BIBLIOTHECA POLITICA:
OR, AN
ENQUIRY
INTO THE
Antient Constitution
OF THE
ENGLISH GOVERNMENT,
With Respect to the just Extent of the REGAL
POWER, and the Rights and Liberties of the
SUBJECT.

Wherein all the Chief ARGUMENTS both for and against
the LATE REVOLUTION, are Impartially
Represented and Consider'd.

In Fourteen DIALOGUES.

Collected out of the best AUTHORS, Antient and Modern.

By JAMES TYRRELL Esq;

The SECOND EDITION.

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THE PREFACE

HAVING out of Curiosity, for some Years before, as well as since, the late wonderful and happy Revolution, carefully pondered, for the Satisfaction of my own Conscience, all Treatises of any Value that have been publish'd concerning the Origin and Rights of Civil Government; as well of Monarchy as other kinds of it, and also concerning the ancient Government and fundamental Constitutions of this Kingdom: I found it necessary, in order to the better meaning of what I had read, and making a more certain Judgment upon it, to write down the most considerable Arguments on both sides, as well of those who will have Monarchy to be Just Divine, as of those who allow it only to Government in general; of those who maintain absolute Subjection, or Perfect Obedience as they call it, as well as of those who hold Resistence in some Cases to be necessary; of those that maintain our Monarchy to have been limited by the Constitution it self, and of those that suppose all our Rights and Liberties, nay, the very Being of Parliaments, to owe their Origin wholly to the graciousConcessions and Favour of our former Kings.

Having made impartial Collections of this Nature, and the'd them to some Persons of Judgment, they thought they might be of great Use for satisfying some Mens Doubts concerning lawful Obedience to their late Majesties King William and Queen Mary. Thefe Gentlemen look'd upon it as the belt and most ingenious way of convincing the Scrupulous, to propofe the Arguments fairly on both sides, without interfering my own Judgment; but leaving it to the intelligent and impartial Reader, to embrace that Side where he found the most rational and strongef Arguments.

This Task, tho troublesome enough, I was prevail'd with to undertake, not for the fale of Fame, but merely for the publick Good and Happiness of my Country.

Being also sensible that a Subject of this Importance deserved a great deal of pains, as, and to be handled in a more artificial Method than the old dry Scholastic Way of Objection and Solution; I thought it would prove more pleasant as well as profitable to the Reader, especially
cially those of our young Nobility and Gentry, for whom I principally design'd this Undertaking, to digest what I had writ into Dialogues or Conversations, suppos'd to be held between two intimate Friends, who, notwithstanding their different Principles in Politicks, had always maintain'd a strict and generous Correspondence. I was the more inclin'd to this Method, because I observ'd that writing of Controversies by way of Dialogue, according to true Rules, had obtain'd well among intelligent Readers; and because my Subjects are of a nice nature, and that my Collections contain strict Inquiries into the Principles laid down in the Writings of several Persons of great Reputation for Learning and Ingenuity.

I was sensible how invidious a Task it must prove to write on purpose against so many Great Men; and 'twas troublesome and tedious it would be to myself, as well as to the Reader, to confute any Author Page by Page; which Method, I perceiv'd, had made Answers to Books very unacceptable to the World. And tho' I grant that writing by way of Dialogue has likewise Objections and Difficulties, as being more diffuse, and taking up more time, where either the one or the other Disputant is apt to rove from the Subject; yet I make bold to affirm, that this may be in a great measure prevented by the Writer, if he keep close to the Question, and not start a fresh Hose till the old one is run down. So that a Man may make and answer Objections in as few Words this way, as by Polemical Discourses. And tho' it be granted, that Matters of Form in Dialogues are more tedious, yet the Reader, as well as Traveller, will find, that the Pleasantries of the Road often makes amends for its being somewhat about.

Whether I have truly pursu'd the Rules of Dialogue, must be left to the Reader's Judgment; but I can justly affirm, that I have carefully avoided all bitter and reflecting Language on either side, having design'd these Discourses for common Places of Argument, and not Forms of Railing. I have also declin'd shewing my self a Party, or giving my own Opinion in any Question, and therefore have not made either of my Disputants the other's Convert; tho' nothing is more easy in writing Dialogues as well as Romances, than to make the Knight-Errant always beat the Giant.

In all my Discourses I have consider'd and contrac'd the best Arguments I could find in the most considerable ancient and modern Authors, either in Latin or English; especially in those that have writ on either side since the late Revolution. As for those in our own Language, wherever I conceiv'd any Author to speak so well, or to argue so closely, that to put it in other Words would make it worse; I have always put the Arguments of both the Disputants in their own Words: and because I would not act the Plagiary, have truly quoted the Book and Page from whence I took them. For other Authors, I hope none will take it ill, if I have sometimes made bold to contrac' their Arguments, without altering their Sense or Words further than by putting in or out an Expression to make the Stile run more smooth. I also desire them not to think that I write on purpose to confute them, since my Design is not to write against any Man's Opinions, as they are his, but only to examine them freely, in order to an impartial Discovery of the Truth. And since some of them have been perhaps too commonly and favourably received by our ordinary Gentry and Clergy, if any ingenious Person will take upon him farther
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that I affir'd or vindicate any Opinion here question'd by the one or the other Disputant, and will clearly and fairly shew me where any Argument might have been put more home, or any Objection more solidly answer'd; I shall, instead of taking it amiss, give him my thanks for his pains, and do here promis to infer all, or at least the Substance of his Arguments under their proper Heads with all due Acknowledgments: only I desire him, whoever he be, to forbear all harsh Reflections and coarse Language; otherwise he must pardon me if I only take notice of his Reafons, and neglect his Passions.

I hope no candid Reader will flight those Dialogues, which treat of Opinions that at present may seem to be of fashion, viz. the Divine Right of Monarchy, and Succession from the Patriarchal Power given by God to Adam; for every one remembers the time when our Pulpits and PefFez would scarce suffer any other Doctrine to be preach'd or publish'd on those Subjects. It fares with some Political Opinions as with Passions, which are never so generally receiv'd and worn, as when they have been in vogue at Court. Those Divines and Lawyers, who were the Inventors or new Vampers of them, commonly receiv'd the greatest Rewards and Preferments: so that as the Court-Taylors did with Passions, they invented such Doctrines and Opinions as were most burdensome and uneasy to all sorts of People, except a few Great ones, who were to be Gainers by them.

I desire it may be observ'd, that however odd or unreasonable those Doctrines may seem to most Men now, yet certainly they must formerly have seem'd to carry a great Appearance of Truth, since they were able to captivate the Reason of the major part of both Houses of Convocation in the beginning of King James the First's Reign, when by several of their Canons they declar'd them to be the only sure Foundations of all Civil Authority, and of Obedience to it; as appears by the Treatise, call'd Bishop Overall's Convocation-Book. And tho' neither King nor Parliament thought it fit to give those Canons the Stamp of Civil Authority, and make them Law, yet this did not hinder severall of the Learned Clergy and Laity from embracing those Opinions; such as Sir Robert Filmer, and his Indicatrix Mr. Bostan, and the Reverend and Learned Bishop Sanderfon, with divers others of Note: whose Arguments I have made use of and consider'd in some of these Dialogues, but with as little Reflection as possible, since I know what is due to the Memory of such Great and Worthy Persons. This was the reason why I only made use of the Initial Letters of their Names, or the Titles of their Books, in the Margin; which are explain'd by an Index at the beginning of this Work, as they were at the beginning of each Dialogue in the first Edition: what is not so mark'd, I desire the Reader to look upon the Words, not the Senfe, to be my own; for I don't pretend to be an Inventor of new Notions in Politicks, there being no Man more sensible than my self of that old Latin Sentence, Nihil dictum quod non dictum prius.

Tho' the Title of the first Dialogue mentions no more than the discoursing of the Question, whether Monarchy be of Divine Right, yet the natural Power of Fathers, Masters of Families, and Freemen, are distinctly treated of, and closly enquir'd into, as being the first Elements or Principles of all Civil Powers, as those alone but of which at first they could be regularly made: And tho' I have made one of the Disputants argue prettily strictly against the Divine Right of Monarchy, and of Indisputable Hereditary Succession to Crowns; yet I declare
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declare I am not what the World calls a Republican or Commonwealths-Man, nor do I hereby delign or define Alterations in the Government, either of Church or State, since none can admire our excellent Constitution more than my self: much less do I prefer an election to an Hereditary Succession to the Crown, for I justly esteem the latter to be the most excellent, if not the only means to prevent all Dissensions and Civil Wars about Succession; and therefore is never to be departed from, unless when some Natural or Moral Disability in the Person, or other unavoidable necessity, render it absolutely inconsistent with the publick Peace and Safety of the Kingdom.

Therefore as a Man may be truly devout without Superstition, which is a Corruption or Abuse of Religion; so I think a Subject may be truly Loyal and obedient to his Prince, tho he has never heard of, or does not believe any Divine Right of Monarchy deriv'd from Adam and Noah; or of Hereditary Succession, from God's Promise, That Cain should rule over Abel. Nor have I any Aversion to Absolute Monarchy as such, could I be assure'd that Princes would be always as wise and as good as they ought to be, for I own that several Nations have never been more happy than under such Monarchs. The Roman Empire, for instance, never arrived to a greater height of Riches and Power, if we may believe Historians, than under Nerva, Trajan, and the two Antonines: So that the Fault is not in Absolute Monarchy as such, but in the general Corruption of human Nature, which rarely produces Persons of such Wisdom, Goodness, and other Abilities, as are requisite for to great a Trust.

I confess Subjects may be happy and contented enough, if they please, under any Form of Government, where the Governors are of equal Capacity and Honesty, and have a hearty love and Concern for the common Good of their People; but where there are Wanting, it is not more Formis and empty Names, that can make them so: Therefore I justly admire the Wisdom of the ancient German and Gothick Nations, who prefer'd a Limited Monarchy to all other Forms of Government; as an excellent Medium between the Mischief of Arbitrary Power, and those Inconveniences that attend Republicks, where either the common People or Nobility must govern.

I likewise hope, that tho I make one of my Dissipants shew the Absurdity and fatal Consequences of Sir Robert Filmer's Principles, yet the Reader will not from thence infer, that I pass an absolute Judgment against them; much less have I done this out of any prejudice to Sir Robert, with whom tho I was never acquainted, I honour his Memory, because his Writings shew him to have been a Person of general Learning, and very ingenious: But whether his Principles be Adverse to the Fundamental Constitution of this Government, I refer to the Reader's impartial Judgment; who I hope will, without Attachment to Party or Faction, determine according to the Merits of the Cause, and observe the Apostle's Rule, to try all things, and hold fast that which is good. I beg the Reader likewise to believe, that tho under the Name of a Freeman I have argued against an Opinion, now and lately much in vogue, viz. That an absolute Tyranny is an inseparable Protagonist of all Sovereign Powers, be they Monarchies or Commonwealths; yet no Man more abhors all unnecessary Resistance or Rebellion against Supreme Magistrates, and is more for an absolute Submission by all particular Persons, whether publick or private, in case of the highest Injuries and Oppressions done
done to themselves alone, and where the common Good of the Community is not immediately concern'd: And this I own to be their Duty, not only out of a generous Regard to the Peace and Tranquility of the Commonwealth, whereof they are Members, (and which ought not to be disturb'd, to revenge or redress a few private Injuries) but also from the express Command of God in the Holy Scripture, which expressly forbids not only all Revenge, but even Self-Defence, whilst the Supreme Powers be legally, the perhaps contrary to the first Rules of Justice and Equity in such particular Cases.

Yet for all this, I doubt whether those Precepts do extend to all Redresses whatsoever, not only of any whole Nation or great Body of Men, whose Resistance or Freedom from intolerable Slavery and Oppression may render it necessary for the Good of the Commonwealth, and is not otherwise to be procured but by a vigorous Resistance, or else joining with some powerful Neighbours, who shall interpose for the Defence. So that if such a Resistance be ever lawful, it can be upon no less momentous an account, than that of a Change of Government, either of the Lives, Liberties, Religion, or Properties of a whole, or any State part of a Nation; as they are established by the Law of Nature, or the Fundamental Constitution of those particular Governments, wherein such insupportable Tyranny and Oppressions are then justified. And if this be not lawful in such extraordinary Cases, in which cases, if God had prefer'd the means of Power or Force, and the means of Governing the Government, before the Good and Happiness of the People, which is contrary to the main End of all Civil Government, even so this Good and Happiness of Mankind, even so that which is against the Resistance must allow, yea, and even is lawful. But whether the Resistance be not in such Cases a lawful, may only be known and determined of those oppressed Nations, leave it to the Judgment of the immediate Rulers, upon the Perusal of my Dialogues on this Subject.
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ground, if it appears in its true natural Dres against its Opposite, Error. But if a great deal of what has been said, by Persons too vio-

lent or either side, appear to be mere precarious Opinions, whose beft Authority is from the great Names of those that have broach'd them; I hope no indiffertent Persn will take it ill, if I endeavour to
discover those Mistakes, since all Men are liable to Errors: and as no one can be more sensible of this than my self, so when either of
those Learned Persns, or any other, shall convince me of weak or
fale Reasonings, I promise to retract them with the firt
Opportunity.

As to my Discourses upon the Supreme Legislative Power, and the Fundemantal Constitution of our Government, together with the Antiquity of Great Councils or Parliaments; and whether they al-
ways consisted of Bifhops, Barons or Temporal Lords, and Com-
mons; is a Question to be decided only from the Histories and Laws
of the Nation. And I dare affure the Reader, that I have advance'd
nothing upon it on either fide, but what I have produc'd good Au-
torities for, either from the Histories and Governments of our own
or neighbouring Nations, or from the Collections of our English Samu
Laws, and anient as well as modern Writers upon our Laws; and
laftly, from our Statutes since the reputed Conquest, without omit-
ting any Authority that I judged material to be urg'd on either part.

As for thofe Parliamentary Records here quoted, they are either
such as have been already printed from the Rolls in the Tower, or
other Offices at Wefminster, and fo are allow'd for authentick, or
else are fuch as have not yet been made publick; for the Truth of
which, the Reader may fearch the Records themselves, if he have any
Diftrift that I have not quoted them fairly. And I can farther af-
jure the Reader, from better Judgments than my own, that he will
find more here than ever was yet publish'd at once, or perhaps at
all, upon thofe important Subjects.

As to the fifth Dialogue, I muft own the Subject of it to be one
of the hardeft and moft important, tho perhaps in the Judgment of
fome, the dryeft and moft unpleafant part of my Task, viz. to adjut
who were antiently the constituent Parts or Orders of Men that
made up our Legislative Assemblies. That the Bifhops, Abbots, Priors,
Earls, and chief Thanes or Barons, were principal Members, is grant-
ed by all Parties; but whether there were from the very Original
of thofe Great Councils, or till long after the coming in of the Nor-
man, any Representatives for the Commons, as we now call them,
in diftinction from the Lords Spiritual and Temporal, is made a quet-
tion. The firt who rais'd the Doubt, for ought I can find, was
Polydore Virgil, an Italian, who wrote the History of England in the
sixteenth Century, and it hath been continued by fome Antiquaries
since that time: tho the firt who undertook to prove the contrary,
was the Author of a Treatife publish'd by James Howl in the Cosmci
Poethuma, under the Name of Sir Robert Cosin, about 1654. And af-
ter him, this Notion of the Bifhops, Lords, and other Tenants in capite,
being the fole Representative for the whole Nation in thofe Councils,
was next printed in the second part of Sir Henry Spelman's Glossary,
Wt. Parliamentam; where King John's Charter is brought as the main
Argument to prove that Affertion. The next who appeared in Print
on this Subject was Sir William Dugdale in his Origins Juridicatae;
who, tho he transcrib'd the fame Notion and Arguments from Spel-
man's
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man's Glossary; yet he allows our Commons to have been always some way misrepresented in Parliament, tho' not by Members of their own chusing: notwithstanding which, he agrees with the Author of the Passage in the Glossary, that the Commons first began by Rebellion in the 49th of Henry III.

Which Opinions being look'd upon not only as novel and erroneous, but dangerous to the fundamental Rights and Liberties of the People of this Nation, they were oppos'd by William Pettit Esq; in his Treatise, intituled, The Rights of the Commons of England asserted, &c. He was seconded by the Author of the Treatise, call'd, *Jani Anglorum facies negra*. Soon after both those Books were animadverted upon by Dr. Brady, in two Editions of his Answers to them; but the Rights of the Commons were again vindicated by the Author of *Jani Anglorum, &c.* in another Treatise, intituled, *Jani Anglorum ab antiquo*, which has not yet been answer'd.

I have been the more particular in my Account of those Authors, because this Controversy being largely debated in them, I thought it proper, for having the trouble of reading so many Books, to reduce all the material Arguments and Authorities made use of by both Parties, in this weighty Controversy, into this and the two following Dialogues; and have, as near as I could, confin'd my self to the words of those Authors, as will appear by the Quotations in the Margin.

I must own, that having had a long and familiar Acquaintance with Mr. Pettit, he furnish'd me with divers Authorities both in Manuscript and Print, not hitherto taken notice of by any Writer on this Subject. And had Dr. Brady, or any of his Friends, thought fit to communicate their Objections against any thing I have writ, I should have fairly publish'd them, with such Answers as the Cafe might have requir'd.

I hope the Reader will pardon me, if I seem too prolix in the Interpretation of divers Words and Phrases, us'd by Dr. Brady and his Opponents in a quite different Sense from our ancient Historians, Records, and Statutes; for if the various Use and equivocal Meanings of those Expressions be truly stated and laid open, according to the several Ages in which those Authors liv'd, or such Laws were made, I reckon this great Dispute will soon be at an end.

I think it needless to insist upon the Nature of the other Dialogues. The Design of them is obvious, from the summery Account of the Subject prefixed to them; so that all I shall add, is, that in each of them, as well as the former, there are many incident Questions handled of Law, History, and Divinity, that relate naturally to the Subject. The Reader will easily find this, by consulting the large Alphabetical Index annex'd to this Edition, which makes it a compleat Common-place Book for understanding our Constitution; a thing hitherto very much wanted, and not to be met with, but by consulting multitudes of Books, at no small Ex pense both of Mony and Time.

I can assure the Reader, that all the Authorities here made use of from Historians and Records, are truly cited, without leaving out or concealing any thing that I thought made for or against either Opinion. And as for the Records, they are either such as having been sufficiently try'd, have pass'd for authentick betwixt Dr. Brady and his Antagonists, or else such as my self have seen and examin'd, and consider'd the Purport of them carefully. If any suspect the contrary,
ry, I have given them a fair Opportunity, by my Quotations, to examine the Truth of it themselves; so that by weighing and comparing Historian with Historian, and Record with Record, and sometimes both together, as the Subject-Matter requires, they may be able to make a right and impartial Judgment of the whole.

I hope that the Arguments, in all the following Discourses, will prove so plain and convincing to careful and unprejudiced Readers, that they may as easily discover the Truth, as an honest and unbiased Jury-Man can, at a Trial, judge on which side the Right and Justice of the Cause inclines, upon the bare hearing of Evidence on both sides, even before the Court hath summed it up. But on which side soever the Reader brings in his Verdict, I heartily wish that God may direct his Mind, and guide his Judgment to find out and embrace the Truth; which as it was the only end of my writing at first, is now the end of republishing these Dialogues: which, since the principal Subject of them has again so lately been controverted, not only by the Pen, but by the Sword, 'tis hoped may be of use to settle the Minds of People, who to their Cost have been so frequently misled, because they did not understand our Constitution.
An ALPHABETICAL CATALOGUE of the LETTERS, by which the Names and Books of Authors are denoted in the Margin of the following DIALOGUES.

B. A. A. Dr. Brady's Answer to Mr. Cook's Argumentum Anti-Norman- nium.
B. A. J. Dr. Brady's Animadversions on 'Sani Anglorum facies nova.'
B. A. P. Dr. Brady's Answer, Edit. in Folio, to Mr. Pett's aient Rights of the Commons of England.
B. C. P. Bobun's Conclusion to Sir Robert Filmer's Patriarcha.
B. D. F. Bobun's Defence of Sir Robert Filmer.
B. G. Dr. Brady's Glossary at the end of his Answer to Pett's aient Rights of the Commons.
B. P. H. Dr. Brady's Preface to his History.
B. P. P. Bobun's Preface to Patriarcha.
B. S. P. P. Bishop Sanderson's Preface to the Power of the Prince.
D. O. G. Filmer's Directions for Obedience to Governors.
F. A. M. M. Sir Robert Filmer's Anarchy of Mix'd or Limited Monarchy.
F. D. O. Sir Robert Filmer's Directions to Obedience.
F. F. G. J. Filmer's Freeholders Grand Inquest.
F. P. Sir Robert Filmer's Patriarcha.
F. P. O. Sir Robert Filmer's Preface to his Political Observations.
G. J. B. Grotius de Jure Belli & Pacis.
H. J. Dr. Hickter's Jovian.
H. P. O. History of Peace-Obedience.
H. S. B. R. Helyot's Stumbling-Block of Rebellion, Folio.
H. T. M. Hunton's Treatise of Monarchy.
J. A. A. 'Suri Anglorum ab Antiquo.'
J. E. M. G. Dr. Johnston's Excellency of Monarchical Government.
J. H. Dr. Esrange's Observators.
P. J. N. Puffendorf de Jure Naturæ & Gentium.
P. N. M. Patriarcha non Monarcha.
P. R. Plato Redivivus.

P. R. C.
An Alphabetical Catalogue, &c.

P. R. C. Petis's Antient Rights of the Commons of England asserted.
R. H. C. Ruffworth's Historical Collections.
S. C. R. Dr. Sherlock's Cafe of Resistance.
S. P. P. Bishop Sanderson's Preface to Archibishop Usher's Power of the Prince.

T. T. G. Two Treatises of Government.
V. J. R. Vindicia Jura Regii.
U. S. A. S. Mr. Dudley Digges's Unlawfulness of Subjects taking up Arms against their Sovereign; Edit. 1643.
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ERRATA.

Bibliotheca Politica: 
OR AN 
ENQUIRY 
INTO THE 
ANTIENT CONSTITUTION 
OF THE 
English Government.

DIALOGUE I. 
Whether Monarchy be Jure Divino. 
BETWEEN
Mr. FREEMAN, a Gentleman; and Mr. MEANWELL, a Civil Lawyer:
Supposed to be immediately upon the late King JAMES's first Departure.

F. GOOD morrow, Sir: What! at your Study thus early this Morning.
M. That is no wonder, if you were acquainted with my Hours: But pray, Sir, may I not likewise ask you what extraordinary Occasion brings you out of your Lodgings so much sooner than your ordinary Time?
F. Why, Sir, I'll tell you. Being awake very early this Morning, and not able to sleep for thinking on the great Change that might happen, let either the King or Prince get the better; and hearing some odd Rumours last Night of the King's Intentions to go away: I was resolved to get up, and go to the Coffee-house, to hear what News; where I had scarce set down, before a Gentleman comes in from Whitehall, and brings us a certain Account, that the King withdrew himself this Morning between three and four of the Clock, no Body knows whither, (tho' most believe he is gone after the Queen into France) which I thought would be so surprizing (I will not say welcome) to you, that being so near your Lodgings, I thought it would be
be worth while to leap up, and tell you of it, and take your Thoughts of this great (and I hope happy) Change, which so great a Revolution is likely to produce in this Nation.

M. I thank you, Sir, for your Kindness, tho' it is not half an Hour ago, that one I employ'd in some Business relating to a Client of mine, came hither, and gave me the same account, tho' it was no great Surprize to me; for ever since Sunday, that the King sent the Queen and Prince away, I believe'd that he gave the Game for loft.

F. I must confess I was of another Minder: and the Night, that when he last secured the Queen and Child, he would have hasten'd with the Prince, before he could have got to London; and if he had had the worst of it, he could have but gone away at last. But to leap away on this manner, and to lose three Kingdoms without ever striking one Stroke, it is both confuts, suitable to that high Character his Admires have always had of his Courage and Conduct.

M. Ah! good King: What would you have him do? Or from could rely on, when some of his near Relations and dear Children in him he had his almost from notoriety had departed him? How could he these, but an Army of Mercenaries, who being most of them but the Legs of the People, would, it is likely, rather have delivered him up to the Prince, than have ventured their Lives for him.

F. What you have said concerning his Majesty's Relations and Confidents, I think they would have left a Prince to whom they were so much obliged, to join themselves with his Enemy, from whom they had no reason to expect greater Advantages than they had already; unless they had been satisfied in their Consciences, that the Protestant Religion established in these Nations, and also our Civil Rights and Liberties, were in imminent danger of being utterly lost and destroyed. And tho' I grant that some of the King's Officers and Soldiers went over to the Prince; yet, considering how few they were that did go, not being (as I am credibly informed) above seven or eight hundred Men at the most, and what great Numbers of Men he had left with him: he might, methinks, have turned out those Officers he suspected, and put others in their rooms, who would have engaged to live and die with him; and if this would not have done, he might have sent those Regiments he most suspected back to London: And then reckoning the Scotch and Irish Forces that came lately over, besides the Papists he had in his Army, and those who, having more Courage than Conscience, could never expect to fight for a Prince, who would pay them better: I am confident (if this had been done) he might, after the going over of those few Troops, have made up as good, if not a better Army than the Prince's; and so need not have scampeded last Week from St. John's in that haste he did, whilst the Enemy was near fifty Miles off. But as it is, I am very well satisfied with a Plot hath happen'd in this great Revolution, and convinced of the Truth of that old Saying, Quas perdere victis, Juppiter, dementat primis.

M. So far I go along with you, that God doth often make use of the Wickdness and Treachery of Men, to bring his great Designs about; but whether God hath ordained this great Revolution, as you call it, for a Deliverance or Punishment to this Nation, I am yet in doubt: For if you please to consider how much those two Causes have contributed to this turn of Affairs, I suppose, if you argue according to my Principles, we must own, that tho' this Change hath happen'd by God's penuitive Providence (as all things else, tho' never so ill) yet whether he doth approve of all that hath been done to procure it, I much doubt; since if divers of our Nobility, with some of our Clergy, had not quitted their Doctrines of Passive Obedience and Non-Resistance, so long owned by the Church of England, this Revolution could not have happen'd at all, or at least not so suddenly, as it did: So that indeed I must confess, I am not only grieved at his Majesty's hard Fortune, but also stand amazed, and cannot but reflect with wonder on the strange Vicissitudes of worldly Affairs, to see a Great King, who but last Week commanded a powerful Army of more than forty thousand Men, forced out of his Throne, and made to fly his Kingdom, by a Prince that did not begin half So Number into the Field. And who can sufficiently bewail the King's Misfortunes, who hath been at once betrayed by the ill Advice of his Counsellors, the Treachery of his Friends, and the Cowardice of his Soldiers? F. May
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F. Methinks, Sir, there is no such great Caufe of Wonder, much lefs of Concern in all this: For who can much admire that a Prince shou'd be thus us'd, who had not only provok'd a powerful Enemy to invade him from abroad, but (by induftriously labouring to introduce Popery and Arbitrary Government at Home) had loft the Hearts of almofl all, except his Popish Subjects; infomuch that many of his own Soldiers were fo terrified with the Thoughts of being discarded (like the Protestant Army in Ireland) to make room for Arifs and French Papists, that they had very little Courage to fight, when they faw Catholick was the beft Reward they.could expect, if they proved victorious. And who can much pity a Prince, who would rather lofe the Affections of his People, than difpleafe a few Priests and Jefuits: So that if he suffers, he may thank himself; it not being Religion, but Superstition which brought this Misfortune upon him. Since the King having got a Prince of Wales, and (as it is highly fufpe&ed) joined himfelf in a feif League with France for the Extirpation of Heretics, it laid an absolute Neceffity upon the Prince of Orange to come over, that, by the Affiftance of the States of Holland, he might not only relieve us, but vindicate his own, and her Royal Highness's his Princefs's Right to the Succeffion, and secure his Country from a dangerous and powerful Invasion, which it was threatened with both by Sea and Land, whenever the Kings of France and England fhou'd be at leifure to join their Forces, to make War upon them; which you know all Europe has been prepar'd for above two Years laft paft.

M. Thefe things were somewhat, if they could be proved; but indeed, to deal freely with you, I look upon this League, and the Story of the suppoftitious Birth of the Prince of Wales, as meer Calumny's cast out by wicked and crafty Men to render the King more odious to his People.

F. Nay, Sir, you don't hear me positively affirm either the one or the other, fince I grant they are not yet made out; but whoever will consider all the Circumstances of the Birth of this Child, cannot but be strongly inclined to believe it an Impofition, notwithstanding all the Depofitions that are taken to the contrary. And as for the French League, you may be fure, if there be any fuch thing, it is kept very private; and yet I must tell you there are very high and violent Prefumptions to believe it true; or elfe why should the King of France, in a late Memorial to the Pope, complain that his Holinefs, by oppofing his Interefs in Europe, had hindred him in thefe great Diffefs he had for the Extirpation of Herefs? by which he must furely intend England or Holland; Proteftantism being fufficiently expelle out of his own Country already. And he could not do it in either of the other without the Confeft and Affiftance of his Brother the King of England. Or to what purpofe fhould the King of England join with France to ruin Holland, and his own Son-in-Law into the Bargain, but to make a War meerly for Religion; fince neither the Dutch, nor the Prince their Stadt-holder, gave him, 'till now, any juft Provocation?

M. Well, however, thefe are but bare Sufpicions and Prefumptions, at moft, and not Proofs; and therefore in a doubtful Matter, as this is, if we ought to judge favourably of the Actions of others, much more of Princes, whose Councils and Actions, though private, yet are all expelle to the Confufe and Calumny of their Enemies; and therefore, I hope, you will not blame me, if I freely confefs, and deeply concerned to fee an innocent and holy King forced to fee his Bread in a foreign Land; and the more, fince many of the Nobility, Gentry, and common People, have contributed so much to it, by taking up Arms againft him; and that fo great a part of his own Army, and Officers, fhould, contrary to their Allegiance and Trust repofed in them, run over to the Enemy.

Nay, that fome of our Bishops and Clergy-men fhould, contrary to the fo often acknowledged Doctrines of Paffive-Obedience, and Non-Resistance, not only countenance, but be likewife active in fuch desperate Undertakings, and this in direct oppofition to the known Laws of God, and this Kingdom; which would needs make our Church a Scorn to our Enemies the Papifts, and a Shame and Reproach to all Proteftant Churches abroad; and render the People of England odions to all the Crowned Heads in Europe.

F. Well, Sir, if you are very warm, and I hope more than the Caufe deserves. You may judge as favourably of the King's Proceedings, and as hardly of the Actions of the Nobility, Gentry, Clergy and People in this Matter as you please. But yet I think I can make it as clear as the Day, that they have done nothing
nothing by joining in Arms with the Prince of Orange, but what is justifiable by the Principles of Self-preservation, the Fundamental Constitutions of the Government, and a just Zeal for their Religion and Civil Liberties, as they stand secured by our Laws; unless you would give the King a Power of making us Papists, and Slaves, whenever he pleased. But as for your Doctrine of an absolute Obedience without Reference, and the Divine Right of Monarchy and Succession, you need not be much concerned whether the Papists laugh at you or no, since there are very few of them (if any) who are such Fools themselves as to believe such furious Opinions. But indeed they have more reason to laugh at you whilst you maintain, than when you quit them; since as they have only rendered you a fit Object of their Scorn, so they would have made you but a more easie Sacrifice to their Malice. For what can Thieves defire more, than that those they design to rob, should think it unlawful to resist them? And what could the Papists have with'd for more, than that our Hands being fetter'd by this Doctrine of an indefinite Passive-Obedience, our Lives, Religion and Liberties should lie at their Mercy? Which how long we should have enjoyed, whenever they thought themselves strong enough to take them away, the late cruel Persecutions, and Extirpations of the Protestants in France, Sweden, Hungary, and other Places, have too much impressed us with the wonder ample; and frightful Examples; and so let your high-bred Church-men write or preach what they please (if the Body of the Nobility, Gentry and People of England could never be persuaded to swallowDoctrines so fatal to their Religion, and destructive to their Civil Rights and Liberties both as Men and Christians.

And as for the Antiquity of these Doctrines, I think they are so far from being the ancient Tenets of the Church of England, that they are neither to be found in its Catechism, Thirty nine Articles, or Book of Homilies, taken in their true Sense and Meaning: though indeed there is something that may tend that way in some of the late Church Canons about fifty Years ago; but I do not look upon them as the ancient establisht Doctrine of our Church, because these Canons are not confirmed, but condemned by two Acts of Parliaments, and consequently never legally establisht as they ought to be by the publick Sanction of the King and Nation. Our old Queen Elizabeth's Divines, such as Bishop Bishops, and Mr. Hooker, being wholly ignorant of these Doctrines, nay, teaching in several Places of their Writings the quite contrary. Nor was this Doctrine of absolute Subjection, and Non-Resistance ever generally maintained, until about the middle of King James's Reign, when some Court Bishops and Divines began to make new Discoveries in Politicks as well as Divinity: and did by their Preaching and Writings affirm, that the King had an absolute Power over Men's Estates, so that it was unlawful in any Case to disobey or resist his personal Commands, if they were not directly contrary to the Law of God; as may appear by Dr. Harford, then Bishop of Chichester, his Sermon upon this Text, Gave unto Cæsar the things that are Cæsar's; wherein he maintained, That all the Subjects Goods and Money were Cæsar's, that is, the King's, and therefore were not to be denied him if he demanded them for the publick use; which Sermon (though ordered by the Lords and Commons to be burnt by the Hangman) yet was so grateful to the Court, that he was so far from being out of Favour for it, that he was, not long after, translated to Norwich, and from thence to the Archbishoprick of York. So likewise about the beginning of King Charles I. Dr. Maundering preached before him; the Subsistence of whole Sermon was somewhat higher than the former, (exc. That the King was not bound by the Laws of the Land, not to impose Taxes or Subsidies without the Consent of Parliament, and that when they were so imposed, the Subjects were obliged in Conscience, and upon pain of Damnation, to pay them; which if they refused to do, they were guilty of Disobedience and Rebellion. For which Sermon Charles, with the Commons in Parliament, took him, and thereupon sentenced by the House of Lords, to be disabled to hold or receive any Ecclesiastical Living, or Secular Office whatever, and also to be imprisoned and fined a Thousand Pounds. Notwithstanding all which, we find him presently after the Parliament was dissolved, not only at liberty, but also preferred by the King to a rich Benefice in Essex, and not long after made Bishop of St. David's. So likewise one Dr. Sidehorp about the same time preached an Alize-Sermon at Northampton, on Rom. 13. 7. wherein he maintained much the like Doctrines, as, That it was the King alone that made the Laws, and that nothing could excuse from an
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A How Obedience to his Commands, but what is against the Law of God and Nature; Vide Archbp. Abbot's New Caution, B. II. c. 413.

And that Kings had Power to lay Pote-Money upon their Subjects' Heads. But this much I have read, that this Sermon was licened by Dr. Land, then Bishop of St. Davids's, because Archbishops Abbot had refused to do it as contrary to Law, for which he was very much frowned upon at Court; and it is supposed to have been one of the main Caufes of his Sufpension from his Arch-Episcopal Jurif dic- tion, which not long after happened. But as for this Sideburb, though he lived long after, even 'till the King's Return yet being (as Archbishop Abbot describes him) a Man of but small Parts or Learning, I cannot learn that he was ever prefer'd higher than the Patronage of Brackley, and another in Northamptonshire, whose Name I have forgot.

But I find a new Doctrine broach'd by some modern Bishops and Divines about the middle of the Reign of King James the First. That Monarchy was of Divine Right, or Institution at least; so that any other Government was scarce warrantable or lawful: And of this new Sect we must more especially take no- tice ofSir R. F. who hath written several Tretifies to prove this Doctrine, and which is worse, That all Monarchs being absolute by Divine Institution, they cannot be limited or obliged either by Oaths, Laws or Con'tacts with their People, farther than they themselves shall think fit, or confent to with their fuppofed Prerogatives; of which they only are to be the sole Judges. So that whoever will but confider from the Reign of our four laft Kings, what strong Inclinations they had to render themselves absolute, and that few Divines, or Common, or Civil Lawyers were prefer'd in the King's Courts to any considerable Place, either in Church or State, who did not maintain these new Opinions both on the Bench and in the Pulpit: You need not wonder when the Stream of Court Preferment ran fo strong that way, if so many were carried away with it; since it was but to expel themselves to certain Mifery, if not to utter Ruin, to oppofe it. All who offered by speaking or writing to maintain the contrary, being branded with the odious Names of Puritans, Commonwealths-men, Whigs, &c. some of whom you may remember were not long since imprifonned, fined, nay, whipp'd for fo doing. So that it was no won- der if there were but very few to be found who durft with fo great hazard spea- what they thought; nor could any thing, but the imminent Danger upon our Laws, Religion and Properties, proceeding from the King's illegall Pafrafties, have opened the Eyes of a great many Noblemen, Gentlemen and Clergy, who, con- trary to the Opinions so much lately in vogue, did generously venture both their Lives and Eftates, to join their Arms with the Prince of Orange against the King's unjust and violent Proceedings.

M. I do not doubt, notwithstanding all you have laid, to prove before I have done, these Doctrines of Non-Refiftance, and of the Divine Institution of Mo- narchy, to be most confromat to the Word of God, and to the Doctrin of the Primitive Church, and also to that of our Reformed Church of England. Nor were these Divines you mention in King James the First's Time, the Authors or Inventers of these Doctrines which were publickly received, and decreed by both Houfes of that Convocation which began: the firft Year of King James, and continued 'till the Year 1610, as appears by divers Manuscript Copies of the Acts or Decrees of this Convocation, the Original of which was lately in the Library founded by Dr. Cuffus, late Bishop of Durham, besides a very fair Copy, now to be feen in the Archbishops Library at Lambeth; Which if you please to peruse, you may be quickly satisfied, that the Church of England (long before ever Sir R. F. wrote those Tretifies you mention) held that Civil Power was alfo given by God to Adam and Noah, and their Defendants; as alfo that absolute Subjection and Obedience was due to all Sovereign Powers, without any Re- fiftance; as claiming under thofe Original Charters: These Doctrines being there fully and plainly laid down and affered, as the Doctrines of our Church. So that you deal very juftly with the Memory of thofe Divines, as alfo of Sir R. F. to make them the firft Broachers of it; whereas you may find that it was the Opinion of the whole Convocation, for many Years before the ever thole Divines, or that Gentleman began to preach, or wrote upon this Subject. Nor were thofe the only Men who maintained thofe Principles; but Archbishops Uper, and Bishop Sanderfon (whom I fuppofe you will not reckon among your flattering Court Bishops) have as learnedly and fully afferte those Doctrines, you fo much condemn, as any of that Party you find fault with, and have very well

*This is fine print lettering under the title of Bishop Overall's Convocation Book.
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proved all Resilience of the Supreme Powers to be unlawful, not only in absolute but limited Monarchies. Of the Truth of which you may sufficiently satisfie yourself, if you will but take the Pains to read the Learned and Elaborate Tracts written by those good Bishops (viz.) the Lord Primatate Uss's Powers of the Prince, and Obedience of the Subject, and the Bishop of Lincoln's Preface before it; as also the said Bishop's Treatise de Juramento, written whilfe he was Doctor of the Chair in Oxford.

F. I must beg your pardon, Sir, if I have never yet seen or heard of that Convocation Book you mention, much less of the Opinions therein contained; since there is no mention made of their Proceedings, in any Hillogy or Record of those Times either Ecclesiastical or Civil, as I know of. But this much I am certain of; that those Determinations or Decrees you mention, (call them which you please) never received the Royal Affent, much less the Confirmation of the King and Parliament, one of which (if not both) is certainly requisite to make any opinion either in Doctrine or Discipline to be received by us Lay-men for the Doctrine of the Church of England, otherwise the Canons made in 1640 would oblige us in Conscience, tho' they stand at this day condemned by Act of Parliament: So that however, even according to your own Principles, you cannot urge this Book as the Authoritative Doctrine of the Church of England, unless their Determinations had received the Royal Affent; which you yourself do not affirm they had for you very well know that, as in Civil Laws, no Bill is any more than wasted and entire if once the King had refused to give his Royal Affent to the like. Like a wife in Spiritual or Ecclesiastical Matters, I think no Decrees or Determinations of Convocations are to be received, as binding either in points of Faith or Manners by us Lay-men, till they have received the Confirmation of the King, and the two Houses of Parliament: or otherwise the Consequence would be, that if the King, who hath the Nominature of all the Bishops and Archbishops, as also of most of the great Prelates in England, of which the Convocation chiefly consists, should nominate such Men into those Places, which would agree with him to alter the present Established Religion and Government, and to bring in Popery or Arbitrary Power, the whole Kingdom would be obliged in Conscience to embrace it; or at least to submit without any contradiction to those Canons the King and Convocation should thus agree to make; which of how fatal a Consequence it might prove to the Reformed Religion in this Kingdom, this King's Choice of Bishops and Deans, such as he thought most fit for his turn, would have taught us when it had been too late.

M. You very much mislike me, Sir, if you believe that I urge the Authority of this Book to you, as containing any Ecclesiastical Canons, which I grant must have the Royal Affent; but whether that of the two Houses of Parliament, I very much question; since the King without the Parliament is Head of the Church, and divers Canons made under Queen Elizabeth, and King James, are good in Law at this day, tho' they were never confirmed by Parliament. But I only urge the Authority of this Book to you, to let you see that those Doctrines are more Ancient than the time you prescribe; and also that the major part of the Bishops, and Clergy of the Church of England, held those Doctrines which you so much condemn, long before those Court Bishops or Divines you mention, medled with this Controversy; and I suppose we may as well quote such a Convocation Book, as a Testimony of their Sense upon those Subjects, as we do the French Histoire, or any other Protestant Churches Confessions of Faith, drawn up and passed in Synod of their Divines, tho' without any Confirmation of the Civil Power.

F. If you urge this Convocation Book only as a Testimony, and not Authority, I shall not contend any farther about it: But then let me tell you, that if the Canons or Decrees of a Convocation, tho' never so much confirmed by King and Parliament, do no farther oblige in Conscience, than they are agreeable to the Doctrine of the Holy Scriptures; sure their Determinations without any such Authority, can only be look'd upon as the Opinions of so many particular private Men. And tho' I have a very great Reverence for the Judgments of so many Learned Men; yet granting those Doctrines you mention to be contained in this Book, I think notwithstanding, that we may justly examine them according to the Rules of Reaon, and express Testimonials of Scripture, by either of which, when I see you can convince me of the falsehood of my Tenets, I shall
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shall count myself happy to be better informed. But as for those Treatises of Bishops Usher, and Bishop Sanderson, which you now mention'd, I must needs confede they are learnedly and elaborately written: And tho' I am against Rebellion as much as any Man, and do believe that Subjects may too often be guilty of it; yet am I not therefore convinced, That it is absolutely un lawful in all cases whatsoever, even in the most Absolute and Arbitrary sort of Civil Government, for the People, when violently and insensibly oppress'd, to take up Arms and resist such unjust violence, or to join with any Foreign Prince, who will be so generous as to take upon them their Deliverance. So that though I freely acknowledge that those good Bishops you mention were very Pious and Learned Men, and that I bear great Reverence to their Memories; yet doth it not therefore follow, that I must own them to be infallible, or as great Politicians as they were Learned Divines; or that they understood the Laws of England, as well as they did the Fathers. And perhaps there may be a great deal more laid on their Behal than can be for divers others, who have since written and preach'd fo much upon those Subjects; for if you please to consider the Times of their writing those Treatises, you will find them written about the beginning or middle of the late Civil Wars, which they suppos'd to be begg'n and carried on contrary to all Law and Justice, under the pretended Authority of the two Houses of Parliament against King Charles the First; and therefore it is no wonder if they thought themselves obliged to write very high for the Perogatives and Rights of Princes, and the absolute Obedience of Subjects, when they saw even the King's just and lawful Perogatives in danger to be taken from him by force. And altho' they may perhaps stretch several of these Points too far, yet this may be very excusable; since it is a hard matter to write for exactly against any Error as not to fall in to the contrary extremity, which nevertheless may sometimes prove useful enough: As those who would set a fitch fag'st, shall bend it to the other side; And so the Doctrines which might then be reasonable, whilst the People carried on their Animadversions against the King, farther than in Justice they ought, have now lost the same reason and cogency, when this King hath so manifeely endeavoured to pull up the very Foundations both of our Religion and Government. So that I am persuaded, could those good Bishops have lived by the course of Nature to our Times, and have seen the 3d and fatal use hath been made of those Doctrines by those in Power, they would either absolutely have renounced them, or at least have been very cautious how they publish'd such doubtful Opinions to the World.

As I must beg your pardon, Sir, if I am not of your Opinion, for I look upon the absolute subjection of the Subjects to the higher or supreme Powers, to be a thing of such constant and eternal Obligation, that no change of Times or Circumstances can ever dispence with us in, or discharge us from it; and I am so far from believing that those good Bishops would ever have recanted their Opinions in this particular, that had they lasted until this time, 'tis think they could not (without the Imputation of Time-servers) have forborne publicly to declare and maintain them: For sure we must not deny or lay aside true Principles, because of some inconveniences or hardships that may thereby happen to our Religion, Peace, Liberty, and Happy State; for, if these were no great want, or to the rank rebellion, and the highest disobedience to the Supreme Powers; for the Primitive Christians might have claimed a right to rebel against the Heathen Emperors, pretending they were not bound to submit themselves unto them, because they percieued God's Church, and put the Christians to death for so other reason than that they were such. Whereas we may plainly see St. Peter and St. Paul teach us another Leflon, and command absolute subjedion without reference to the higher Powers, which were then the tyrannical persecuting Emperors; and that the Primitive Christians who immediately followed the Apostles, understood their faith in this sense; and altho' they had sufficient strength, yet being unwilling to be the first to subvert those Heathen Emperors under which they lived. I refer you to that vast treasure of Quotations out of the Fathers and Ancient Church Historians, collected with such Learning and Industry by the Lord Primate Usher in the second Treatise.

F. It is not my intention, Sir, to press this into a severe examination of so many Texts of Scripture, and Quotations of Fathers, and other Authors, as are made use of by those Learned Men you lately mention'd, which require more consideration than our time will now afford; therefore the best Method I
can propose to you, for the true flattering and understanding this noble Controversy, were first to look into the Natural state of Mankind after the fall of Adam; and enquire, First, If God has appointed any kind of Government by Divine institution before another. Secondly, If he has appointed any; how far Civil Power may be look'd upon as from God, and in what sense as derived from the People. Thirdly, Whether Reformation by the Subjects in some Cases be incompatible and absolutely destructive to all Civil Government whatsoever. Fourthly, Whether such Reformation can be absolutely contrary to the Doctrine of Christ contain'd in the Scriptures, and that of the Primitive Church practising thereunto. Fifthly, Whether such Reformation be contrary to the Constitution of this Government, and the express Laws of the Land. Sixthly, Whether what has been done by the Prince of Orange, and that of the Nobility, Gentry, &c. in pursuance of those Principles, has been done according to the Law of Nature, the Scriptures, and Ancient Constitutions of this Kingdom; which material Points if we can once settle, and discover where the Truth lies, it will prove the clearest Comment and best Interpretation of all those places of Scripture, and Opinions of Fathers, and other Authors which are cited by Divines or other Writers, for the Doctrines of the Divine Institution of Monarchy, and the absolute Submission of Subjects without any Reformation. For when we have once discover'd what the Law of Nature or Right requires, I think we may rest satisfy'd that that is the true Sense of the Scripture: God not having given us any Precept or Command, in Moral or Practical things, that can be contrary to the Law of Nature or Reason; or incompatible with the happiness and welfare of Mankind in this Life; as the reveal'd Will of God does chiefly regard that which is to come.

M. I do very well approve of your Proposal; and therefore pray give me, first, your Opinion on those Heads, that I may see how far I may agree with you, and wherein I must differ from you; for I do assure you my Intention is not to argue with you incerely for disputes like, but that we may with the Benefit of each others Understanding, and discover, if it be possible, where the Truth lies. Therefore pray, Sir, begin first with the Natural State of Mankind; but remember to do it like a Christian, and one that believes that we are all derived from one first Parent, and that we did not at first spring up out of the Earth like Muff-rooms, or as the Men, whom Ovid reigns to have been produced of the Dragons Teeth Cadmus is feign'd to have fown, who, as soon as they sprung out of the Earth, immediately fell a fighting and killing each other.

F. I thank you, Sir, for your honest and kind Advice; and shall therefore in the first place suppose, that the Neccessity as well as Being of all Civil Government proceeded from the Fall of Adam; since if that had not been, we had still liv'd, as the Poets fancy Men did under the Golden Age; without any need of Kings or Commonweals to make Laws against Oppression, Theft, Adultery, Murder, and those other Injuries which Men are now too apt in this lapsed corrupt State to commit against each other; much less would there have been any need of Judges or Executioners, either to sentence or punish Offenders; for if Man had continued as free as he was in Paradise, there could have been no need of a Supreme Coercive Power, since every Man would have performed his Duty towards God and his Neighbour without any punishment or constraint. So that all the Authority that can be suppos'd could have been then necessary for the good and happiness of Mankind, would have been no more than Directive, as that of the Husband over his Wife; or Imperative, as that of Parents over their Children; the former of which would not have been an Absolute Coercive Power neither, but rather such a Power as his Understanding then had over the inferior Faculties of his Soul, join'd with a voluntary Submission of her Will to his; the Coercive Power of the Husband, and his more extensive Rule over her, being conferred by God on Adam, and in him on all his Posterity after him; for the regulating and restraining the unreasonable Desires and Passions of the Woman, which then began to exert and shew themselves in her: And as for paternal Authority, that would have been so far from being Coercive, that Children having no Inclination to disorder, either in their Wills, Appetites or Passions, there would have been so little need of Punishments, that they would not have required so much as Reproof or Correction; God having first planted the Laws of Nature or Reason in every Man's Breast free from rebellious Motions against it; so that Children then could have had no more to do, than to pay their Parents all that Gratitude, Duty and Oben-

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Obedience which was due to them as the subordinate Gautes of their Being, which could only conft in performing those indifferent things, which they then would have had occasion to command them; since Mankind being immortal, and the Earth bringing forth of it, self all Necfaries for Human Life, there could have been no occasion of attending and relieving their Parents, when sick, old, or decrepit, and unable to keep themselves; and so likewise upon the fame grounds all other Men would have been equal by Nature, in respect of any Civil Difference; for when there was no necessity of Men’s Service, there would have been no Diffinition between Mafter and Servant.

But after the Fall the State of Mankind was altered, and Self-love, and the Defire of Self-prefervation, grew so strong and exorbitant above all natural Equity, that the inordinate Passions of Men blinding their Reafons, they began to think they had a Right not only to the Necfaries of Life, but to whatever their unruly Appetites defired, or that they thought they could make themselves Maffers of. To remedy which Inconveniences, I fuppofe, the Fathers and Maffers of Families, and other Freemen (in whom alone then reftated that little Government that then was in the World) were forced, after some time, to agree upon one or more Men, into whose hands they might confign all their particular Powers, and to make Laws for the due governing and reftraining thofe disorderly Appetites and Passions, and alfo endowing them with a sufficient Authority to put them in execution. But which of the Governments now extant, or that have been formerly, were prior in Nature, I think cannot well be known; whether it was a Monarchy, or an Arifocracy, confifting of all the Heads or Fathers of Families, or Freemen, is not material, the Ends are the fame in it; But it being cofufficient to fuppofe, that it was at first begun by the Perfufion or Mediation of fome one or more wife and virtuous Perfons, and was configned to by the whole Number, confifting of many Families, who were fensible of thofe great Inconveniences and Mischiefs they lay under for want of Civil Government. But be it which way it will, 'tis moft certain that it was principally intended by God for the Good and Prefervation of the Governed, and not for the Greatness or Advantage of the Perfons or Perfons appoyted to govern; since God designed all Civil Government for the reftraining of Man’s inordinate Passions and Lusts after the Fall, and procuring, by sufficient Rewards and Punishments, that Peace and Happinefs, which could no longer be obtained by Men’s natural Inclinations to that which was equitable and honest. And besides, it is absolutely impossible to fuppofe, that any great Number of People, nor preffed by the Invasion of a powerful Enemy from abroad (which could not be fuppofed in this early Age of the World) would ever be brought to confent to put themselves under the absolute Power of others, but for their own greater Good and Prefervation, or to part with their natural Liberty, without advantaging themselves at all by the Change.

I will not take upon me to affert after what manner Mankind would have been governed, in cafe our first Parents had continued in their primitive State of Innocency. But this much I think I may boldly affirm in oppofition to what you have already faid, that Civil Government, after the Fall, was not alike in all the Fathers and Maffers of Families; but that Adam alone was by God endued with it, as the great Father and Monarch of Mankind: So that not only Civil Power, but also Monarchical, was immediately after the Creation conferred by God upon him. And Adam was Monarch of the whole World, even before he had any Subjects.

Sir, not to interrupt you, it seems somewhat hard to conceive how Adam could be a Father before he had Children, or a Monarch before he had Subjeds.

If you pleafe to consider it, you will find no Abfurdity at all in this Affection. For though I confefs there could be no actual Government without Subjed emphasizes, nor Fatherhood without Sons; yet by the Right of Nature it was due to Adam to be Governor of the World, when as yet he had neither Sons nor Subjects: So tho’ not in Act, yet at leaft in Habit, or in Poem (as they fay in the Schools) Adam was a King, and a Father, from his Creation, and even in the State of Innocency; for he had been Governor over his Wife and Children. For the Integrity or Excellency of the Subject doth not take away the Order of Eminency of the Governor: For Eve was subject to Adam before he finned; and the Angels, who are of a more pure Nature, and cannot sin, are yet Subjects to God, and perform all his Commands. Which will serve to confute what you fay in that

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gation of Civil Government, or Power, that it was introduced by Sin, or the Fall of Man. Government, I grant, as to coercive Power, was not till after Sin, because Coalition supposeth some Disorder, which was not in the State of Innocency; but as for directive Government, the State of Humane Nature requires it; since Civil Society cannot be imagined without a Power of Government. For altho' as long as Men continued in the State of Innocency, they might not need the Direction of Adam in those things that were necessarily and morally to be done; yet things indifferent, that depended merely on their Free-will, might well be directed by Adam's sole Command.

F. Pray, Sir, give me leave to settle this Point between us, before you proceeded farther; and I doubt not, when you better consider what I say, you will not think we have any just Occasion to differ. So far then you and I agreed, that even before the Fall Adam was superior over his Wife and Children, and that they owed him not only Gratitude and Respect as a Parent, but also Obedience in all indifferent things: Yet I deny that this Power or Superiority of Adam over his Wife and Children was at all a Deishopical or Civil Power, but merely Oeconomical, for the Good and Convenience of Adam, and the well ordering and Preservation of his Family; which you will easily grant, if you please to consider what are the essential Differences of Civil Government from Oeconomical. Now the essential Properties of Civil Government consist in preserving and defending the Subjects, both in War and Peace, from foreign Enemies, and internal Injuries, and invasions of Men's Persons or Properties, and in revenging and punishing such Transgressions by Death, or other Punishments; and consequently in making Laws concerning Property, and for restraining all Robberies, Murders, and the like. Now, in the State of Innocency, there could be no need of any of these essential Functions of Civil Power: for your self must grant, that Man was then not apt to sin, and also immortal; so that all Laws about Peace or War, Punishments of Offences, publick Judgments concerning Mens and Women, and all Injuries, were absolutely needless, and had never been in Nature, if Adam had not sinned; and then how you can call this Authority, or Superiority (which I grant Adam had over his Wife and Children) Civil Power, I can by no means understand.

But I do utterly deny, that even after the Fall Adam was a Monarch, or sole and absolute Lord over the whole Earth, and all Creatures therein contained; and declare you to give me such plain Proofs of it, either from Reason or Scripture, that I need no more doubt of it, than your self.

M. I shall, first of all, give you an Argument drawn from the Reason of the thing; and for the next place, the Authority of Scripture, for my Opinion: And first, I think it is evident, that every Man that is born is so far from being free, that by his very Birth he becomes a Subject of him that begetts him; and even Gratian himself acknowledges, that Generation jus acquisitionis in libert. And indeed the Act of Begenting being that which makes a Man a Father, his Right of a Father over his Children can naturally arise from nothing else. And the same Author in another place hath these Words upon the Fourth Commandment: Parentum nomine, qui naturales sunt Magistratus, etiam alios Reiores par est intelligentiquum auctorum: and if Parents be natural Magistrates, Children must needs be born natural Subjects. So that not only Adam, but the succeeding Patriarchs had, by Right of Fatherhood, Regal Authority over their Children, as may appear by divers Testimonies out of Scripture; and therefore it is very reasonable, that all Fathers should have a Power over the Lives of their Children, since it is to them that they owe their Life, Being and Education: And I think that even the Power, which God himself exercised over Mankind, is by Right of Fatherhood.

F. Before you come to Scripture, give me leave, in the first place, to examine your first Argument, which you deduced from the Law of Nature, or Reason: For I doubt, if you pleaze better to consider of it, you will find, that the light and tranitory is Action, as that of Generation, cannot give any Man an absolute Property and Dominion over the Person and Life of those whom he begetts; since few Men do principally intend the giving of a Being to another, so much as they do their own Pleasure, in that Argument. Nor do we owe our Lives, properly speaking, to our Parents, but to God, who is the true and original Cause of our Being; tho' it is true he makes use of our Parents as physical, tho' not as moral Means or Instru-
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ments for that end; since it doth not lie in their power to hinder the generating of Children, if they perform the Acts necessary thereunto. So that both the Antecedent and the Consequent are altogether false, etc. That Parents give their Children Life, and that therefore they have an absolute Power over their Lives and Persons: Which, if it were true, would give the Mother an equal Title to the Lives of the Children, as the Father; seeing they owe their Lives as much to the one as to the other: Which Power in the Mother I am sure you will not admit of. But as for what you say concerning the Power of Fathers, arising from Education; tho' I confess, that is a much better Title than the other; yet doth it not follow, that, because by reason of my Parents Care of me, before I was able to help my self, I owe my Preservation and Well-being to them, that therefore they are to be perpetual and absolute Lords over my Person and Life; since, by thus breeding me up, they only performed that Duty and Truth, which God had laid upon them, for the Good and Preservation of Mankind, and which they could not, without committing a Sin, either refuse or decline; and therefore their Authority or Power over my Person, being only for my Well-being, can extend no farther than whilfe I am not of Years of Discretion to understand the true Means of my own Good and Preservation: And tho' I grant, that I am bound in Gratitude to return this Care and Kindness by all Acts of Duty and Piety towards them, as long as I live; yet doth it not therefore follow, that they are Masters of my Life, and of all that I have; since they were to take away more than they then gave ever gave. And tho' I should grant, you that even the Power, which God himself exerciseth over Mankind, is by Right of Fatherhood or Creation; yet this Fatherhood is such, as utterly excludes all Pretence of Title in earthly Parents: For he is our King, because he is indeed the Maker of us all, p. 69. which no natural Parents can pretend to be of their Children. But if you please more closely to consider your own Argument, you will find that it will quite destroy your Hypothesis. For if all Fathers have an absolute Power over their Children by Generation, then Adam could only have Power over his own Children which he begat, and none at all over his Grand-children; since his Fathers, by this Argument of Generation, ought to have had the same Power over their Children, which Adam had over them, for the same Reason. So that this Monarchical Power of Adam, as a Father, could extend no farther than one Generation at the most.

M. I shall not further urge this Argument of Generation, since I see you are not satisfied with it; but this much I think I can clearly prove from Scripture, that Adam was Lord over the Persons and Lives of his Wife and Children, by virtue of that Command which God gave Eve, Gen 3:16. Unto the Woman he said, I will greatly multiply thy Sorrow and thy Conception: In sorrows thou shalt bring forth Children; and thy Husband shall be thy Lord, and he shal rule over thee. From which Words it appears, that Adam had not only an absolute Power granted him by God over his Wife, but all the Potestity that should be born of her. For, in the first place, it here seems that Eve was to yield an absolute Subjection to her Husband, who was to rule over her as her Lord, from these Words, and thy Husband shall be [subject] to thy Husband, (as it is better expressed in the Margin) and be thy rule over thee. And if his Wife was thus to be subject to him, then likewise by a Father, B.P.P. § 31. by Right of Generation, they were to be so too; it being a Maxim in the Law of Nature, as well as in the Civil Law, that Parentis suae servire non omnem. So that if Eve was to be absolutely subject to Adam, the Issue by her must be so too; as in the case of a Master of a Slave, not only the Peron of the Woman, but all that are begotten of her, whether her Master or any other Man, are likewise his Servants; otherwise the Children would be in a better condition than their Mother; for Adam having no Superior but God, both his Wife and Children must have been alike subject to him. There is likewise another Rule in the Civil Law, lb. § 32. which is a Voice of Nature too, Qui quidem ex me & non me suam, in postfato suo, non est. This is true in some sense in all Fathers whatsoever; it was so in a more supertative degree, where the Father had no Superior over him but God, as Adam had not. And farther, it seems apparent to me, from the very lb. § 20, 32. Method that God us'd in creating Mankind, that Adam's Wife and Children should be subject to him: For if Adam and Eve had been created at once, it could not have been known which of these two had the best Right to command, and which was to obey. For Adam's Strength, or Wit alone, would not have...
given him any Authority over her; and it might be that Eve was as strong and as wife as he, or at least she might have thought her self so; and if these two had differ'd and fought, nought but the Event could have declared which of them should have been Master.

So when they had Children born between them, the Children could have told as little which of the Parents they should have obey'd, in case they had differ'd in their Commands: So that it had been impossible this way that any Government could have been in the World. But when God created only one Man, and out of him one Woman was made, sure he had some great Design in this; for no other Creature was thus made at twice, but Man. Now St. Paul drew a Reason for God's acting thus, when he says, the Woman should not teach, nor usurp Authority over the Man, &c. And mark the Reason: For Adam was created, and then Eve. So that, in the Apostle's Judgment, this was one main Cause why Adam should be superior to his Wife, and all other Husbands to their Wives. And in the Connubium, from the History of the Creation, the same Apostle deduces two other Reasons for the Superiority of the Man over the Woman (says he) the Man

1 Cor. 11. 8, is not the Woman, but the Woman of the Man; (that is, Eve was formed out of Adam) neither was the Man created for the Woman, but the Woman for the Man. So that you see here is Adam flated in a degree of Superiority over his Wife before the Fall; and immediately after it, God again renew'd Adam's Title, when he told Eve (as I have but now mention'd) thy Desire shall be subject to thy Husband, and he shall rule over thee. Now I do far agree with what you at first laid down, that if the Fall had not disorder'd her Faculties, and render'd her apt and prone to disobey her Husband, this Command need not have been given her; but she would have known her Duty from the Order and End of the Creation, without this explicite positive Command.

F. You have, Sir, taken a great deal of pains to prove that which I do not at all deny, that as well before as after the Fall, Adam, and (consequently all other Husbands and Fathers) ought to be superior to their Wives and Children, and likewise govern and command them in all things relating to their own Good, and that of the Family, as long as they continue Members of it; nay, that Children, after they are separated from their Father's Family, still owe their Parents all the Gratitude, Duty, and Respect imaginable: But yet I deny that this Power, which Adam had over Eve, and his issue by her, and all other Husbands have over their Wives and Children, is a regal despotic Power, or any more than conjugal in respect of his Wife, and paternal in respect of the Children; nor is that filial Reverence and Obedience, which Children yield their Fathers, the same with that Respect and Duty, which a Wife owes her Husband, or the same with that servile Subjection, which Slaves owe their Lord and Master; neither is the Duty of a Wife of the same kind with that which Sons pay their Fathers, or Slaves their Lords; nor did Sarah, when she called Abraham Lord (who was then Master of a large Family) to whose Subject she was subject) ever suppose that her Husband had the same Authority over her, as he had over Hagar her Bondwoman, to fell her, or turn her out of doors at his pleasure. But to make it more apparent to you, that this Power granted to Adam over Eve, was not regal nor despotic, but only conjugal, and for the well ordering of the Family, where some one must command in chief, and the rest obey, to avoid Confusion, will appear, first, if you consider that this Subjection of Eve to Adam was not enjoin'd till after the Fall, and is part of God's Judgments denounced against her, for tempting her Husband to eat the forbidden Fruit, and certainly included somewhat more than that Superiority which he had over her by his Creation, or else God would not have made it any part of the Judgment denounced upon her. "If this Submission the owe'd to her Husband before the Fall, had been of the same nature with that Subjection the was to be under after it; which yet I take to be neither servile nor absolute, but only a conjugal Obedience or Submission of her Will to his, in all things relating to the Government of the Family, and the Carriage of her self; tho' I do not deny but the Husband may sometimes restrain her by force, in case she carries her self unchastly, or indirectly, to the loss of her Reputation, and Prejudice of his Interest, when he will not be directed, or adviz'd by his Persuasion, or Commands, which before the Fall, when she was in a State of Innocence, there was no need of; since (as your self grant) before the Fall the knew what was her Duty, and performed it without any force or constraint, &c. And therefore that Text,
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Text, which you have now quoted out of Genesis, Thy Deity shall be subject unto thy husband, and he shall rule over thee; is not fairly cited: For, as for the marginal Addition, viz. subject to thy husband, it is not warranted from the Hebrew; Original, or Version of the LXX; the Hebrew having no more than thy Deity shall be to thy husband which the LXX renders ἐξουσία, i.e. the Conversion or Inclination of the Deity, by which some Interpreters understand no more than the carnal Appetite. So likewise from the Words rule over thee they likewise observe, that Master makes use of the same ἐξουσία Word, when he makesmention of the Sun and Moon ruling the Day and Night, tho' they do not do it by any Violence, or corporeal Force: So likewise, by this ruling of the Husband, is not to be understood any absolute, despotic Power, whereby he hath a Right to dispose of the Person and Actions of his Wife in all things as his pleasure; but that the may in many cases refuse, may control his Commands, and relish his Actions; in case they prove unlawful, or destructive to her self and Children.

But that this Argument of St. Paul, of the Husband's Superiority over his Wife, was not granted to Adam alone, but equally extends to all Husbands whatsoever, appears from the very Text it self; or otherwise St. Paul had argu'd very improperly of the Duty of all Wives: And if so, it will follow that every one of Adam's Sons, as soon as he took a Wife, had the like Authority over her, as Adam had over their Mother: And if over their Wives, then, by your Maxims (of Patris, securior uxor, & quicquid est ut se uxor una uxor, in postulantem efl), all the Sons of Adam must have had the same Power over their Children, as their Father had had over them. So that the same Consequences will still follow from these Places of Scripture, and also from your Civil Law Maxims, that neither Adam had no Civil or Despotic Power over his Wife and Children; or else, if he had, that everyone of his Sons, when married and separated from his Father's Family, had the same, and consequently there were as many Princes as distinct Masters of Families; and then what would become of Adam's Monarchy, I give you leave to judge.

All I must beg your Bardon, if I am not satisfied with your Answer to my last Argument: For I am full of opinion, notwithstanding what you have said, that Eve was to yield an absolute Subjection to her Husband, from that Place already cited, That her (vom. Eve's) Deity (i.e. Will) should be subject to her Husband, &c. To which you answer, that this Subjection of Eve to Adam was not the same which Sons owe their Fathers, or Slaves to their Lords; and that Eve owed Adam not a literal, or servile, but a conjugal Subjection. For I would fain know the difference, in the State of Nature, between one and the other: For if you pleases to compare that Place of Genesis, I but now quoted, with that other where God gives Cain Power over Abel, his younger Brother; you will find there the same in Words, as also in Sense. For in this God likewise tells Cain, That now shalt thou be subject to thy Brother, and thou shalt rule over him. And sure God could not intend by these Words, that Abel should yield a conjugal, but a servile Subjection to his elder Brother: and their Words are not comparable with two Sentences, but must be understood alike in both Places (i.e.) That that Deity (which is the same quality of Power) was to be over him, and all the Powers of it, were to be overseen by him; which is as full and absolute a Subjection as can be expressed in Words. And whereas you say, that these Words were not spoken till after the Fall, and thence seem to infer, that Eve did not owe Adam so much as a conjugal Subjection before that; St. Paul himself gives you an Answer to that already, which it is needless to repeat; and therefore, upon the whole matter, I think your Distinction of a conjugal Subjection, different from a servile servile one, will signify nothing.

I ask doubt not Sir, but I shall be able, nay more, to make good this Distinction of a servile Subjection, and in order to it, you will find that the Consequences you have made for Eve's absolute Subjection to Adam, from the like Expressions used by God to Cain concerning his ruling over his Brother Abel, as is us'd here to Eve concerning her Subjection to her Husband; and that because the Subjection of Abel was absolute, therefore her Subjection must be so too. I must crave your Pardon if I deny you Assumption: For I think I am able to prove, that neither Abel, nor any other younger Brother, was, or is obliged, by virtue of this Text, to yield an absolute Obedience to his elder Brother, in the State of Nature, or that he is therefore his Lord and Master. Not can I for any Abel's Power, but that the same Words might be spoken to several Persons, yes in different

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Senex, which, according to the Nature of the Perfon to whom they were spoken, might have different Effects. As here thefe Words, when spoken to Eve, enjoin a general Submission of Eve’s Will to Adam as her Husband; but when spoken to Abel, they may signifie a fraternal Submission of Abel’s Will to Cain’s, as the elder, and perhaps the wife of the two, but without giving any absolute or despotic Power over either.

M. I cannot be yet satisfied with your Reply; for methinks this is but too trifle with God’s Word, when he told Cain, thy Brother’s desire shall be subject to thee, that is, (say you) Thou shalt rule over him only as far as he thinkst fit—or it thou half the knack to wheedle or persuade him. Was not this a mighty Matter for God Almighty to appear to Cain about? An excellent and rational way to appease his Wrath towards his Brother? Whereas God here plainly enjoyneth a Submission from Abel to his elder Brother: and if so, by vertue of the same Words, a like Subjection of Eve to Adam; and then it will likewise follow, that as the Streams are of the same Nature with the Fountain, the Subjection of all her Pofferty will likewise be included in hers, which I have sufficiently proved already, had you not mistaken the true Sense of those two Maximis I laid down. For first, if Persis saecular ventrem, and the Mother be a Subject, as Eve was, all her Pofferty must be fo to all Generations. And if Quique me nescit et nescere me saecurum, in perpetuo mes eff, be true, then Adam’s Grand-children, and great Grand-children, deriving the familieds from him and Eve, must be likewise subject under Adam and Eve. Nor can I see how his Sons, or Grand-children, by setting up separate Families, could ever discharge themselves from this absolute Subjection to Adam, since they could never have quitted his Family without his Consent; and when they did quit it, unless he pleased to manumit them, they, their Wives and Children were full as much subject as they were before. Since I do not fee, if they were once Subjects to him, how any thing but his express Will and Consent could ever discharge them from it. Nor was that Authority (which every one of these Sons of Adam might exercise over their Wives and Children, though they were not freed from the Power of their Father) any more inconsistent with that Submission and Obedience they owed him, as their Prince, than in an absolute Monarchy, the Power of Fathers and Husbands over their Wives and Children, as to the things relating to the well-ordering and governing their Families, is inconsistent with that supreme predominant Power which the Monarch hath over the Father himself, and all his Family; or than the Power of a Master of a Family, in the Isle of Barbadoes, over his Slaves that are married, and have Children, is inconsistent with that Marital and Paternal Power which such a Slave may exercise over his Wife and Children within his own Family, tho’ full subordinate to the Will of the Master, who may forbid any such Slaves, or their Children to marry, but where he hath a mind they should; and may likewise hinder them from conveying or putting to Death their Wives and Children without his Consent. Though such Subjects in an absolute Monarchy, or Slaves in a Plantation, cannot have, or enjoy any Property in Lands or Goods but at the Monarch’s, or Master’s Will. And so likewise at first none of these Sons of Adam, though they set up differing Families from their Fathers, could enjoy, or enclose any part of the Earth without his Grant or Allomiation, to whom the whole was given by God before.

It seems likewise to be a great Mistake, when you at first affirmed, that the Civil Government was ordained by God, for the Benefit and Advantage of the Subjects, rather than the Governour. Whereas from the first and most Natural Government it appears, that Children, who were the Subjects, were ordained as much for the benefit and help of their Parents, who were the first Monarch, and their Parents for them. From all which we may draw these Conclusions: Briefly, That from Gen. 3. v. 6, already cited, we have the Original Chriftian Government, and the Fountain of all Civil Power derived from Adam as the Father of all Mankind. So that not only the Constitution of Power in general, but the special Limitation of it to one kind, (viz.) Monarchy, and the Delegation of it to the individual Person of Adam, are all Ordinances of God. Neither had Eve, or her Children, any Right to limit Adam’s Power, or join themselves with him in the Government. Now if this Supreme Power was vested, and founded by God himself in Fatherhood, how is it possible for the People to have any Right to alter, or dispose of it otherwise? Is this being God’s Ordinance, that this Supremacy should be unlimited in Adam, and as large as any Abel of his
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his Will. So that he was not only a Father, but a King, and absolute Lord over his Family; a Son, a Subject, and a Servant, or Slave, being one and the same thing at first; the Father having Power to dispose of or sell his Children or Servants at his pleasure: And tho' perhaps he might deal too severely or cruelly in so doing, yet there was none above him, except God, in the State of Nature, who could call him to an account, much less reftift or punish him for so doing.

F. You have, Sir, made a very long Speech upon the Monarchical Power of Adam, which you have made of so large an extent, that this imaginary Kingship must swallow up all the other more dear and tender Relations both of a Husband, and of a Father. So that was I not satisfied you were a very good natured Man, and spoke more the Sense of others than from your own natural Inclinations, I should be apt to believe, that if you had sufficient Power, you would prove as great a Tyrant over your Wife, Children, and all that should be under your Command, as such Arbitrary Tenets would give you leave: But since, I hope, your Error lies rather in your Understanding, than in your Nature; I shall make bold to fly the Miftakes you have committed in those Principles you here lay down. I might first begin with the Place of Scripture you farther inliff upon, for Eve's absolute Subjection to Adam from the like Expression used by God to Cain's, concerning, and nothing over his Brother Abel, as well as he to Eve: And though you are pleased to think my Exposition of this Place so ridiculous, yet I doubt not but to be able to prove, when I come to speak of this pretended Divine Authority of elder Brothers over the younger, that this Place cannot be understood in any such Sense, according to the best Interpretation that both the Reason of the Subject, and the Sense the best Commentators put upon it can allow: But I shall defer this till we come to discourse concerning the Successors of Adam in this Monarchical Power you suppose. And therefore I shall only at present pursue that absolute Power, which you suppose Adam to have had, not only over Eve, but all her Descendants. For indeed your Argument of Eve's, and consequently all her Children's absolute Subjection to Adam, depends upon a very false Supposition. Since if the Subject of Eve to Adam, and of all Wives to their Husbands is not servile or absolute, neither can that of the Children be so; since, according to your own Simile, if the Streams are of the same Nature of the Fountain, they can never rise higher than it: And tho' I grant, Adam might in some cases have put his Wife or Children to Death, for any enormous Crime against the Law of Nature; yet I allow him that Power, not as a Husband or Father; but only as a Lord or Master of a separate Family, who having no Superior in the State of Nature, I grant, is endowed by God with this Prerogative, for the Good of his Family, and Preservation of Mankind, as such horrid Crimes, so much to its prejudice, should pass unpunish'd. But that the Husband, or Father, doth not act thus in either of these two Capacities, I can easily prove.

First, Because the Scripture tells us the Husband and Wife are one Flesh, Gen. 2. 24. and that no Man ever yet hated his own Flesh; so that it is impossible for, 2 Ezech. 5, 19. a Husband to put his Wife to Death, 'till by the Greatness of her Crimes he be worthy of that tender Affection he ought to bear her. Then as to the Father, he, as a Father, ought not to desire to put his Son to Death, while Being he hath been the chief of, and who is principally made out of his own Subsistence, and on whom he hath bestowed Nourishment and Education for so many Years, until he finds that instead of a Son he proves an Enemy to his Family; or hath so laid waste against his Life, that as long as he lives he cannot be safe; or else commits some of those heinous Crimes, which, by the Laws of God and Nature, do justly deserve no less Punishment than Death; in short, when he ceaseth any longer to deserve the Name of a Son.

Yet this Authority holds no longer than whilst the Son remains part of his Father's Family, and so subject to his Power; And this I take to be the reason why we do not read, that Adam took any notice of Cain's murdering his Brother, because he was before freed from his Power, by letting up another Family, which certainly had been Adam's Duty to have done, had he been then under his Jurisdiction; Murder being as great a Crime before the Flood as after, though the Punishment of it by Death were not positively enjoined by God 'till then. But I shall prove this point more particularly by and by, as also that Adam's Children might enjoy, or enclose some part of the Earth without any Grant or
Affent from Adam, to whom you suppose (though without any Proof as yet) that the whole Earth was given by God.

To conclude, I doubt you mistake me when you say, I at first affirmed, that all Civil Government was ordained by God, for the Benefit or Advantage of the Subjects, rather than that of the Governours; and therefore you undertakke to shew me, that in the first and most natural Government, viz. that of a Family, Children, who are Subjects in the State of Nature, are ordained as much for the Benefit and Help of their Parents, who are their Princes or Masters, as their Parents for them; in which Affertis you fall into more than one Millake; for I do not affirm, that in Civil Government the Benefit or Advantage of the Subject is only to be considered: For I shall easily grant, that Princes may very well challenge a very great share in the Honour and other Advantages that may be reap’d by their Government; and yet for all that, when the Happiness and Preservation of the Subjects is incompatible with that of the Prince, the former is to be prefer’d; and Bishop Sanderson is of this Opinion, when he tells us in his Lectures * De Juramentos, That the end of Civil Government, and the Obedience that is due to it, is the Safety and Tranquility of Human Society; and therefore the end is certainly to be preferred before the means, when they cannot both conflux together. But this is no Argument for the preferring the Benefit or Advantages of Parents before that of their Children, since Paternal is not Civil Government: Nor are Fathers absolute Princes or Masters over their Children, as you suppose; and yet I think I may safely affirm, that even in this Paternal Government, though it be granted, that Children are ordained for the Benefit, or Help of their Parents; yet when their Happines and Preservation is inconsistent with that of their Children, it may be a great doubt which is to be prefer’d, since God’s chief Intention in Parents was for the Preservation and Propagation of Mankind; and therefore I cannot see how it could ever be any part of the Paternal Power, for a Father to make his Child a Slave, or to fell him to others at his pleasure, as you suppose; this being no part or end of the Deign or Duty to a Father.

And whereas you lay to my charge my mistaking the true Sense of those Civil Law Maxims you have quoted; I think I can easily prove, that the Millake lies on your side, and that you have misapplied them, to make them serve your purpose: for as to your first Maxim, *Parvis sequitur Vetus,* from which you infer, that the Child ought to be of the same condition with the Mother, this Rule in your Civil Law relates only to Balfards, and not Legitimate Children, who follow the condition of the Father according to your Digest: *Qui ex utero mea nascitur, filium mariti ebt habendos,* so likewise in your Code, *Cum legitime nupta fiet in fuit, patrem liber sequatur,* velgo *quamvis matrem sequitur.* Nor is your second Maxim more true; for though I grant, according to your Roman Law, the Father might have absolute Power over his Wife and Children; yet I cannot see how this word, *nascitur,* can be extended beyond those that are born of a Man and his Wife, and therefore can never concern Grand-children much less any more remote Descendants; and this very Law, that a Son or Daughter might be killed by a Father, seem’d to cruel and odious, even to the ancient Romans themselves, that neither the Law of the Twelve Tables, nor the Julian Law of Adulteries, which were provided against Fathers, Sons, and Daughters, ever extended it to the Grand-father, Grand-son, or Grand-daughter by Interpretation; or Argument as *en famili.* Nor do these Words, *in Patre meo effi,* prove more than that all Children are born under the Power of their Parents, though whether they shall always continue so long as they live, is not to be proved from this Maxim; nor if it were, doth that make it a Law of Nature. For I must needs observe this of divers of you Civilians, that whatever Maxim you find in your Civil Law Books, that will make for your Notions, you presently adopt them for Laws of Nature, without ever enquiring by the strict Rules of Reason, and the Good of Mankind, (by which alone any Law of Nature is to be tried) whether they are so or no.

I shall not trouble my self to confute those false Conclusions you have brought from those weak Premisses; for if I have destroyed your Foundation, I think your Superstructure cannot stand; and therefore you must pardon me, if I cannot find this Original Charter of Government, and of all Civil Power, to be derived from Adam by any Argument that yet you have brought either from Scripture,
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Scripture, or Reason; only give me leave to observe thus much upon what you have said, That if not only the Constitution of Civil Power, in general, but the special Limitation of it to one kind, (viz.) Monarchy, be the Ordinance of God, I cannot see how any other Government but that can be lawfully set up, or obeyed by Men, since no Government can challenge this Privilege against Divine Institution.

M. Since this Hypothesis doth not please you, I shall be glad if you can shew me any better Original, either of Adam's Paternal Power, or of Civil Government, than this that God gave Adam over Eve, who indeed was, as at the first B.P.P. 36. Subject, so the Representative of all that followed; and it reaches not only to all her Daughters in relation to their Husbands, but to all of them in relation to their Fathers, and to her Sons too, in relation to both their Father, and their eldest Brother after his Decease, if no Body superior to both of them, and him interposed, and diverted, or rather over-ruled it.

For (1.) If a Priority of Being gave Adam a Power over his Wife, it gave him much more so over his Children.

(2.) If God's taking Eve out of Adam, the forming her of one of his Ribs without his Concurrence, did yet make her his Inferior, his Children were much more so, which were derived from him, and by his Act.

(3.) It is formed for him, not be for her; and that was another reason: this extended to his Children too, who were begotten for the Comfort and Affluence of both him and her.

(4.) When God put Eve under the Subjection of her Husband after the Fall, her Children must needs be so too, if they were not excepted, but we read of no Exception.

(5.) Is it not an eternal Law of Nature, that all Children should be subject to their Parents? And did not this Law spread itself over the Face of all the Earth, as Mankind increased?

And whereas you would limit this Power of Parents over their Children, both in its Extent and Duration, this is purely owing to the Civil Laws of Nations, and not to the Laws of Nature, and is different in different Places; some having restrained the Power of Parents more, and some less. But God gave the Parents a Power of Life and Death over their own Children, amongst his own People the Jews, and that not limited in Duration neither, for the Father's Power over his Son was not determined but by his Death, though they could not execute that Power, but in the presence of a Magistrate. And I am also sure that in all the Histories and Relations I have met with, amongst civilized Nations (where it is not otherwise order'd by the Civil Laws of the Country) all Husbands and Fathers have Power of Life and Death over their Wives, and Children; and so it is at this Day amongst many Eastern Nations, and was antiently amongst the Romans, Greeks, and Persians, &c. Which Power I take not to have been given, or conferred on them, but rather left to them by the Civil Laws of their Country in the same State, as it was establisht by the Law of Nature, or rather Nations. Now is such Husbands and Fathers antiently had, and still have a Power of Life and Death in divers Countries over their Wives and Children, I desire to know what higher Power they could enjoy, since he that hath Power over a Man's Life, which is of the highest concern to him, may certainly command him in all things else?

But as for your last Scruple, that you cannot see, if Monarchy be of Divine Institution, how any Government but that can be lawfully set up or obeyed by Men, I think it may be a satisfactory Anwser, if I tell you, that if those who are born under a Monarchy can justify the Form they live under to be God's Ordinance, they are not bound to forbear their own Justification, because others cannot do the like for the Forms they live under; let others look to the Defence of their own Government: If it cannot be proved, or showed, that any other Form of Government had ever any lawful beginning, but was brought in, or erect'd by Rebellion, must therefore the lawful and just Obedience to Monarchy be denied to be the Ordinance of God?

F. I hope, before I have done, to give you a clearer Original from the Law of Nature, as well of Paternal Authority, as Civil Government, without recurring to Divine Revelation, which (as I said before) would oblige none but Jews, and Christians, or Mosaicans, whose Law is a Mixture of both the other.
In the mean time give me leave to tell you, that Eve's being the Representative of all Wives, did not put either herself or her Daughters into any absolute Submission either to Adam, or their Husbands; if it did, then could not this Submission be likewise owing either to Adam, as the Patriarch, or Grandfather of the Family, or to his eldest Son after his Decease; since this would make every Wife in the face of Nature, to have had two absolute Lords, her Husband, and her Husband's Father, which is contrary to our Saviour's Rule, that no Man can serve two Malters, that is, in the same kind of Service: And therefore it plainly makes out my distinction, that there is a great deal of difference between a Conjugal Submission of a Wife to her Husband, and a Servile Submission of a Servant to his Lord, as also of that Obedience or Duty, which a Subject oweth his Sovereign; since by your own Hypothetis it necessarily follows, that either Cain's Wife (for Example) was not to be subject to her Husband, or else must be free from all Submission to her Father Adam: But as for any Submission to Cain, as elder Brother after Adam's Decease, I desire to be excused meddling with it, till we have dispatch'd the Question in hand.

I come now to those fresh Considerations you bring for this Monarchical Power of Adam; for indeed I cannot call them new Arguments, because most of them have been answered already. The first Consideration is from the Priority of the Being, which you suppose gave Adam a Power over his Wife, and consequently over his Children; but I think this Priority of Being could give him no such Power at all over her, and consequently not over them; for I desire to know whether if God had been pleased to have Created, the same day that Eve was made, twenty finge Men, and their Wives, that therefore Adam must have been, from his being first Created, Monarch over them all, unlefs God had particularly commanded it.

'I grant indeed that from God's Creating Eve out of Adam, it did render her inferior to him, and also from God's express Command, that she was to be subject to him in all Conjugal Duties, yet did neither of these render either her, or her Children absolute or perpetual Subjects, and Slaves to Adam. And that their being derived from him, or by his Act, doth not at all alter the Case, I have already proved.

As for the third, That if she were formed for him, and not he for her, that this must be another reason which must extend to his Children too: Here the Assumption is not only false, but the Consequence too: For she was not only formed for him, but that they might be a mutual help to each other: and therefore the Scripture tells us, A Man shall leave his Father and his Mother, and shall cleave unto his Wife; and they two shall be one Flesh; which Words (in my Opinion) are very far from proving any such absolute Submission; for no Man can ever tyrannize over his own Flesh: and if such an absolute Submission had been intended from Eve to Adam, it had been more congruous to Reason, for the Scripture to have enjoind her to have left her Father and Mother to cleave to her Husband. Whereas indeed there was no more meant by this Text, than that when a Man marries, he may freely quit his Father's Family, and joining himself to his Wife, may set up another of his own. But as for the Children that were begotten between them, tho' I grant they might be intended both for the Comfort and Affixture of him, and her; yet I have already proved that the Parents are more chiefly intended for their Children's Propagation and Preservation, than the Children are for their Interest and Happiness.

Your fourth Consideration is only a supposition of the Question which is yet to be proved; that Eve was under an absolute Submission to Adam after the Fall. I have already proved this supposition not to be true; and therefore the consequence, as to the Children, is false likewise.

Your fifth is rather an Interrogation than an Argument, whether Children ought not to be, and have not always been subject to their Parents all over the World? In answer to which, I grant that it is true, that they have ever been so, tho' not in your Sense. For I hold this Submission neither to be servile, or absolute, not yet perpetual, as long as they live: But in reply to this limitation of the Power of Parents over their Children both in its extent and duration, you tell me, this is purely owing to the Civil Laws of Nations, and not to the Laws of Nature; and for a Proof of this, you produce God's own People the Jews for an Example, that the Power of the Father over his Son was not determined but by
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by his Death. But yourself confesi'd, that he could not exercise this Power of Life and Death, but in the presence of the Magistrates; the Circumstances of which, if they be justly confesi'd, will rather make against you; for, first, the Father could not have this rebellious Son put to Death, till he had accused him before the Elders of the City, that is, the Judges who were establish'd in every Precinct; who, upon a fair hearing, were to sentence such a rebellious Son to be flayed to Death by all the People of the City: Where you may observe that the Father had no Power to put him to Death himself; and therefore acted in this case, as an Accuser, or a Witnesse, not as a Judge. But if you'll believe Maimonides, one of the most learned of the Jewish Rabbins, he will tell you that by the Municipal Law of the Jews, this Power of the Father did scarce extend beyond the thirteenth Year of the Son's Age, after which the Son was reckoned adult, and emancipated from his Father's Power, and could not after that incur this Punishment of a flaminous and rebellious Son; and a Father who did but strike his Son after he was adult, incurred Excommunication, for that he offended against the Law. And thus I grant that the Nations you mention did exercise a Power of Life and Death over their Wives and Children, yet will not the Practice of some particular Nations, tho' never so much civiliz'd, amount to a Proof of a Law of Nature, which is only to be made out from evident Rules of right Reason, and the great end of this Law, the common good of Mankind; and especially when against the Examples of those Nations which you produce, I can likewise fet those of many more Nations, where this Power was allow'd, after once Civil Governments were establish'd.

And as for the Romans themselves, amongst whom the greatest Examples of this kind are to be found, they will not all of them amount to above three, or four, in six or seven hundred Years; and then, tho' there might be very good cause for it, yet the People of Rome never so much esteemed or loved such Fathers after they had put their Sons to Death, as they did before, but counted them too severe and cruel for so doing. And you may read in Valerius Maximus, and Suetonius, that De Cim. they killed Erius, a Roman Gentleman, for whipping his Son to Death like a Slave; so much did they abhor all such Cruelty of Parents towards their Children. And afterwars, when by the general Corruption of Manners amongst the Romans, Fathers grew more cruel to their Children, and often put them to Death without cause; those of your Faculty suppose that some of the Roman Emperors (tho' it is uncertain who) took away this Power from Fathers, and made it (as it is now among us) Murder, for a Father to put his Son to Death; tho' others suppose (since there are no particular Edicts to be found concerning this Matter) this Law to be changed by degrees, and to be left off by common consent of the Romans themselves; for it seems dangerous to grant to a private Person the Cognition of any Crime, which might belong to publick Authority; and they thought it better to strengthen both the Paternal and Marital Power by other Laws than putting to Death. And therefore Simplicius, upon Epictetus's Embrision, says, that the Romans allowed Fathers this Power, because they thought they might very well trust their natural Affection to their Children, for the exercise of that Power of Selling them, or putting them to Death, which was suppos'd they should rarely use, unless compelled by extreme Necessity, or unpardonable Crimes; and therefore if a Father would put his Son to Death, he was to do it with his own Hands, that he might suffer as well as his Son; but when this tender Law was fail'd, it was not wonder that the Roman Emperors did not think it for the common good of their People to trust Fathers with this Power any longer, which they had hitherto exercised, not so properly by right of Fatherhood, as that of the Master of a Family, who govern'd his Servants and his Sons by a like Authority.

To conclude, I cannot but observe, how flyly you wave my objection against the Divine Institution of Monarchy; for tho' you seem loth expressly to condemn all other Governments as unlawful, yet the consequence will be the same upon yours Principles: For if it be a good Argument which some make use of, for the Government of the Church by Bishops, because that Government being imposed by them, has been instituted by the Apostles by Divine Precept; therefore that other Government but Episcopacy, can be lawful, or any true Church, where that Government is not in use: So the same Argument will likewise hold in Civil Governments, that all others must be unlawful, if Monarchy alone were ordained.
ordained by God, and that all other Forms whatsoever began from Rebellion, or the Fancies of Men.

M. To answer what you have said, in the first place, I cannot so slightly pass over this Argument of the Law of Nations, by which I suppose the Power of Fathers over the Persons of their Children is sufficiently established, and from whence also it appears that among the Jews, as well as Romans, the Children were look'd upon as part of the Subsistance of their Father, and consequently that they had a perpetual right in their Persons, as long as they lived; that the Romans had the Power of selling their Children three times, yourself do not deny; that the Jews also had it in ufe among them; appears first, by the Story of the Poor Woman, the Widow of one of the Sons of the Prophets, who complained to Elija, in the second of Kings, telling him that her Husband is dead, and the Creator is come to take the first Son to be Bondman. And so likewise in the New Testament, our Saviour in St. Matthew supposes it as a thing commonly practiced in those parts of the World where he lived. For in the Parable of the King, who would take account of his Servants, amongst whom, one owed him Ten thousand Talents. But forasmuch as he had nothing to pay, his Lord commanded him to be sold, and his Wife and Children, and all that he had, and payment to be made. Which was founded upon that Law among the Jews, that Fathers might sell their Children for Bond-servants, until the Year of Jubilee, as appears by Nehemiah, Chap. 5, where he states the Complaint of those poor Jews, who had been forced, for want, to bring their Sons and their Daughters into Bondage. Nehemiah was it in their Power to redeem them, for other Men had their Lands, and their Vineyards.

And amongst the Romans, this Power of selling their Children continued, till it was forbidden by the Emperor Justinian. And as for the Grecians, Plutarch in his Life of Solon relates, that till this time it was lawful amongst the Athenians, for Fathers to sell their Children to pay their own Debts: And I suppose it was upon this account, that Cimon, the Son of that great General Miltiades, was kept in Prifon by the Athenians, till he had paid the Fine of Ten thousand Talents, which his Father died indebted to the Commonwealth. And Plutarch in his Life of Apollonius Tyaneus relates, that it was common amongst the Phrygians to sell their own Sons. And to come to more Modern Times; a Son amongst the Malavites may be sold four times; but after the fourth Sale, the Father hath no longer a Right in him, as the Baron of Herberstein tells us in his Relation of Malavos; and it is not only in use amongst them, but also amongst the Tartars, East-Indians, Chinese, and the People of Japan, not only to sell their Children themselves, but also, that they are liable to be sold by the Prince, or his Officers, for their Father's Debts, or Offences: So that you see here is the content of most of the civiliz'd Nations in the World, who care in this follow the Dictates of Nature and Reason, in the exercise of a full and absolute Propriety and Dominion, in, and over the Persons of their Children; so that if it be a received Custom or Law amongst most Nations, it is also from Reason too, since the Law of Nations is only that which receives its obligation from the consent of many Nations, as Grotius well observes: And Aristotle lays it down as one of the strongest Proofs, when all Men agree in any thing: And Cicero tells us, That the content of most Nations is to be looked upon as a Law of Nature; and therefore these Customs are to be esteemed as obligatory amongst all civiliz'd Nations, where the Municipal Laws of the Countries have not restrained or abridged this natural Power, and Interest, which Fathers had originally over the Persons of their Children.

But as for what you say, that according to my Principles, no other Government can be lawful besides Monarchy, I shall give you the same answer, that some of the most Moderate of our Divines have given to thofe, who would make the like Objection against us of the Church of England, that believe Episcopal Government to be pure Divino, viz. That God, for the necessity of some Ecclesiastical Order and Government in a Church, may permit, nay (perhaps) allow that Form of Government as lawful, which himself never instituted; nay, which perhaps was unlawful to have been set up in the Church at all; And to the wife, in Civil Governments, I will not deny, that those Forms may be lawfully obeyed as the Ordinance of God, which he never instituted; but have wholly proceeded from the Rebellions, or Inventions of Men.

F. I must confess, Sir, I cannot see how any Law of Nations can be supposed to lay any Obligation upon Mankind, different from the Law of Nature, and
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Reaion, or the revealed Law of God in Scripture. And, tho’ I confess there is some division amongst Learned Men about this Matter; yet I think it is far more National to suppose, that there are but two Laws to be considered, viz. Rules of Humane Actions, the Natural Law, and the Divine. And of this Opinion is the Learned Grotius himself, in the place you but now cited, where he says, he added the Words, many Nations, because there can scarce be found any Natural Law, which is also wont to be called the Law of Nations, that is common to all Nations: Yea, that is often look’d upon as a Law of Nations in one Country, which is not so anywhere else; as (says he) we shall shew in its due place, concerning Captivity, and Palsyminism.

And for a farther Confirmation of this, I will make bold to read to you in English some part of what the excellent Puffendorf hath written upon this Subject, in his Learned Work De Jure Naturae & Gentium, Lib. 2. Cap. 3. which you may here peruse with me if you please.

... The Law of Nature, and the Law of Nations, is accounted by many, one and the same, which only differ by an extrinsic Denomination. And from hence Hobbes, De Corp. c. 14. § 4, divides the Law of Nature into the natural Law of Men, and the natural Law of Commonwealths, which is commonly called Isi Gentium: And then adds, that the Precepts of both are the same; but because Commonwealths, when once instituted, do put on the Personal Property of the State, and in the Law which speaking of the Society of a particular Man, we call natural, being applied to all Commonwealths or Nations, is called Isi Gentium, to which Opinion we likewise subscribe; neither do we think there can be any other voluntary, or positive Law of Nations, which can have the power of a Law properly so called, and which may oblige all Nations, as proceeding from a Superior. But most of those things, which among the Roman Civil Lawyers, and others, are referred to the Law of Nations; as supposing, about the manner of acquiring of Conquests, and the like, do either belong to the Law of Nature, or else to the Civil Laws of particular Nations, which agree together for the most part in these things: yet from which no new or distinct sort of Law can be rightly instituted, because those Laws are common to Nations, not from any Agreement or mutual Obligation, but in that they do by accident agree, from the peculiar Will of the Law-givers in each particular Commonwealth; from whence the same things may be changed by one People or Nation, without conflicting the rest, and oftentimes are found to be so changed. And of this he here gives us several Examples of different Customs amongst Nations, in making War upon each other, according to divers Forms or tacit Agreements, whereby War may be managed with as little Cruelty as may be. But thus he proceeds: "These Customs, although this may seem to contain some Obligation, as arising from this sort of tacit Agreement amongst Nations; yet if any Prince shall wage a lawful War, and neglect them, or should do quite contrary to them, he would not be guilty of any Sin against the Law of Nature;" but only of a piece of Roughness or Incurtity, that he did not make War according to those Rules of Honour, which are used among them, by whom War is looked upon as a liberal Art. [And a little farther proceeds thus:] "Amongst the principal Heads of the voluntary Law of Nations, where War may be managed with as little Cruelty as may be, there is the Right of Ambassadors, where we also suppute, that the Law of Nature, Ambassadors are inviolable even with the Enemy, as long as they appear Ambassadors, and not Spies, and do not contrive Plots against those to whom they are sent. And having shown the necessity of Ambassadors in order to Peace, he thus goes on: But there are other Privileges attributed to Ambassadors, especially to those who reside in a place rather to fish out the Secrets of another State, than for Peace sake; those Privileges depend from the meer Indulgence of that Prince to whom they are sent, and so, if it seems good to him, may be denied them, without the violation of any Right, if he will likewise provide, that his own Ambassadors should be treated in a like manner."
of God; and what Laws of Nations are founded on the Law of Nature, can only be tried by some Rule, which certainly is not to be learnt from the Knowledge of the Cusomrs or Laws of all Nations; since who is able to know them all? and therefore these Laws must be tried, either by the moral light of a Man's own Conscience, or else by considering, whether this or that Practice of a Nation conduces to the honour or service of God, or the common good and happiness of Mankind, and so may be known as well by the Unlearned as the Learned. Now I suppose you will not affirm, that this Law of the absolute Property and Dominions of Fathers in and over their Children, can be discovered by either of these ways; or that a Man's Conscience will tell him, that it is his Duty to let his Father kill him or fell him, or use him like a Brute, without any Contradiction or Refutation. And as for the other, I think I have sufficiently proved, that this absolute Power, which you allow of Fathers over their Children, doth not proceed from that great Law of Nature, viz. the common Good and Preservation of Mankind, to which the Practice of it may prove very destructive; which, if proved, I think I may easily answer all that you have now said about the particular Customs or Laws of divers Nations concerning this matter, tho' your Influences were many more than they are.

For, in the first place, as for those you allude out of Scripture, they do (as I said before) only regard the Municipal Laws of the Jews: The law of the Romans touching this matter did only concern that Commonwealth whilst it was in being, and to other Nations whatsoever. And for this Opinion I have both Grotius and Puffendorf of my side: For the former, in the beginning of the Chapter last quoted, after having set down the different Powers which Fathers may exercise over their Children, according to their different Ages, thus affirms: "Whatsoever is beyond these Powers, proceeds only from a voluntary Law, which is different in divers Places: So by the Law which God gave the Jews, the Power of the Father over his Son or Daughter, to dilique their Vows, was not perpetual, but only endured as long as the Children were Parts of their Father's Family. And by the same Rule I may add, that Children were not reckoned as part of their Father's Goods, and to be sold by him, or seized upon by Creditors for his Debts, any longer than they continued Members of their Father's Family, and consequently were not seized upon as his Sons, but Servants. And I defy you to shew me an Example, where ever among the Jews, the Children, after they were adult, and parted from their Father's House, were sold or seized as Slaves for their Father's Debts. And as for the Romans, it is plain they acknowledged their Pratia Potestatis to be in use amongst them neither by the Law of Nature or Nations, but only from their own Civil Law, as appears by this Title, almost at the very beginning of Justinian's Institutions (which, as I suppose, you know better than I).

Inf. l. 1. 2. Patria Potestas est juris Civile & Civitatem Romanam propriam. The Text follows in these Words (as I remember) "Iurus Potestatis, quod in liberis habemus, proprium est Civitatem Romanam; nullus enim alius finis hominis, qui tales in liberis habeas partiam, qualem nos habeamus: And therefore they would not permit Strangers to exercise it over their Children within the City of Rome. And if the Power of the Father, amongst the Jews and Romans was not by the Law of Nature or Nations, no more could it be so, tho' exercised amongst never so many other Nations; since, if it were one of the Laws or Precepts of Nature, it could never have been taken away or restrained by any Civil Law, no not by the express Confents of all Fathers. And as for your Influence of Cynus amongst the Athenians, it makes nothing to this purpose: since, if I take it at the worst, it maketh no more, than that the Athenian Commonwealth dealt very ungratefully and tyrannically with Miletus and his Son; and it might be that they kept him Prisoner, as being Heir to his Father's Principality in the Thracian Chersonese, out of which they supposed he might pay the Debt; as the King with us doth often put an Heir in Prison for his Father's Debts, where he hath Assets by Default.

But for all your other Examples, unless they have a Reason in Nature to support them, they will no more prove that by the Law of Nations Fathers should have a Right of Life and Death, or of selling their Children, than if you should argue from the common Custom amongst the Lacedemonians, the Aborigines in Italy, the Inhabitants of the Kingdom of Sicyonia, as amongst the Indians mentioned by Qu. Curtius, and the Chineses, and the Inhabitants of Formosa at this Day; all which either did, or now do destroy their Children as soon as they are brought forth,
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forth, or else in the Womb before they are born, if they please so to do. And as for some of thefe Nations you have in fance, and particularly the Muflo-
cen, who can fell their Children but four times, it is apparent it is only a Munici-
pal Law; for if the Property of the Father over the Sons Perfons were by them
looked upon as perpetuall, he might not only feithim four times, but forty, if it were
the Mufloen in other Actions, as a Pattern for other more civilized Nations.

But on the other fide, I have, againft this Conufm of your Nations, the Exam-
iples of divers atas together as wife and civile'd, who did not permit Fathers to
exercise this abolute Power over their Children; and therefore againft your
Exemplar of the Jews I fay that of the Egyptians, who did not permit Parents to
put their Children to Death, nor yet to fell them, unlefs in cafe of great nec-
fsity, and when they could not otherwife maintain them; and then I grant it may
be neceffary. So likewife againft your Roman Law, I fay that of all the Greek Na-

tions, none of whom permitted Fathers to put their Children to Death, except

Plutarch, in the Spartan: and that was only in one cafe, and that with the Judgment and

Conent of the eldefl Men of the Family, when their new born Infants were fo

weak or ill fhaped, as to be thought not worth the rearing. So likewife againft

your Examples of the ancient Gauls, I fay that of the Germans, a Nation altogethers taine, Spaniards, and divers others. And to the more modern Examples of the

Etranger Nations, where this Custom is permitted of felling or killing their Chil-

dren, I fay Pufkin and modern Prufians, amongst whom it is forbidden, as also amongst all the Nations of Europe, who believe Christianity: And if we
go over to America, we fhall find that they are there fo indulgent to their Children,
that of Fane whatsoever, thof' never fo great, fhall make them put them to Death,
and to let you fee that this is mostuitable to Reafon, the two greatcffe Calphoos,
his Laws, where he expressly forbids it, fupposing that in no cafe whatever a Fanf
ought to put off all Piety and Humanity towards his Son, and that a Son

could be better led by Nature, than driven by force, to obey his Father: effe-

cial that Arifotle, in his Morals to Nicomaclus, fil. & cap. 12, 18, tells you, he produces thefe Examples of the Romans and Prufians, only that we

might difpute of Civil Rights from Naturall. From whence it appers, that the 7th. P. Rea-
mongt the Welfare of the Antient, and therefore neither the Leg. Regia, nor the Indulgence
of the XII Tables, nor the Julius Law de Adverteris (all which left Fathers void.

Law of the XII Tables, nor the Julius Law de Adverteris (all which left Fathers void.

by Interpretation of the Grand-father towards his Grand-ffon or Grand-daughter), yet would extend this Power

Yet for all this, I think all the Welfare and more civilized Peoples were of

my opinion, and it is from them that we ought to take this Law of Nations,

rather than the others; and therefore I think the Romans were a great deal wiser,

does your Argument againft this Power of Life and Death in Fathers by the Law

of Nature feems cogent, that if it were fo, it could never be taken away, as a

Power of Life and Death, with which you invent your Fathers of Families in the

be restrained or taken away by Civil Laws, than any paternal Power in the

F. I pray, Sir, bold: If this Controversy is to be decided by the Wifdom and

the Civility of Nations, we shall never have done; for in the firft place, who

to be made of thofe whom you call barbarous; for what Nation will con-

ledge it to be fo, or can arrogate fo much to it felf, as that it may require

all others to confeff themselves to their Laws and Customs; and that all Nations

look upon over Nations as barbarous; and then the Romans fucceeded,

in this foledad Conceive of themselves; and at this day we People of Europe (who

are but a few in comparison of the reit of the World) do fuppofe our felves to

exceed
exceed all others in Knowledge. And yet on the other side there are divers Nations, who prefer themselves far before us; and I have read that the Chinese have a Saying, that the Europeans see with one Eye, themselves with two, but that all the rest of the World are dark blind; and yet this Nation maintain their Power of selling and exposing their Children, which we Europeans abhor. Now pray tell me, if there is not some common Rule to be drawn from Reason, or the common good of Mankind, how shall we judge which is in the right? So that notwithstanding all that hath been said on this Subject, I think I may safely conclude with the Judgment of the Learned Puffendorf, in Lib. 6. Cap. 2. where speaking of the Paternal Power, he says thus: "But neither the same Power, as such, seems to extend it itself to that of Life and Death by reason of any fault, but only to a moderate Chastisement. For since this Authority is employed about an Age that is weak and tender, and in which such incorrigible Crimes can hardly be committed, which nothing but Life can expiate; it is much better that a Father should turn out of doors a Son, who doth wilfully refuse through Obstinacy and Wickedness all due Correction. So that Abdication and Dividing him seems to be the utmost Punishment which can be inflicted by a Father on a Son, considered as such."

M. I see it is to no purpose to spend longer time about this Question; since yourself have all along allowed, that the Father of a separable Family in the State of Nature hath a Power to put his Wife or Children to Death, in case they have committed any heinous Sins or Offences against the Laws of God or Nature. But you have not yet told me (and I doubt cannot) how Adam, or any other Master of a Family, could be endued with this Power of Life and Death, unless it were granted him by God.

P. I promise to give you full Satisfaction to this Question by and by; but in the mean time, pray let me make it a little more plain to you, that this Power of Life and Death, which may be exercised by Masters of separable Families over their Wives and Children, in some cases, is not by any Power they receive from God, as Husbands or Fathers; but only as Heads or Masters of such Families, may be proved by this Inference: Suppose a Master of a Family, independent on any other (as in the Indies) hath neither Wife nor Children; yet sure he hath notwithstanding the same Power of Life and Death over his Servants or Slaves, for such great Offences as you have mentioned, in case there be no superior Power over him to take cognizance of such Crimes. And to make this yet plainer, suppose a married Man, having a Wife and Children, will live (together with them) in the Family of such a Master as I have now described (yet not as a Servant, but as an Inmate or Boarder) and whist he so continues, his Wife kills one of her Children, or one of his Sons, murders his Brother, who hath Right to punish this Offence, but the Master in whose Family he is an Inmate? And this follows from your own Supposition: For if every separable Family in the State of Nature be a distinct independent Government, then all those that enter themselves, as Members of such a Family, must be subject to the Master or Governor of it. Nor do you reduce me into any Absurdity by your Reply to my Argument, by urging, that if the Power of Life and Death were originally in Fathers by the Law of Nature, it could never be restrain'd not taken from them without their Consent: That then this will make as much against the law of Power of Masters of Families; or that law which makes a Father so great, this is the best law, and taken away by the Law of Nature, and not the other? To this I reply, that you do not observe the strengtne of these Words, Without their Consent: For I suppose that no Power whatever can be taken out of the hands of such Fathers, or Masters of Families, in the State of Nature, without they assent it to the Suprem Power of the Commonwealth upon its first Institution; whereas you make this Power to be obtainable by Force, by Conquest, or usurpation, not only over those that are not at their own disposal, as Children and Servants, but over their Fathers and Masters too, without their Consent; which is contrary to the Law of Nature and Reason.

M. I see you take it for granted, that I will admit your Inference of the Power of Life and Death to be in the Masters of Families, and not as Fathers, in the State of Nature: But as plain as you think it, since you question the Power of Life and Death, which I suppose to be inherent in all Fathers; I know not why I may not with more Reason question your allowing the like Power to Masters of separable Families, since there is no reason, in my Opinion, which you can bring
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for such a Power in your Matters of Families, which I cannot with like reason urge, may be also exercised by Fathers and Husbands over their Wives and Children, in cases they requisite. For if it be for the Good and Preservation of Mankind, that great and enormous Crimes, such as Murder and Adultery, should be punished, and that with Death; who is more fit to inflict these Punishments, or who can be supposed to judge more impartially of them than the Father or Husband himself? since he cannot put his Son or Wife to death, however they may deserve it, without very great reluctance; since he, as it were, thereby loses off a Limb from his own Body. And therefore I cannot see any Reason why such a married Man as you describe should, by coming under another Man's Roof only as an Inmate or Boarder, and not as a Slave (which I grant would alter the Case) lose that Power of Life and Death, which I suppose he hath by the Laws of God and Nature over his Wife and Children, unless he had actually given it up to the Master of that Family, with whom he came to board. And therefore as I do not deny, but that a Master of a separate Family hath Power of Life and Death, and also of making Peace and War with other such Masters of Families, nay with Princes themselves, if there be occasion, as we read in Genesis, Ch. 14, that Abraham made War with the four Kings who had taken Lot Prisoner. So likewise the Jewish Revised Version of Deuteronomy 21.10, Daughter-in-law, for playing the Harlot, Being her forth, says he, and let her be burnt, Gen. 38. I own this was not done by the Authority of a Father alone (for not being his own Daughter, and his Son being then dead) but as the Master of a separate Family, who hath (I grant) Power of Life and Death, as he is Lord over the Perfons of his Children, as Servants, and consequently over their Wives also: For if he hath Power over his Son, he hath certainly the like over all that belong to him, as long as they continue Members of his Family; and that he hath not thought fit to manumit or set them free. But now I desire to know by what Right the Patriarchs could exercise all these Marks of Sovereignty, especially this great Power of Life and Death, unless it were derived from God at first; since no Man hath any Power to dispose of his own Life at his pleasure, and therefore sure hath naturally no Power over that of another Man's: So that not only this Power of the Patriarchs, but also that of all Monarchs to this day, must be derived from this Divine Original.

E. Well then, I find you're forced to quit the Power of a Father, as such, by Generation; since it plainly appears, that this Power of Life and Death, which you affirm a Husband or Father may exercise over their Wives or Children in the State of Nature, is not, quatenus a Father, but Lord and Master over them; which in the first place I cannot allow to be true in relation to the Wife; nor that the Submission of the Wife's Will to the Husband must imply a Power of Life and Death over her: For if she is not his Slave (as certainly she is not, for then a Man might kill his Wife when he pleased) I cannot see how the herself could convey by force of the Contract any such Power over her Life, tho' I grant indeed, if the happen to commit Murder upon one of her Children, or other Person of the Family, he may proceed against her as an Enemy, but not as a Subject; and if it be for Adultery it is, I cannot see that the Husband can by the Law of Nature punish her with Death: For since that Crime doth really dissolve the Bond of Matrimony, Divorce, or putting her away, and defying the Child born in Adultery, was even among the Romans look'd upon as a sufficient Punishment. But as for the Power of Parents over their Children, I do not deny but that a Father may have the like Power over his Children whilst they are part of his Family, as over his Slaves or Servants, in case of such great and enormous Crimes as you have already mentioned; but that this is not as a Father, but Master of a Family, your self have already granted in your Inferences of Abraham and Judah, tho' if you will consider the letter more, you will find that Judah did more proceed thus against Thamar, as her Father or Master, but by some other Right. For if you please to look upon the 11th Verse of that Chapter of Genesis, from whence you cite this Example, you will find that Thamar, after the Death of Onan her Husband, went with Judah's leave, and dwelt in her own Father's House, and she was a Member of her Family, and consequently (according to your Hypothetisa) not under Judah's Power, when she was thus got with Child by him; and therefore not he, but her own Father ought to have condemned her, if this Judgment had belonged to him as to the Master of the Family. And therefore some of
of the Rabbins with more reason suppose, that when Judah gave this Judgment against Thamar, he did not act either as a Father or Master of the Family; for he was then under the Power of the Contaminis (who certainly had some Civil Government among them at that time) and therefore they suppose that he acted thus as a Civil Judge, appointed by the Prince or supreme Magistrate of that Nation.

But to defend the Infancy I have given you of a Father of a Family losing his Power of Life and Death, upon his becoming a Part or Member of another Family; you youself have already yielded me as much as I can reasonably desire for the defence of my Assertion, since you allow this Power of Life and Death to Fathers, not as such, but as Lords and Masters over their Children, as over their Slaves; and if so, I desire to know who can challenge this Power but the Master of the Family with whom he lives, unless you can suppose two distinct Heads or Masters in the same House; and then they will not be one Family, but two, under different Heads, each of them still retaining their distinct Rights. But you will say, that this Boarder or Inmate is not a Servant or Slave to the Master with whom he lives, and therefore hath not forfeited or given up his Right or Power of Life and Death over his own Children to him. It is no matter whether he did or not, since by making himself a Member of the other's Family, he ceased to be Master of his own, and consequently must lose all the natural Rights or Prerogatives belonging to it, of which I grant this of Life and Death to be the chief: For if Families in the State of Nature are like so many distinct Commonwealths, independent upon each other; it will likewise follow, that the Heads of those Families must be in all things necessary for the Good and Preservation of the Family, like so many distinct Civil Sovereigns, and consequently must have a Power of Life and Death, and also of making Laws, with Punishments annexed to them, in all Cases where the Good and Peace of the Family require it. If therefore in a Civil State, or Monarchy, an absolute Prince come into the Dominions or Territories of another, it is acknowledged by all Writers on this Subject, that such a Prince loyes that Power of Life and Death which he had before, and cannot exercise it as long as he is in the other Prince's Dominions: So by the same reason, if Masters of Families, in the State of Nature, be like so many Civil Sovereigns, it will follow, that they must cease to be such, when they become Members of another's Family; unless you will fall into the Absurdity of supposing two absolute independent Heads, or Masters, in one and the same House; which, what a Confusion it would bring, I leave to your self to judge.

M. I shall not much dispute this Power of Life and Death with you, as belonging to Masters of separate Families: But pray shew me how they can exercise this Power over the Lives of those that are under their Jurisdiction, unless it were granted them by God, by virtue of that original Power given to Adam, not only as a Father, but Prince of his Polity.

F. I do not doubt but I shall give you a satisfactory Answer to this important Demand, without supposing any extraordinary Divine Commission from God to Adam: For as for your Instance of Abraham's making War, Leagues, or Covenants with other Princes, it is no more than what any Master of a separate Family may do for his own and their defence; and what, if you or I were Masters of a Family in the Indies, where there is no Power above us, we might do as well as Abraham; and all this without any other Commission from God, than the great Right of Nature, Self-preservation, and the Well-performance of that Truth which hath put into our hands, of defending and providing for ourselves and our Families: And God hath ordained the End, he hath likewise ordained all Means necessary thereunto: and therefore there is no such great Mystery in this as you suppose.

M. If there were no more in it than a mere Right of Self-defence, for which I grant Retaliation or Revenge may be also necessary, you would have a great deal of Reason on your side: But pray shew me how a Father, or Master of a Family, can condemn either his Wife, Child, or Servant to Death, as a Punishment for any enormous Crime, such as I have mentioned (and you agreed to) without such a Divine Commission as I suppose Adam had; since I know Revenge or Retaliation may be used by private Men in the State of Nature, by the Right of Self-Defence, which I grant may be exercised between Equals. But since all Punishments, properly taken, are the Acts of Superiors towards their Inferiors, I cannot conceive how any Father, or Master of a Family, can inflict so great a Punishment as
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Death upon any Member of it, unless he derived this Power immediately from God, by virtue of the Divine Charter committed by him to Adam, and from thence to be derived to all Malters of Families, or Civil Sovereigns, who could never derive this Power from the joint Compacts or Confent of Fathers, or Malters of Families; since no Man could convey that to another, which he had not himself. And I have already, I think, with a great deal of Truth asserted, that no Man hath Power over his own Life, to take it away when he pleases, and therefore cannot have it over another Man's; much less can convey any such Right to others, except it were granted at first by God, in the manner I have supposed, which I conceive may safely be made out by several Places in Genesis, by which it plainly appears, that Adam, and after him Noah, were supernaturally endued with this Divine Power.

F. Though I am satisfied that this Hypothesis is extremely absurd; since if it were so, only Chriftian or Jewish Sovereigns, or Magiftrates, who acknowledge the Scriptures, could lay any claim to, or exercise this Divine Power; whereas we find it practic'd by all tho' Nations, with whom the Memory of Adam and Noah is quite loft, and therefore must claim this Prerogative, not from any revealed, but natural Law of God: Yet however the Case be, you have such clear Texts of Scripture on your Side, I desire you to produce them, tho' if they should make out what you say, they would only serve to confirm, by Divine Revelation, that Prerogative of Life and Death, which all Malters of Families, as well as Civil Sovereigns, enjoyed by the Law of Nature, before ever the Bible was written.

M. As for my own part, I am so well satisfied of this Suprem Power of Life and Death granted at first by God to Adam, and after to Noah, that I cannot see that without the Support of this, any Suprem Power could lawfully be exercised by Civil Sovereigns at this Day: And therefore I am of Mr. Sedan's Opinion, who in his most learned Treatise, De Jure Gentium apud Hebraeos, maintains, with the Jewish Rabbins, That the Law of Nature can never be plainly proved, and made out by Reafon, without a Tradition of its Precepts, as given by God to Adam, and thence conveyed to Noah, and his Posterity: Which Divine Laws, or Commands, are called by the Jews, the Seven Precepts of Noah, which whatever People would observe, they permitted them to live as Inhabitants among them; though they did not embrace Circumcision, or tho' other Rites and Ceremonies commanded by the Law of Moses. Now amongst these Precepts, that of inflicting publick Judgments for Capital Crimes, is one of the first, in pursuance of that Command which God gave Noah immediately after the Flood, Gen. 9. v. 6. Whosoever sheddeth Man's Blood, by Man shall his Blood be shed; for in the Image of God made he Man. By which Text almost all Commentators understand, that it is not any common Man, but the Perfom of the Civil Magiftrate, or Sovereign, that is to be meant: Since it would be both impracticable, and also breed great Confusion in Civil Societies, if by this Word Man, every common Perfom, not endowed by God with this Suprem Power of Life and Death, should be underflood to act with this Preypoite, with the most learned Jews, that this Power was first exercised by virtue of that Divine Charter that was given of it by God to Adam, and then renewed again to Noah, by the Text above-mentioned.

Now that Adam had, by Divine Grant, an absolute Dominion over the whole World, and all Creatures therein contained, will appear from Gen. 1. v. 27, 28. 211. (Here is the Bible, I desire you would read it with me.) So God created Man in his own Image, in the Image of God created he him; Male and Female created he them; And God blessed them; and God said unto them, Be fruitful and multiply, and replenish the Earth, and subdue it, and have dominion over the Fish of the Sea, and over the Fowl of the Air, and over every living thing that moveth upon the Earth, or Donation, from God of subduing the Earth, and having dominion over the Creatures, Adam was made the general Lord of all things, with such a particular Propriety to himself, as did exclude his Children from having any share in it. So that if Cain had his Fields for Corn, or Abel his Flocks, and Pasture for them, it was only by Adam's Grant, or Affignation, none of his Children or Descendants having any Property in Lands or Goods, without his particular Grant, or Permiption.

F. You must persuade me, Sir, if I cannot be of your Opinion, that all the Precepts of the Law of Nature must depend upon no firmer Foundation, than a Tradition.
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a Tradition of the seven Precepts, supposed by the Jewish Rabbinos to be given to Adam, and Noah, and from them conveyed to all their Posterity; since we find not the least mention of any such Precepts in the Scripture, or in Josephus, Philo Judaeus, or any other ancient Writer, but only in the Talmud: Which, though it pretends to a great Antiquity in its Traditions, yet any judicious Man that will but peruse it, may easily see the Falsity, as well as Absurdity of the pretend-
ed Tradition of these Precepts; one of which is against eating the Members of any living Creature, which favours so strongly of a Jewish Superstition, that if that were a true Precept, or Law of Nature, no Man could eat a Fish of Lamb-
stones, or a Black-Pudding, without sinning against the Law of Nature: And it is very improbable to supposethat all Mankind, except Jews, Christians, and Mahometans, should be obliged to live or act by those Laws or Precepts they never heard of. For if (as you your self must grant) the Memory or Tradition of these Precepts be quite lost amongst all Nations, except the Jews, it is all one as if they had been without any Law at all; and consequently, they have not some better grounds for their Observation of the Law of Nature, than these Precepts of Noah, I doubt whether (according to your Hypothesis) all Civil Sovereigns, that do not own the Original of their Power of Life and Death to this Divine Charter granted to Adam, and Noah, are any better than Murderers, since they take upon them to execute this great Prerogative without any Divine Au-
thority for so doing. But I hope to shew you, before we have concluded this Con-
versation, that not only the Power of Life and Death; but also other Laws of Nature, may easily be deduced, by Reason, to have been given by God to Mankind, by the ordinary Course of his Providence, without recurring to Di-
vine Revelation; which can only oblige those that have heard of it. But since you lay so much stress upon those Texts of Scripture you have now cited, I pray give me leave to examine, whether they will bear that Sense you put upon them. As for the first of those Texts you quote, 'Whosoever findeth Man's Blood, by Man shall his Blood be shed,' &c. Supposing I should take it in that sense you put upon it, only to extend to Civil Sovereigns, or Magistrates, it will be so far from proving a Power of Life and Death to have been granted by God to Adam, and from him conveyed to Noah, that this Place seems to imply the contrary; for if it was a known Law before, that Murder was to be punished with Death by a Father, or other Magistrate, to what purpose was this Command now given to Noah? Since if it were a Divine Law before the Flood, wherefore is it here repeated? And therefore all Expositors agree, that this is the first Precept enjoining Murder to be punished by the Civil Magistrate, which, before, any of the Kin of the Perfom flain might have executed; as appears by Genesis 4:14, when Cain fain'ted unto the Lord, I shall be a Fugitive, and a Wandering on the Earth; and it shall come to pass, that every one that findeth me, shall slay me; which had been a needless fear, if none but Adam had a Power to take away his Life for the Murder of his Brother, as you supposethat much less that God should have need-
ed to have fet a Mark upon him to keep him from being murdered by his Brethren, or other Relations. Nor will that other Place you cite out of Genesis prove Adam's sole Domination over the Earth, and all the Things and Perfons therein contained: For if you please to consider it, you will find, that it is so far from proving your Opinion, that it speaks the direct contrary. Pray there-
fore observe of whose Mefes speaks in that Place: Surely, not of Adam alone, when he says, Male and Female were created by them; and God blessed them, and said unto them, Be fruitful and multiply, and replenish the Earth, and subdue it, and have Do-
mination over the Fish of the Sea, and over the Fowl of the Air, and over every living thing that moveth upon the Earth: From whence we may obverse, first, That those Words being directed in the plural number, both to the Male and Female, were not intended to Adam alone; but by way of Anticipation, not only to himself and Eve, (who was not then made) but likewise to there Posterity (that is) all Mankind: Then that they should be fruitful, and multiply, and replenish the Earth, and subdue it, (that is, perfect and enjoy it) and have Dominion, &c. over every living thing that move on the Earth (in the Hebrew) creepeth upon the Face of the Earth. By which Words it appears, that not any Domination over Mankind, or the sub-
beitaits, that move or creep upon the Earth, is hereby conferred. And that this must be the true meaning of this Place, is plain, if you will but read the two next Verses that follow. And God said, Behold I have given you every Herb.
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having Seed, which is upon the Face of all the Earth; and every Tree, in which is the Fruin of a Tree yielding Seed; so you it shall be for Meat. And to every Beast of the Earth, and to every Fowl of the Air, and to every thing that creepeth upon the Earth, wherein there is Life; I have given every green Herb for Meat; and it was so. Which Words are certainly directed to the same Perasons as the former (that is) to all Mankind, by the-fame Argument as that every green Herb is here granted for Meat to every Beast of the Earth, and every Fowl of the Air, &c. that then was, or ever shall exist in Nature: So that this Text, which you have cited to prove this absoulute and sole Dominion of Adam over the Earth, and all the Creatures therein contained, is so far from proving any such thing, that it seems to me to make out the direct contrary Doctrine, viz. that the Earth, and all the Creatures therein, were not granted to Adam alone, as the sole Lord and Master of them; but in common to himself, his Wife, and all his Pofferity, who had as good a right to them, as he had himself. So that I must tell you, if you intend to bring me over to your Opinion, you must produce some better Proofs out of Scripture, or Reason, than those made use of by Sir R. F. And therefore I desire that you would give me some plainer Proofs for Adam's absolute Power over his Wife, and all his Pofferity, than hitherto you have done; since I cannot see any Divine Charter granted by God in Scripture, or of any absolute Power, or Dominion, over their Lives or Perons.

M. I shall, Sir, do my best Endeavour to give you all the Satisfaction I can possibly therein; therefore I desire you farther to take notice, that Mr. Sel- 

den, in his More Clasianum, from the ancient Tradition of the Jewish Rabbins, L. 1. c. 4. has undoubtedly given Adam an absolute Power over the Earth, and all things therein contained, exclusive to his Pofferity, as long as he lived. So that if Sir R. F. and divers others, have erred in the sense of this Place, I believe it is more than you or I can prove, since sure they would not have put this sense upon it, without they had some good reason for it.

But this much, I suppose, you will admit, that Adam was created by God, and in Scripture called the Son of God, as indeed he was; and if so, let Ex. 3. 27.
your felt, or any other rational Man consider, whether it be at all likely that God should not endow this Son of his, the Father of Mankind, with so much Authority and Power as should enable him to govern his own Family, and Children, as long as he lived, without depending upon them for their Comfort, and chopping Logick with them, whether his Commands were reasonable, or lawful or not? And if a Power of Life and Death was necessary (as the Mother of Abel by Cain shews it was) whether Adam had no more share in that Power, than any of his Children or Grand-children: Which is sufficient to shew you the Aburdity of your Tenets, that the Authority of Adam over his Pofferity was not absolute in its Exercise, as well as perpetual in its Duration: And this, I think, you cannot but admit, because you have already acknowledged this Power of Life and Death to proceed from, or to be granted by God to Adam; and so consequently must have continued with him as long as he lived.

F. Well, I perceive you find your Monarchy, or absolute Dominion of Adam over Eve, and all her Pofferity, as also over all the Creatures of the Earth, not to be proved from any of these places of Scripture you have brought for this extravagant Opinion; and therefore you now urge upon me my own conceit of this supream and absolute Authority of Life and Death, which I do not deny but Adam might have exercised in some cases over his Wife and Children, as long as they continued part of his Family: But that he was not ended with this Prerogative as a Father, but as a Heir or Master of his own Family, I think I have sufficiently proved, and therefore need not repeat it. And indeed, your own Instance of the Murder of Abel by Cain, (which, for all we can find, past unpunished by Adam) sufficiently proves, That this Power of Life and Death over his Children or Grand-children, when once they were separated from his Family, was not a necessary Prerogative of his Government; or else that his Children, and Grand-children, when they have erected new Families of their own, had it as much from God as he; and that from the same Reason which you give, why God endowed this Task in Gen., because without such an absolute Power, they could not have been enabled to govern their Children and Families as long as they lived. So that Adam's being created by God, or called his Son, gave him not a jot more power over his Children, and his Descendants, than what, as a Master, or Heid
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Head of a Family, he would have had by the Law of Nature however; and it is all one in this Case, whether you suppose Mankind to have been created by God, or to have exited from all Eternity, provided you hold the Being of a God, according to the Hypothesis of the more Modern Platonists, who though they held the Eternity of the World, yet likewise owned all things to be governed by God's Providence: And therefore, if on this Supposition Mankind could not be well governed nor preferred, without inflicting of Capital Punishments for great Crimes, and that they are necessary for its Peace and Preservation; it is likewise as necessary, that there should be some Judge appointed by God to inflict them, which in the State of Nature can be only the Head, or Master of a Family; as after Civil Government is once instituted, it belongs to the Civil Sovereign or Commonwealth. And this I hope will serve to answer your Scruple, how Adam, or any other Master of a separate Family, may very well be endued with this great Power of Life and Death by the Law of Nature, without supposing any Charter granted him for it by Divine Revelation; or else depending upon his Children's content for his Exercice of it.

But before I farther consider, whether this Power of Adam, or of any other Father or Master, be perpetual or not, and extends any farther than his own Family, give me leave to examine, whether it be so. Children, when grown to years of Discretion, and even while they continue Members of their Father's Family, may not in some cases chop Logick with him, (as you call it) and not only question, but judge whether his Commands be reasonable or lawful, or not; or else Abraham (for Example) must have sacrificed to Idols, because his Father bid him. Whereas Josephus tells us, He rather chose to quit his Country, and his Father's Hons, than to sin against God. And therefore I think you cannot deny, but if Husbands or Fathers command their Wives or Children to do any thing that is morally unlawful, by contrary to the Laws of God, or Nature, they may lawfully (nay are obliged) not to obey such unlawful Commands.

M. I shall so far agree with you, that if the thing commanded be apparently contrary to the Laws of God and Nature, that they are not obliged to obey their Commands; but they must be evidently, and apparently so, before they thus take upon them to refuse Obedience to them; otherwise I deny, that their Conscience, however misguided, ought to be any excuse, or just ground of their Disobedience. For if their Conscience be truly grounded upon the Laws of God, or Nature, that will excuse them; but if it be not, Conscience without such a Law can never do it. And yet this Non-performance of the unlawful Commands of the Husband, or Father, may very well confit without any Anarchy, or Disorder in the Family; since the Wife and Children must always yield him an active Obedience, in performing all his Commands, or else a passive one, in submitting to whatever harsh Usage, or Punishment, such a Husband, or Father, shall please to exercise or inflict upon them for their Nonperformance of them, though never so unlawful. But yet certainly in all possible and indifferent things, Children are bound to yield, not only a passive, but an active Obedience to their Father's Commands; For if his Children should have a Liberty to judge of his Commands, whether they are reasonable or not, what can ensue but Anarchy and Confusion in all Families?

F. Well, I am glad we are so far agreed, that a Wife and Children in the state of Nature have liberty to judge of their Husband's and Father's Commands, whether they are lawful or not, and also to disobey them when they are not so: And I think I may carry this a little farther, and affirm, that such Wife and Children ought not to obey the Commands of such a Husband, or Father, though they are not really contrary to such Divine or Moral Laws, but only erroneously supposed so by them; and therefore most Casuists agree, that even an erroneous Conscience does oblige, as long as a Man lies under that mistake. For St. Paul tells us, Wherefore is the Law of Faith, it is Sin, Rom. 14. Nay farther, such an erroneous Conscience may excuse a Man before God, if his ignorance was not wilful, but invincible, and not proceeding from his own fault; but of this no Man can judge but God alone, and the Party whose Conscience it is; and therefore such a Husband, or Father, can have no right or authority to compel their Wives and Children to perform such Commands, because the Will ought always to follow the Dictates of the Understanding; and therefore they should not be forced to do that, which they judge contrary to God's Moral or Divine Law; since Conscience may be instructed, but can never be forced. Neither will your dictation of
of an active and passive Obedience help you in this Matter: For active Obedience I understand well enough; but as for passive Obedience, I think it is next door to that we call a Bull or Nonsense. And to prove this, I shall give you this plain Instance: suppose you had a Jew to your Servant, and should command him to do you some Work or other on a Saturday, which he judged a Breach of the fourth Commandment, that forbids him to work on the seventh Day, (or Sabbath,) and you being very angry, should cudgel him soundly for this resurfal; whereupon he tells you, that you may beat him as long as you please, he would not resurf, but yield a passive Obedience; but yet could not perform your Commands: I ask you now, whether you would resurf satisfied, that this Jewish Servant had sufficiently performed what you had bid him, by submitting to your cudgelting? And whether your Dinner or Horse would not be as much undressed after this sort of passive Obedience, as it was before?

M. Perhaps indeed this Phrase of Passive Obedience may be somewhat improper, and may be more properly termed an absolute Subjection, or Submission; but it is all one what we call it, as long as you understand what we mean; since such Submission doth sufficiently avoid that Anarchy and Confusion which would necessarily follow, in case it were lawful for Wives, or Children, in any cafe whatsoever, to resurf their Husbands, or Fathers, though for the defence of Life it fell, Government can be maintained, where the Parties governed have a right to resurf their Superiors, or Governors, in any case.

F. I grant indeed, that no Government can be maintained, where the Parties Governed resurf their Superiors or Governors in the due exercise of their Power: but when they exceed those limits, they cease to act as true Superiors, or Governors; and therefore when, instead of Husbands, or Fathers, they prove Deployers of their Families, I doubt not but they may then be lawfully resurfed by them. For suppose such a Father of a Family should, in a furious or drunken fit, go about to kill his Wife, or one of his innocent Children; can any Body think this was a reason against the Monarch of the Family, if his Wife, or one of his Sons, should resurf this fellow, this innocent Child, out of his Hands by force, if they could not otherwise quiet him?

M. This Supposition of Madness, or Drunkenness in Fathers of Families, you B. P. P.

Gentlemen of Commonwealth Principles make great use of, to justify your Doc.

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tine of Reliance: and I know no reason why you might not extend it as well to Anger, Luath, or any other Passion that a Man is subject to; and have given all the World a power to judge when a Man is drunk, and mad, as well as his Wife, Children, or Servants; nor do I know why you so much insist upon it, but because the Authors from whence you had it, are so in love with Rebellion and Disorder, that they seek and catch at every opportunity to recommend it to the World. But, I believe, had you a Wife, Child, or Servant, that should take the liberty of controlling you upon this pretense, you would be more enraged with the reason of the Reliance, than with the Reliance itself.

F. I am sorry, Sir, any thing I have said can so far transport you to passion, as to make such unkind Reflections upon your Friends; but pray be not so hot; is it not possible that a Master, or Father, in the State of Nature, may be mad, or drunk? Yes, and is it not possible also that the Wife may be so too? Now suppose they should mutually charge each other with madness, or drinking too much, who shall judge betwixt them? What horrible Confusion must this introduce into all Societies, to give Inferiors a power to judge their Superiors to be mad, or drunk; and then resurf to resurf, and oppose them with force? But if it doth at any time happen, Wives, Children, and Servants, that are dutiful, may have ways to appeal their Husbands, Fathers, or Masters, when mad, or drunk, without reliving, or fighting them; as by getting out of the way, or by submission, prayers, and tears, which Nature hath taught them, or such occasions to take the life of, and which is a thousand times a better Method, than those violent Courses you propose.

R. All I desire of you in this Conversation, is, that you would be pleased to believe, I do not argue out of any love to Rebellion, or Disorder, or that I desire to encourage it in private Families, much less to recommend it to the World; only what I speak, is purely out of a desire of the happiness and preservation of Mankind; and I hope I say no more, than what all sober Men will allow may be every Day practised in private Families:
And therefore, since you will needs have it, I do extend this Power of Reffistance, not only to Madmen, or Drunkenmen alone, but even to Anger, Lust, or any other exorbitant Paffion a Man can be subje& to; and I do likewise give all the World a power to judge when such a Man is mad, or furiously passionate, as well as his Wife, Servants, or Children, if in those drunken, and mad fits, he goeth about to kill them, or any else. For I think in that Case, you will not deny, but any honest Neighbour may step in, and bind him, or hold his Hands; and so may likewise the Wife or Children themselves. As suppose, this Father, or Husband, should be so far transportéd with Paffion, or Lust, as to go about to kill his Wife, or ravish his Daughter; I hope you will not deny, but they may lawfully reftit him, if they can neither run away, nor yet pacify him by Submiffion, prayers, or tears; which I grant are much better Methods, if they may prevail: But what if they can neither get away, nor yet any of those gentle Means you propofe, can work any good upon him; what shall they do then? Can any one, I faie, that I told you appointed an innocent Wife or Children, to be in the Room of a Sacrifice to the Madmen, Drunkenmen, Paffion, or Lust of such a Father, or Husband? And as for the Cafe you put, where the Husband or Wife fhould charge each other with Madmen, or drinking too much, who fhould judge between them? It is a meer Cavil; for as long as they fall out, and only braggle, it is no matter whether there be any Judge or not. But if it proceeds to blow, and they are like to mischief or kill each other, no doubt but the Children or Neighbours may come in and part them; and may either hold, or flut up one, or both of them, till they are fober.

M. Pray, Sir, let us leave this touchy Difcourfe concerning Self-defence till anon, when we shall have occafion to fall more naturally upon it. Suppose then I fhould at present grant you, that a Wife or Children may (in cafe of such extremities as may happen to them by the Madmen, or Drunkenmen of the Husband, or Father) reftrain, or reftit his violence, in cafe no other means can prevail; what is this to disobeying his Commands, or reftiting him when he is fober? Which certainly they have no right to do. But to come as near you as pothibly I can, and to let you fee I am not a Man of a demeanour Temper, and who approve of unnecessary Sovereties, or unnatural Rigidours, either in Masters of Families, Husbands, or Fathers; I grant that no Father, or Master of a Family, has any right to punifh, or put to death the meanefl of his Slaves; much lefs his Children, without a suficient caufe; or that he may fell his Children, or otherwife tyrannize over them by cruel Ufage, or too severe Punishments, since they are not only part of his own Subfiance, and to whom by the order of the Creation he gave a Being; but was alfo (as you well obferve) ordained by God for their happiness, and prefervation, as they were alfo (as well as his Wife) for his conf tant help, comfort, and fubfidence; and therefore they were as much, or more, made for him, as he for them; as it is in concern ing the Wife from the Text in Genesis, when God faid, it is not good that the Man fhould be alone, I will make him an Help meet for him, Gen. 2. 18. (viz.) the Woman; and therefore, as her Subje&tion to her Husband is perpetuall, as long as the lives, fo likewise is that of the Children, in whom he acq uireth a Property by their Education for fo many Years; which I look upon as a greater obligation than their Generation; and over both whom he muff in the flate of Nature have an abso lute Power of Life and Death; which though I grant he may happen sometimes to abuse, yet I fuppofe no Perfon living hath any right in that flate to reftit him in the Relegation of it; much lefs to kill him to an Account, or punifh him for the Male-adminiftration of his Power. And you have granted, that the Husband in the flate of Nature hath a Power of Life and Death over his Wife, if he murther his Children, or commits any other abominable Sin againft Nature; and that then the may be juftly cut off from the Family, and punifhed as an Enemy to Mankind, and fo certainly may his Children too. But what need I fay any more of this Subject, when you have not as yet anwercd my former Arguments, concerning the Absoluteines, and Perpetuity of this Conjugal Subje&tion, (and that which will likewise follow from it) the conf tant Service and Subje&tion of Wifes and Children to their Fathers in the flate of Nature. Therefore pray, Sir, let us return again to that Head, and let me hear what you have to object against those Reasons I have brought for it.
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F. I beg your pardon, Sir, if I have not kept so close to the Point as I might have done; but you may thank your self for it, who brought me off from where I was going farther to say on that Head, by your Discourse of Paffive-Obedience and Non-Rifiance, and I know not what strange unintelligible Power of Life and Death, conferred by God on Adam, as a Husband, and a Father. But first, give me leave farther to prove, that this Subjection of the Wife is neither absolute, nor irrevocable. For Proof of which, I shall lay down these Principles. 1. That the Wife in the State of Nature, when she submits herself to the Power of her Husband, does it to live as happily as she did before, or rather to enjoy more of the comforts of Life, than in a single State. 2. That therefore she did not renounce either her own Happiness or Self-preference. 3. Neither did she the make him the sole and absolute Judge of the means that may conduce to these Ends: For if this were so, let him use her never so cruelly, or severely, she could have no caufe to conforme him, or complain in the least against him. 4. If she has not so absolutely given up her Will to his, she is still Judge when she is well used by him; or else so cruelly, that it is no longer to be endured. And therefore if such a Husband will not allow his Wife sufficient Food and Raiment, and other Necessaries; or that he uses her cruelly, by beating, or other Punishments, or hath endeavoured to take away her Life; in all these cases in the State of Nature, and where there is no other Power to complain, or appeal to, she may certainly quit him; and I think she is not bound to return, or cohabit with him again, until she is satisfied he is sorry for his former cruel Treatment of her, and is resolved to make amends for the future. But whether this Repentance be real or not, the only can be Judge, since she can only judge of her own Happiness, and the means of her Preservation. And the end of Matrimony being for their mutual happiness, and help to each other; if he has broke his part of the Compact, she is then so far discharged from hers, and consequently in the meer State of Nature (which is that we are now talking of) the Vindication Matrimonii (as you Civilians term it) will be likewife dissolved: So likewise if such a Husband, for no just cause, or crime in the Wife, but only to be rid of her, should endeavour to take away her Life; as suppos'd, to strangle her in her Sleep, or the like, no doubt but the may (notwithstanding your Conjugal Subjection) revolt him by force, and save her Life, until she can call in her Children, or Family, for her relief and assistance; who sure may also, notwithstanding this absolute Despotick Power you place in their Father, or Master, release her from his Rage and Malice, whether he will or no: Nay they are bound to do it, unless they will be Accessaries to her Murder.

M. These are doubtful Cases at best, and do very seldom happen; and a Husband can scarce ever be supposed to be so wicked, as to hate, and destroy his own Flesh; and therefore we need not make Laws on purpose for Cases that so rarely happen.

F. Rarely happen! I see you are not very conversant at the Old Bailey, nor at our Country Assizes; where if you please to come, you may often hear of Cases of this nature; and I wonder you that are a Civilians, and have so many Matrimonial Causes in your Spiritual Courts, brought by Wives for Separation, proprietum, &c. should doubt whether Husbands do often use their Wives so ill, that it is not to be endured. But if the Wife have these Privileges, pray tell me why the Children shall not have the same, according to your own Maxim of Patris sequitur Ventrem, since the Subjection of Children must be according to your own Principles, of the same nature with that of the Mother; and then pray what becomes of this absolute and perpetual Subjection you talk of?

M. Yet I hope you will not affirm, but that Children are under higher obligations of Duty and Obedience to their Father, than a Wife is to her Husband, with whom perhaps the may in some Cases be upon equal Terms; but Children can never be so in respect of their Father, to whom they are always inferior, and ought to be absolutely subject in the State of Nature, (that is) before Civil Laws have restrained Paternal Power.

F. I thank you, Sir, for bringing me so naturally to the other Head I was coming to, and I agree with you in your other Maxim, quidquid ex te & usque mea sofitur in posse tei of, yet not in your Sentence: For if I should grant, that the Father's Power over the Child commences from his Power over the Mother, by her becoming his Wife, and submitting herself, and consequently all the
the Illuc that should be begotten of her, to her Husband's Power; yet as I have pro\'d already in case of the Wife, so I think I may affirm the same in that of the Children, that they are not deliver'd by God so absolutely to the Father's Will, or Disposal, as they have no Right, when they attain to Years of discretion, to seek their own Happines and Prefervation in another place, in case the Father utis them as Slaves, or else goes about to take away their Lives without any just cause; since when Children are at those Years, I think they are by the Laws of Nature, sufficient Judges of their own Happines, or Misery, that is, whether they are well, or ill used; and whether their Lives are in danger, or not, by their Father's Cruelty.

For tho' I grant that Children, considered as such, are always inferior to their Parents; yet I must likewise affirm, that in another respect, as they are Men, and make a part of that great aggregate Body of Mankind, they are in all Points equal to them; that is, as the Parents have a Right to Life, Happines, and Self-prefervation, so have they likewise; and consequently to all necessaries mean thereunto, such as Food, Cloaths, Liberty, (I mean, the liberty of acting as men,) which Principles, if true, will likewise serve for a farther Proof against that absolute Property, and Dominion, you supposed to be conferred on Adam over the Earth, and all things therein, exclusive to that of his Wife and Children. For if they had a Right to a Being and Self-preferervation, whether he would or not, so had they likewise to all the means necessary thereunto; and he was not only obliged to provide Food and Raiment for his Children, whilst they were unable to do it for themselves, but also when they grew up to Years of discretion, they might take it without his Affirmation, and this by virtue of that Grant in Genesis I before mentioned; And God said, Gen. 1. (next to the Man and the Woman,) to all Mankind, then in their Loins) Behold, I have given you every Herb bearing Seed, which is upon the face of the Earth, &c. Behold, to you it shall be for Meat. So that sure you were too rafh, in affirming with Sir R.F. that a Son, a Slave, and a Servant, were all one at the first: For I hope I have proved, the Father doth not acquire any absolute Property in the Person of the Son, either by his begetting him, or bringing him up; for then I grant, a Son and a Slave would be all one. But if you please better to consider it, you will find, that Fathers were never ordained by God for perpetual Lords and Masters over their Children, but rather as Tutors and Guardians, till they are of Years of discretion, and able to shift for themselves; God having designed the Father to beget and bring up his Child, not for his own interest or advantage only, but rather for the Child's happiness and preservation, which by the Laws of God and Nature he is bound to procure: For as it is the Son's Duty never to do any Action, that may make his Father repent his begetting, or bringing him up; so on the other side, the Father ought not to treat his Son so severely, as to make him weary of his Family, much less of his Life. It is the Apostle's Precept, Ephes. 6. 4. Parents provoke not your Children to wrath; which certainly he knew they were to do, or else that Precept had been needless. Now pray tell me, if Adam had used one of his Sons (whom he loved worse than the rest) so cruelly, as to make him a Slave instead of a Son, and when grown a Man, should have put him to all the ferver and hard Labour imaginable, with scarce Vitals enough to live upon, or Cloaths to cover him; what must this Son have done? born all patientely? Or else do you think it had been a damnable Sin, if he had fled into the Land of Ned, to Cain his elder Brother? M. To answer your question, I think in the first place it had; for I do not only take Cain to have been the first Murderer, but Rebel too: And in the next place this Question is needless; for it can be nothing less but to say, Adam, or any Father can be so wicked and ill-natured, as to use a Son thus cruelly, without some just occasion; but if he had, I think he ought to have endured any thing from his Father, rather than have left him without his leave, since I cannot see how Children can ever set themselves free from their Father's Power, whether they will or no.

F. If that be the condition of Children, they are then, instead of Sons, as aboulute Slaves as any in Turkey, whenever their Father pleases. But you have already granted, that Fathers ought not to use their Children like Slaves, nor to fell them for such to others; and that I have no great kindness for Cain, yet I know not what warrant you have to call him Rebel: I am sure neither the Scripture, nor Josephus, mention his going to the Land of Ned, as an offence com
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omitted against his King and Father, Adam; but rather as a piece of Compliance or Obedience to God's Sentence, who had made it part of his Curse to do.

M. I shall not much trouble myself whether Cain was a Rebel or not; I only tell you what some Learned Men have thought of his quitting his Country; but as for other Children, tho' I grant their Fathers ought not to use them like Slaves, yet if they should happen to do so, I think such Children ought to bear it as a Judgment inflicted by God for their Sins, and should not by any means bet themselves free, tho' their Fathers use them never so severely; since it is God's Will they should be born, and continue under the Power of such severe Fathers.

F. But pray, Sir, tell me: What if this Son had fallen into the power of a Stranger who would thus make a Slave of him, was he like wise bound to bear this as a Punishment from God for his Sins, and might he by no means set himself free, since this could not happen without God's permissive Providence at least; and I think you will scarce prove it more in the Case of the Father, unless you will allow God to be the Author of Tyranny and Oppression.

M. I grant, that a Man that is made a Slave to a Stranger by force, without just cause given by him, may set himself free by what means he can; but I deny he hath the same Liberty in respect of his Father, since the Father's Power over him is from God, and so is not the Stranger's.

F. What Power of the Father do you mean? that of making his Son a Slave or of using him as a Father ought to use a Son? The latter of the two I very well understand to be from God, but not the former: And if the Father hath no such Power over his Child, I cannot see how it can be any Act of Disobedience in a Son to look to his own Liberty and Preservation; since Cruelty and Tyranny can never be regarded as a Property of Paternal Power, as you yourself confess.

M. I grant, indeed, a Father hath no such Power from God to treat his Son thus cruelly; but if he does, I say again, that God having ordained the Son to be absolutely subject to his Father, he must endure it, let the consequence of it be what it will: And I suppose you will not deny, but that in case of necessity, as when a Father hath not wherewithal to nourish and breed up his Children, he may fell or affiign his Interest in them to any Person, who will undertake to provide for their Nourishment and Education; and that the Children so sold, or affiigned, do thereby become absolute Servants to the Person to whom they were thus affiigned as long as they lived; and why this should be their Condition in respect of a Stranger, and not so to their Father, I can see no reason, since their Father would have been at as much trouble and charge for their Education as the Stranger.

F. I so far go along with you, that in case of such necessity as you mention, a Father may sell or affiign the present Interest in his Child to a Stranger: yet I cannot see any reason that this Sale, or Affiignment, should confer so absolute a Property in the Person of this Child, as that therefore he should be a Slave to this Master, or Fosterer, as long as he lived: Since admitting that the Father, or other Person who takes upon him that Care, may perhaps justly claim a Right in the Service or Labour of the Child, to satisfy them for their trouble and charge in bringing him up; yet it doth not therefore follow, that this Service is due as long as the Child lives, but rather until such time as they can make their Labour satisfy them for their charge and trouble in keeping him, which may very well be by that time the Child attains to twenty five Years of Age at farthest: And there are those that have offered to breed up and maintain all the Foundlings and Ballard Children in England, if they may be bound to serve them until about that Age. So that I see no reason why a few Years of Education should give any Man a Right over another's Person as long as he lived.

But if you urge, that the Child owed his Life to his Father, or Fosterer, since without his assistance he must have perished, and therefore the Service of the Child's whole Life is but little enough to recompense it: To this I answer, That the Parents are under an absolute Obligation, by the Laws of God and Nature, to breed up their Child, and they sin, if they do not perform it as they ought; the end of a Father being chiefly for the breeding up and preservation of the Child; and therefore there is no reason he should acquire such a Property in him, merely because he did his Duty: And the Duty of a Father being to better the Condition of his Son, and not to make it worse, I doubt whether an absolute and perpetual Servi-
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Servitude, or Death itself, were the better bargain. And if this Right will not hold for the Father himself, much less will it for a Foster-son, since he is likewise obliged by the Laws of Nature and common Humanity, as well as by his Contract with the Father, to breed up this Child to a useful Man; and not to let him perish, if he be able to breed him up. Nor ought this Father's or Foster's temporal Advantage, which he may make of this Child, to be the principal end of his Undertaking; but the doing good to Mankind, and the Advantages he may reap thereby, is to be considered only as an Encouragement, and not as the only Motive to this Duty, since he is obliged to do the same thing, tho' he were sure the Child would either die or be taken away from him, before he could be with him half long enough to satisfy him for his Charge.

Neither doth this Reason hold true, even according to the Scripture Rules of Gratitude, that a Man hath a Right to exact, of one to whom he hath done a Courtsey, or bestowed a Benefit, a Return as great as the Benefit bestowed; since this were not Benevolence, but mere Barter or Exchange; and a Man who had his Life saved by another's assiduity (suppose by pulling him out of the Water) must be obliged by this Principle to submit his Life to this difpofal ever after. And therefore I desire you would give me some better Reasons, why such a Son ought to be so absolutely subject to his Father's Power, as that it is not lawful for him upon any account whatsoever, to free himself from it, let his Father use him never so cruelly or severely.

M. Well, Sir, since you desire it, I will give you the best Reasons I have, why God cannot permit to unchristian Liberty as this would give to all Children, in case they should make use of it whenever they thought fit; and therefore God hath ordained it thus, to take away all those Pretences of Undisiruifhes and Disobedience, which Children might make, should they be permitted to be their own Judges, when they might quit their Father's Family without his leave; which Pretence of cruel Ulage they would be sure to make use of, thereby to leave their Parents upon every flight occasion, saying, that their Fathers were so cruel and severe, that there was no lifting with them any longer; and indeed it was not so, but on the contrary, so just Cause of Complaint against them, more than bare correcting them for their Faults: And so the Father might be bereft of some, nay all his Children, who should be helpful and serviceable to him in his old Age, which would breed great Confusions and Inconveniences in Families, especially in the State of Nature; as in the Case you have put concerning Adam's Sons, they being the only Servants he could have to make use of on all Occasions.

E. I desire you in the first place to take notice, that I put this Case concerning Adam by way of Supposition only; not but that I have a better Opinion of our first Parents, (withstanding his Fall) than to believe him so ill-natur'd, or that he was ever so cruel as to use his Children thus hardly. But in this depraved State of Nature such unnatural Rigors and Cruelties in Fathers, as well as Disobedience in Children, is but too frequent; which no Man needs to doubt of, that will but consult the Custom of divers Nations in Africa, and other Countries, at this day; where they sell their Sons for Slaves, and exercise this Fatherly Power with the greatest Tyranny and Rigor, usuring them as Slaves, or selling them to others for such things as they want. And if you think it against the Law of Nature for such Children, when they see themselves ready to be sold to work in the Mines in Peru, or Sugar-works at Barbadoes, to run away into another Country to avoid such a Condition, which is as bad or worse than Death, you may enjoy your own Opinion; but I am sure you'll have but few Prophylaxes, but such as are of the like arbitrary Principles. And as for your Pretence, that if Children should be allowed to judge when their Fathers treated them too severely, or like Slaves, they would all run away; that is but a Subterfuge: For first, it is a needless Caution, Children being, when young, not apt to leave their Parents who have bred them up, upon whom they depend for their Subsistence, and to whom, if they are treated like Children, they seldom fail to bear a natural Duty and Affection; and if well used, they will, when of Years of discretion, be likewise willing to stay with them, and look after them when sick or old; not only for Duty, but also for their own advantage, and in hopes of having a share in what Goods or Estates they may leave behind them when they die. But if, when they come to Years of discretion, they can better their condition by marrying, and leaving their Father's Family, their Parents are bound in conscience to let them go; since it
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it is their Duty to better the Condition of their Children, and not to make it worse: Always provided that such Children either take care of their Parents themselves, or else hire others to do it for them, in case they want their Affinances by reason of their old Age, Poverty, or Sickness. But if Children may not quit their Father's Families, tho' they are never so hardly or feverly dealt with, the consequence will be, that Fathers may keep their Children as Slaves as long as they live, tho' it were to a hundred Years, or else may sell them to others, to be used worse, if possible; the Absurdity of which Affiersons, and how contrary to the common Good of Mankind, I might leave to any indifferent Person to judge of.

Therefore, I think, I may very well (according to the Learned Gratius) divide the Lives of Children into three Periods of Ages. The first is the Period of Infancy or imperfect Judgment, before the Child comes to be able to exercise his Reason. The second is the Period of perfect Judgment or Discretion, yet whilist the Child continues still part of his Father's Family. The third is, after he hath left his Father's, and enter'd into another Family, or sets up a Family himself. In the first Period, all the Actions of Children are under the absolute Government of their Parents: For since they have not the Use of Reason, nor are able to judge what is better, or best for themselves, they could not grow up nor be preserves'd, unless their Parents judiciously for them what means best conduce to this end; yet this Power is still to be directed to the principal End, viz. the Good and Preservation of the Child: In the second Period, when they are of mature Judgment, yet continue part of their Father's Family, they are still under their Father's Command, and ought to be obedient to it in all Actions which tend to the Good of their Father's Family and Concerns. And in both these Ages I allow the Father has a Right to make his Children work, as well to enable them to get their own Living, as also to recompense himself for the pains and care he has taken, and the charge he may have been at in their Education, and also to correct them, in case they refuse to work or obey his Commands. But in other Actions the Children have a Power of acting freely, yet still with a respect of gratifying and pleasing their Parents, to whom they are obliged for their Being and Education; since without their care they could not have attained to that Age. But this Duty being not by force of any absolute Subjection, but only of Piety, Gratitude and Obedience, it does not make void any Act, tho' done contrary to their Duty. The third and last Period is, when the Son, being of Years of discretion, either by Marriage or otherwise is separated from his Father's Family: In which case he is in all Actions free, and as his own dispos'd; tho' still with respect to those Duties of Piety and Obedience, which such a Son must always owe his Father, the Caufe thereof being perpetual.

M. I must beg your pardon if I cannot come over to your Opinion, notwith-F.O.G. p.21. standing all you have said in this long Discourse; since I cannot conceive how in any case Children can naturally have a Power or moral Faculty of doing what they will without their Parents Leave, since they are always bound to study to please them: And tho', by the Laws of some Nations, Children when they attain to Years of Discretion have a Power and Liberty in many Actions; yet this Liberty is granted them by positive and humane Laws only, which are made by the Supreme Fatherly Power of Princes, who can regulate, limit, or assume the Authority of inferior Fathers, for the publick Benefit of the Commonwealth. So that naturally the Power of Parents over their Children never ceases by any Separations, tho', by the permission of the transcendent Fatherly Power of the Supreme Prince, Children may be dispens'd with or privileged in some cases from Obedience to sub ordinate Parents:

F. And I must beg your pardon, Sir, if I cannot alter my Opinion in this manner, for all that you have now said, since you can give me no better Reasons than what you did at first: And tho' you say, you cannot conceive how Children can ever in any case have a Power or moral Faculty of doing what they will without their Parents Leave, yet they may have such Power in many cases, whether you can conceive it or no. For tho' I do grant, that Children are always bound to study to please their Parents, yet doth not this Duty of Gratitude or Compli-

P.m. M. 29. 21. ency include a full and perfect Dominion of Fathers, in the State of Nature, over the Persons of their Children, and an absolute Power over them in all cases whatsoever, so that the Children can have no Right to confute their own Good or Pre-

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servation, however it may be endangered by their Father's Paffion or ill Nature: Since a Wife is always obliged to this Duty of Complacency to her Husband; yet is not this for absolute, but that in the State of Nature the may quit his Family in those Cafes I have already mentioned, and against which you had nothing to object. And I deny your Position, that Children, when they attain to Years of Discretion, derive that Power and Liberty they use in many Actions from positive Humane Laws only; or that the Power which Parents naturally have over their Children can never cease by any Separation, but only by the permission of the Father.

For as for Bodin, and divers others that have written on this Subject, they do no more follow than others, who have afftered this absolute Power of Fathers upon no better grounds than the Civil or Roman Municipal Laws, without an

troubling themselves to look into the true Original of Paternal Authority or Filial Subjection, according to the Laws of Reason or Nature. And most Treatises of this Subject being commonly writ by Fathers, no wonder if they have been very exact in setting forth their own Power over their Children, but have said little or nothing of the Rights of Children in the State of Nature; and therefore I shall farther let you see, that this Duty of Children, even of pleasing or obeying their Parents, can only extend to such things as they may reasonably or lawfully command.

For suppos't that Adam had commanded some of his Sons or Daughters never to marry, you cannot deny but this Command had been void (that being the only means then appointed to propagate Mankind): For when there then lay a higher Obligation upon them to increase and multiply than there is now, they might then certainly have chosen Wives for themselves, when, they were of Years of discretion, and capable of Marriage.

And farther to shew you, that Children may in some Cafes separate themselves from their Father's Family and Subjection, without their Father's Consent, is apparent as to the Daughters, who if they were at first obliged by this Precept to marry, might likewise do it whether he would or no, and were to be obedient to their Husbands when they were married, the Obedience which they before owed to their Father being now transferred to their Husband; or else they must serve two Masters, which is against our Saviour's Rule. By which it appears, that the Subjection of Daughters in the State of Nature is not perpetual: And to prove that Sons have a like Right to separate from their Father's Family, let us suppose that Adam had been so cruel and unnatural as some Fathers are; that being only servile of the Profit he received from his Sons Labours, he would never have permitted them to leave his Family, nor to enjoy any thing of their own, but would have kept them like Slaves as long as they lived: If you affirm, that he might have done so if he had pleased, and that the Sons had no lawful means to help themselves, since he only was Judge whether ever he thought fit to set them free or not; you your self have already granted the contrary, when you affirmed, that a Father had no Right to sell his Child as a Slave; and then fure he can have no little Right to use him to himself.

But as for what you say against that natural Equality ofChildren to their Parents, considered as Men, you might easily have understood it, if your Thoughts were not so wholly taken up with this transcendent imaginary Empire of Fathers in the State of Nature, as if they were somewhat more than Men: For pray tell me, are they not equal, who have the same Right from God to the same things? For if Fathers have a Right to live and be preferred, so likewise have the Children; and if they have a Right to the End, they have likewise the fame to the Means necessary thereunto, such as are Food, Raiment, Freedom from Slavery, &c. And if they are thus equal, they must likewise, when they attain to Years of discretion, be endowed with a Power of judging for themselves, concerning what things are necessary to their Happiness and Preservation, and what tends to their Misery or Destitution; and consequently may very well judge whether their Fathers treat them kindly or cruelly: For if the Father in the State of Nature is the sole Judge of the Means that conduce to his Son's Happiness and Preservation, without his Consent he may determine, that Poverty, Slavery, and Torment, shall be fit Means, and conducing to this End, which is against Sense and Reason. And tho' I grant, that Sons may sometimes be mistaken in the true Means that may lead to these great Ends of Life; yet doth not this take away their Right of judging for themselves, any more than it doth the same Right from their Fathers, who as Men are also liable to the like Mistakes. Neither did any Slave or Subject ever
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ever give up his Will so totally to his Master or Monarch, as absolutely to renounce all Right to Happiness and Self-preservation, or to the Means that may conduce thereto. But I think we have sufficiently debated this great Point of the natural Power of Fathers over their Children: And therefore

Let us in the next place consider, whether Children may not upon these Principles in some cases make use also of Self-defence, even against their Fathers, if they cannot otherwise avoid certain Ruin and Destruction: Therefore I will first ask you what you think of this Case? A Son in the State of Nature being sepa-

rated from his Father’s Family, and having Children and Houte of his own, what shall he do in case his Father, by the evil Suggestion of a Stepmother, or other wicked Parents, be so far incensed against his Son, as to send Men to burn his Houte, plunder him of his Goode, and destroy his Plantation?

M. If the Son be absolutely set free from his Father’s Family and Power with his consent, I do not deny but that such a Son may reft those Parents his Father sends to ruin him and his Family, and may repel their Violence by force; but I do not allow the Son the fame Power to reft the Perfons of the Father, if he should come himself thus to destroy him.

F. Why so? Do you think a Father, by being fo, hath any greater Right to destroy his Son and ruin his Family than a Stranger?

M. No; but because the Persion of a Father ought always to be esteemed by the Son as sacred as his natural Prince; and if he should have a Right to reft his Father by force, he might happen to kill him in the Scuffle, which would be a Sin against Nature.

F. Well, suppose the worst, would this make the Son an Enemy, and innocent Children, to be turned out of all they have, and left to perish by Hunger and Cold? St. Paul says, That he that doth not provide for his Family is worse than an Infidel; and, I think, so would the Son be, if, for fear of hurting his Father’s Person, he should permit all his Family to be exposed to certain Beggary and Ruin.

M. This Precept of St. Paul obliges only, when a Man may provide for his Family by lawful means, but not when it cannot be procured but by doing what is unlawful, as I take this Refistance of the Person of the Father to be.

F. I grant indeed that a Father, acting as such, is not to be resisted, even when he corrects his Son; but I suppose you will not say, that in the case I put he acts as a Father, but an Enemy, when he goeth about without any just Occasion to kill him or him himself; unless you can suppose, that the Will to preferve and defoy can conft together in the fame Subject: Neither can you affirm, that the Father hath any Right to deal thus wickedly and violently towards his Son and his innocent Family. By what Law then must the Son be obliged to sacrifice his own Life, and that of Wife and Children, and all that he hath, to this imaginary Duty?

M. There are two good Reasons for it: The first is that Gratitud, which the Son must always owe his Father for his Being and Education; and therefore if he give up his Wife, Children, and all that he hath to his Will, it would be more than a sufficient Quittance for all the Benefits he hath received from him. The second is, because no Circumstances whatsoever can take off or obliterare this Relation: And tho’ is true your Father, whilst acting thus, doth not deal with you as a Father, but as an Enemy; yet he is still your Father, and you are and will be always his Son, do what you can, and so consequently you will still owe the Submission. For it is a Maxim not only of the Civil Law, but of

Nature too, and this must of all in the State of Nature, that is, before Civil Laws had restrained the Paternal Power, ‘Judicamus non delecto divini poenit, and lastly from the fourth Commandment of, Honour thy Father, &c. Now no Man can rende Honour to him whom he goeth about to reft, and so may afford.

F. I confess you have urged this Argument as home as the thing will bear; but yet I think I can shew you, that the Son is so far from acting against the Law of God, when he preserves his Father, that I think he would rather deserve it, if he acted otherwise. But first to answer your Arguments, I deny that either Generation or Education do confer so great a Benefit, that a Man is obliged to sacrifice himself, his Wife, and Children, and all that he hath, in return for it.

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First for Generation: I suppose you will not much insist on that, since you must grant that a Father doth not act in that matter as a voluntary, but natural Agent; neither is it in his power to hinder the Child that he gets from being conceived or born; neither did he get him so much to propagate his Species, as to gratify his own present natural Appetite.

Then for Education, which I grant is the greater Obligation, since by the former I am only born an irrational helpless Creature, but by the other I am made a reasonable Man, able to help and provide for my self, and knowing my Duty to God and other Men; yet even these Obligations are not great enough to make me sacrifice my self and all that I have to his Fury or Humour. I grant indeed, that if it were to save a kind Father's Life, a Son may be obliged to venture, nay lay down his Life to perform it; but I deny, that even for such a Father he hath a Right to give up the Lives of others, which are not at his disposal (as those of his Wife and Children are not) in this case. For this were not only to return more than was first given, but also to pay Debts with that which is not my own; and to give up their Lives, and let my Father take them away, is all one; if I can hinder it: Qui non prohibet, facit. Then as for the Relation of a Father, which you say no Fault of his can oblige or defray, you must grant that it may be indulged for a time: As, when a Man binds or refrills his mad or drunken Father, who would kill him or his Wife or Children, he doth not do it to the Father, but to the mad Man or Drunkard; and so likewise in this case, he doth not reftil his Father, but a furious unreasonable Creature, who is so far from beholding himself as becomes a Father, that he doth not act like a Man. Nor doth your Maxim hold true in all Cases, and therefore is no Law of Nature: for si tua fanguis aliquo delisto dirimi posset, or else a Father could never put his Son to death for any Crime whatsoever, which you have affirmed he may: But certainly when he acts thus, it is not as a Father, nor doth he defray him as a Son, but an Enemy or Malefactor.

Now I defer you or any indifferent Man to consider, since the common Good of Mankind is the Sum of all the Laws of Nature, and the great Rule by which they are to be tried, which Rule is to be preferred, and conduces more thereto also, when they cannot confil at once or together: That a Father, who by your own confession comes to do an unlawful wicked Action, viz. to ruin and defray his own Son, with his Wife and Children, should be reftilled, and consequently one Man's Life put in hazard: than that many innocent Persons should be ruined, and perhaps starved to death for want of Food and Shelter. And as for the fifth Commandment, that extends no more to the Father than to the Mother; tho' you are pleased to leave her out, because it makes against your Opinion: And therefore if by honour is meant, Thou shalt not defray; then no Man should reftil his Mother any more than his Father, if she went about to kill him; and yet not the Mother, but the Father, is by your Hypothese the natural Monarch, that hath this Power of Life and Death over the Son. But let us pursue this Point no farther; if you will not be convinced, I cannot help it.

But pray tell me now, what a Son must do, if his Father, transported by Fury and Malice, should go about to kill him with a Sword or other Weapon, and that he hath no other way left to save his Life, neither by Intreaty nor Flight (which I grant ought to be done if possible) whether he may reftil his Father with what next comes to hand, or suffer himself to be killed?

M. I am much better satisfied in this case than in the other, that he ought rather to let his Father take away his Life than reftil him, since here is but one Life to be lost; whereas, I confefs, the other Case was harder, because there were more Lives concerned than the Son's; and I am of this opinion partly for the same Reasons as before, and partly because 'tis more suitable both to Reason and the Law of Nature, as also to Holy Scripture, Precepts and Examples: For if St. Peter command Servants to be subject to their Masters, &c. not only to the Good and Gentle, but also to the Froward; and if Servants, much more Sons, who owe their Fathers a higher Duty and Obedience than Servants owe their Masters; and Isaac was so far convinced that his Father Abraham had Power over his Life, that tho' he was a lily young Man, and could carry Wood enough to consume a Burnt-offering, yet do we not find that he offered in the least to reftil his Father, when he was about to bind him to be sacrificed: For he very well knew, that his Father could not be reftilled without endangering his Life, if not taking it away in
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in the Scurfle. And sure you will grant, that a Son ought rather of the two to let his Father kill him, than he take away his Life, by whose means he received his own; especially since Abraham was the Master of a great Family, and in whose Life and Well-being not only his Mother, but all the Family, had an Interest, as necessary for their Well-being and Happines. Nor can I think, that Abraham would have so readily attended to God's Command for the doing of it, had he not been already satisfied, that he had an unaccountable Power of Life and Death over his Son by the Laws of God and Nature.

F. In the first place to answer your Authorities from Scripture; as for that Place of St. Peter you have cited, it is not a Precept given by the Apostle to Sons, but to Servants or Slaves, whose Lives and all that they had were at their Masters absolute disposal, being those whom the Apostle Paul calls, Servants under the Yoke; and unless you will make a Slave and a Son to be all one (which you have already denied) this Precept doth not at all concern them. And as for the Example of Isaac, that will make as little for your advantage; for first, as to Abraham, he could not but know, that to kill his Son without any just Cause, was as much murder in him as in any other Man. Now what could be a jufter or a higher Cause than God's particular Command? So that as this Act of Abraham is not to be taken as an Example by other Fathers, so neither doth the Example of Isaac oblige other Sons to the like Submition; therefore it is most reafonable to suppute, that Isaac being then (as Chronologers make him to be) about nineteen or twenty Years of age, and of Years of discretion to ask, where was the Lamb for the Burnt-offering, was also instructed by his Father, before he came to be offered, of the reason of his dealing thus with him; and then the Submition was not paid to his Father's, but to God's Will, from whom he miraculously received his Being. But if such a cafe were a law, I leave it to his own Conscience to consider, whether, if his Father had him alone in a Place where he could neither run away, nor yet call for Help, he would suffer his Father to cut his Throat without any Reafon, only because he pretended Divine Revelation for it. Not but that I do agree with you likewise, as to limit such a Reafon only to the holding his Father's Hands, or wounding his Blows, but not to the taking away his Life; but of the two, rather to lose his own than to kill him, for the Reasons you have given, and which I will not deny: But yet if the Father be mad, I doubt whether the Son is bound to let him kill him rather than take away his Life, since such a Father's Life is no way useful to the Good of the Family. So that tho' I should grant that Paternal Power is from God, and consequently irrefrangible, yet doth it not follow, that all the unjust Force or Violence, which a Father as a Man may use against his Son's Life or Fortune, is such part of a Paternal Power, as God hath commanded us not to reft; since you yourfelf muft grant, that he doth not thus act (in going about to kill his Son) as a Father, but a violent and wicked Man: So that where the Father hath no Right to take away his Son's Life, I think in all fuch Cases the Right of the Son to reft him doth take place. And if a Man may reft or bind his Father, when he is mad or drunk, and in fuch Fits goeth about to kill him, I can fee nothing to the contrary why he may not do the fame thing, when his Father is transported by a fudden Rage or unreasonable Malice; since both of them do take away the Life of natural Reafon, as much the one as the other, according to that Saying of the Poet, 

Era furor brevis off, Anger is but a short Madness: Fury and Malice being alike fatal and destructive to the Son's Life and Safety with Drunkenness and Madness; nor doth such a Son reft his Paternal Power, but only his brutifh Force and Violence. So that if Sons (when grown to Years of discretion) have not a Right to defend their Lives, in the State of Nature, against all Persons whatsoever, who go about to take it away without any just Cause; every Son ought to suffer his Father to kill him, whenever, being transported by Madness, Drunkenness, or fudden Paffion, he hath a Will fo to do: Which how it can confift with that great Law of Nature, of propagating and preferring the Species of Mankind, if a Father should have such an unreasonable unlimited Power, I'll leave to your felf or any other reasonable Man to confider. Nor doth it follow, that because a Son can in no wife be inferior to his Father, he ought not therefore to reft him; since tho' I grant that Punishment is a Right of Superiors over their Inferiors, yet fo is not Reft; since every one knows that Reftance is exercis'd between Equals; and I have already proved Sons are to their Fathers, in all the Rights of Life and Self-

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preservation; and consequently to judge when their Lives and Estates are unjustly invaded.

M. I must confess I am in a great doubt which will most conduce to that great Law you mention (which I grant to be the Sum of all the Laws of Nature) viz. of preferring or prosecuting the common Good of Mankind; that Fathers should have an absolute irresistible Power over the Lives and Fortunes of their Children, let them use it how they will; or else that Children should have a Right to repel them, in some cases, when they go about to take away either of them without any just Cause: For tho' I own, that (if the former Principle be true) Parents may be sometimes tempted to take away their Children's Lives or Estates without any just Cause; so on the other side, if Children shall assume such a Power to themselves of judging when their Fathers do thus go about to invade either their Lives or Estates, it will (I doubt) lay a Foundation for horrid Confusions and Divisions in Families; since, if Children are under a constant Subjection to their Fathers, they ought then to be absolutely subject to them in the State of Nature, and therefore ought never to be refuted: For if all Fathers, and Malters of Families, are trusted by God with an absolute Power of Life and Death over the Wife, Children, and Servants of the Family, as your self cannot deny; then no Restraint of this absolute Power can subsist with the Peace and Tranquility of that Family, without the Diminution or total Destruction of that absolute Power, with which they are enthralled.

And tho' I admit that Parents ought neither to use nor sell their Children for Slaves, nor to take away either their Lives or Goods, without great and sufficient Cause; yet of these Causes Fathers, in the State of Nature, must be the only and uncontrollable Judges: Since, if Children (whom I still consider as Subjects, tho' not as Slaves, in this State, as long as they continue Members of their Parents Family) should once have a Right to repel, when they thought their Lives or Estates were unjustly invaded; they might also oftentimes, through Undutifulness or false Suggestions, pretend or suppose that their Parents were mad, drunk, or in a Frenzy, and went about to take away their Lives, when really they intend no such thing, but only to give them due Correction: Which would give Children an unnatural Power of repelling, or perhaps of killing their Fathers, upon false Surmises or flight Occasions.

And as this would introduce great Mischief and Confusion in private Families, so would it likewise prove a Foundation of Rebellion against all Civil Powers whatsoever; if Subjects, who are the same thing in a Kingdom that Children are in a Family (in the State of Nature) should take upon them to repel their Prince whenever they think he goeth about to invade either their Lives or Fortunes, which would likewise serve to justify all the most horrid Rebellions in the World; since all Rebels whatsoever may or do pretend, that their Lives, Liberties and Fortunes are unjustly invaded, when indeed they are not; and likewise upon the least Hardship or Injustice in this kind inflicted upon any subject Subject, either by the Prince or his Ministers (which Rebellions and Violences do often happen even under the best Governments) any such private Person, who shall think himself thus injured, may upon this Principle take up Arms, and endeavour to right or defend himself against such Violence; by which means, under pretence of securing a few Men in their Lives or Estates, whole Kingdoms (if such Persons can find Followers enough) may be cast into all the Mischiefs and Confusions of a Civil War, till the Prince and Government be quite destroyed.

F. I must confess, the Arguments you now bring are the best you have yet produced, since they are drawn from that great and certain Law of procuring the common Good and Peace of Mankind. But I hope I shall make it plain to you, that no such terrible Consequences will follow from the Principles I have already laid down; and therefore I must first take notice, that you have in your Answer confounded two Powers together, which ought to be distinguished in the State of Nature, viz. the Power which Fathers, as Malters or Heads of Families, may exercise over the Lives of their Children or Servants, whilst they remain Members of their Family, and that Reverence and Duty which Children must always owe their Fathers as long as they live, even after they become Fathers or Malters of Families of their own. In the first State, I have already allowed, that such Fathers, as Malters of Families, may lawfully exercise a far greater Power over their Children, whilst they are Members of their Family, than they can when
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they are separated from it, yet is not this Power in all Cases absolute or irresistible, as I have already proved; and therefore I do in the first place restrain this Right of self defence only to such Cases where a Father would take away a Son's Life in a fit of Drunkenness, Madness, or sudden Passion, without any crime committed, or just cause given; Which I also limit to a bare self defence, without injuring or taking away the Life of the Father if it can possibly be avoided; and in this Case, if the Son, who is like to suffer this violence, may not judge when his Life is really in danger to be destroyed, because he may pretend to when really it is not. This is no just reason to overthow so great a Right as self preservation; since if this were a sufficient Objection, it would have the same force against all self defence whatsoever: For it doth often happen that wicked and unreasonable Men will pretend that they were forced to take away the Lives of others, only to preserve their own, when indeed it was altogether false and meddles, and they only killed them to satisfy their own Malice or Passion. And therefore, as there is no reason that the abufe of this natural Right should be used as an Argument against the use of all self defence, by any Man whatsoever; so likewise neither ought the like abuse thereof by some wicked Children be brought as an Argument against its being made use of by all others, who are never so unjustly affailed, and in danger of their Lives from their Fathers violence, if the first Principle be true, (on which this is founded) that a Son may exercise this Right of self defence in such Cases, without any intrepidation upon his Father's Paternal Authority, or that Filial duty and respect which he must always owe him whenever he returns to himself, and will behave himself towards him as becomes a Father, and not like an Enemy of Concern.

And as for the Quarrels and Confusions, which you allege may happen in Families between Fathers and Children; in such cases a liberty should be allowed, these inconveniences will prove very insignificant, if you please to take Notice: That, first, I do not allow this Right of Resistance to be exercised by any Children before they attain to years of discretion. Secondly, that after they have attained to these Years, no Resistance ought to be made against a Father, whilst they remain part of their Father's Family, but only in defence of their own, their Mothers, Wives, and Children's Lives; since I grant, that a Son as long as he continues a Member of his Father's Family, ought to bellow all his own labour for his Father's profit, and cannot acquire any Property either in Lands or Goods without his Father's consent. And since you concede this Right of self defence, allowed to Children, would be the cause of so great mischief in Families, if Children should have any Right to judge when their Fathers abused their Power over them; let us a little consider on which side this abuse is most likely to happen; for if you please but to look into the World, and survey the Nature of Fathers and Children, and let the faults of the one against the other, you will find, that (as I confed) it is the Nature of many Children to contradece and disbelieve their Fathers Commandes, and that most young People hate restraint, and love too much liberty, and may oftentimes think their Fathers too harsh or severe to them, when they really are not; yet doth this false Sense, and disbelieve Actions seldom end, either in absolute Resistance, or taking away their Father's Lives by force; or if they do so, it is really done for their own defence, or whilst they are assaulted by them in their own Lives, or those of their Children; but is commonly acted privately, to satisfy their own revenge or malice, which I hold to be utterly unlawful. So likewise let us consider on the other side, those temptations that Fathers lie under of injuring their Children, or taking away their Lives, or using them like Slaves, without any just Cause; you'll find that they, by reason of their Age, natural Temper or Infirmities, may be easily transported to that degree of Passion, that not considering the Polities of Youth, they may oftentimes, in their Passion, either beat them so cruelly, as utterly to disable or main them, or else take away their Lives for little or no Cause. And besides, Fathers being often covetous and ill natured, (which are the Vices of old Age) may (where there is no Power over them to restrain them from it) either keep them as Slaves themselves, or else sell them to others for that purpose, (as I have already given you an Example of the Negroes in Afric) and which of these two inconveniences are most likely to happen between Children and Parents in the State of Nature, I should leave to any indifferent Man to judge between.
us. And therefore I think, it more conduces to the good and peace of Families, and consequentially the happiness and preservation of Mankind, (which are the end of all Laws) that Children should be allowed these Rights (I have already laid down) of ascertaining their natural Liberty from Slavery; and defending their Lives, and those of their Wives and Children, from the unjust Violence of their Fathers, than that they should be led wholly at their Disposal to be maimed, killed or ruined, whenever their Covetousness, Passion or Malice may prompt them to it: Since if all Fathers were satisfied that their Children have a Right thus to defend themselves in these Cases against their unjust Violence, it would be a means to make them act more cautiously, and to behave themselves with greater Tenderness and Moderation towards them.

So that to conclude: I utterly deny that these Principles, I have here laid down, do at all tend to countenance Rebellion, or raising Disturbances in Civil Governments; since I cannot allow you have proved Parents to be Princes or Monarchs in the State of Nature, or that Families, and Kingdoms or Common-wealths are all one: Or if I should grant them to be so, yet would it not therefore follow, that every private Subject in a Civil State hath the same Right to defend his Life, or that of his Wife and Children, against the Violence or Injustice of the Suprem Power, as a Son may have in the State of Nature to defend his Life, &c. against his Father's Rage or Violence; since I grant no particular Subject, on his own private Account, can contravert or revolt the Suprem Power of the lawful Magistrate (however unjustly exercised) by Force, without disturbing, or at least endangering the Quiet and Happiness of the whole Community, and perhaps the Dissolution of the Government in which it was against the Duty, not only of a good Subject, but also of an honest moral Man, who will not disturb the public tranquility for his own private security or revenge. But in private Families the Case is otherwise, and Children may revolt their Father in the Cases already put, without introducing either Anarchy or Civil War in the Family; since it can scarce be presumed, that either their Mother, Brothers or Sisters, will take part with a Son or Brother, against their Husband and Father, unless it were that they might thereby hinder him from committing Murder, by defending their Son or Brother's Life, when thus violently and without cause assaulted; and if it should sometimes happen otherwise, yet this would be a much less mischief, than that, out of this fear, the Lives and Liberties of an innocent Wife and Children should suffer, without cause, by his Drunkenness or Passion.

But as for the Refractory which Sons may make in the State of Nature, and when separated from their Father's Families, it is of a much larger extent, since they may then not only defend their own Lives, but also those of their Wives, Children, and their Eldest, against their Father's unjust Violence. Though I do here likewise refrain this legal defence only to cases of actual Invasion or Assault of such Fathers upon their Lives and Children, in which Cases, I also absolutely condemn all Actions and Proceedings, done by way of prevention, before such violence or assault is actually begun to be made upon them; much less do I allow of any revenge or return of Evil for Evil by such Children, when the danger is over; since however such revenge may be lawful between Persons in the State of Nature, no ways related or obliged to each other; yet do I by no means allow the same privilege to Children against their Parents, since I look upon the Obligation they have to them, to be of so high a Nature, that it can never totally be cancelled, tho' in these Cases of self preservation and defence they may be suspended for a time. As if I owed my Life, and all that I have to some great Person, whom I either feared the one, or believed the other upon, though I should be very undutiful and ungrateful too, if upon his becoming my Enemy, though without any just cause, I should go about to return his injuries in the same kind; yet were I not therefore obliged to give up that Life and Estate he had before bestowed upon me, whenever he thought fit, without any just occasion to take them away; and I am confident that Refractance in these Cases, and with these Restrictions, doth neither derogate from that Gratitude and Piety, which Children always ought to pay their Fathers, nor is ought to encourage either Anarchy or Rebellion; since such Sons, when once married, and are become Masters or Heads of Families themselves, then cease to be under their Fathers Subjection as they were before, though I confess they are always
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always to honour and reverence him according to God's command in all cases, when they will deal with them as Fathers, and not as Enemies.

M. I shall no longer dispute this Right of Refinance in Children in the Cases you have put, since I see it is to little purpose to argue longer with you about it; but this much I think is still true, that all Suprem Powers whatever cannot without Rebellion and absolute Dissolution of the Government be refitted by the Subject; so that if the Government of Fathers or Heads of Families be Suprem, as you seem to grant, that cannot be refitted neither, without bringing all things therein to Anarchy and Confusion.

F. Pray give me leave, Sir, to interrupt you a little; I desire you to remember that I do not allow the Power of Fathers or Masters of Families to be any more then Oeconomical, and not Civil Power; and I have already showed you, how Refinance of such a Power, when violently and unjustly exercised, may be refitted without any Anarchy or Confusion in the Family: But as for Refinance of Civil Powers in some Cases, it is not the Subject of this Discourse; and therefore I desire you would now mind the Subject in hand, and not pass off to any other, till we have dispatch'd this, so that I would rather, if you any fresh Cases of your own, that you would now do it, because we groweth late.

M. I must confess ingenuously, your Arguments have much disordered me, since I see great inconveniences may happen on either side. For if the Father or Master may be the sole Judge, when and how he may exercise this absolute Power, I grant all those Chiefsmen sometimes fall out, which you have here set forth: So on the other side, if the Children may be Judges in their own Case, such Evils may often happen, which I have already alleged. And therefore pray pardon me, if I am not too hastily in altering my Opinion in this Point, without better consideration. But methinks you have not yet fully answered one of my main Arguments, to prove the Power of Life and Death to proceed from God alone, and therefore must have been conferred at first on Adam, since no Man hath a Power over his own Life, (as I said before) and therefore cannot have it over that of others.

F. I thought I had already as good as answered this doughty Objection, when I had yielded to you, that neither private Men, nor Masters of Families, have any Right to defend their own Lives, much less to take away those of others; but as it is granted them by God, not by Law of Nature, in order to the procuring the great end of it, viz. the happiness and propagation of Mankind, which I own could not, in this lapsed and depraved State of Nature we now are in, long subsist without such a Power. Yet I think I have already sufficiently proved, that we have no need to recur to I know not what Divine Charter granted by God to Adam or Noah, and from them derived to all Civil Magistrates, that ever have been or shall be in the World, the Consequences of which would be, that no Sentence of Death could be justly given against any Man, but in such Kingdoms or Commonwealths, who own this Authority as conferred on them by God in Adam or Noah, from which they must derive their Title to it. But I can you would shew me how many Kingdoms or Commonwealths there are in the World, who ever heard of; much less owned this Divine Charter, this fine Notion, yea scarce reaching farther than some few Divines and high Royals of our own Island.

But be it as it will, the Antecedent or first Proposition is not true, that no Man in any case whatsoever hath Power over his own Life, and therefore neither is your Consequence; for I suppose, that for the same end for which the Civil Powers may take away another Man's Life, viz. in order to the greater good of Mankind, (of which my Religion or Country is a part) I am likewise Master of my own, and may lay it down or expose it, when I think it can conduces to a greater good than my single Life can amount to. And therefore, the Example of Cadmus the Athenian King is highly celebrated by all ancient Authors, and is not condemned by any Christian Writer that I know of, for exposing himself to certain Death to gain his Citizens the Victory, the loss of which would have been the ruin of that State. And in the fifth Book of Maccabees, Chap. 6. 43. (which though it be, not Canonical Scripture, yet is allowed to be read in our Churches, as containing Examples of good Manners) you may read that Eleazar, the younger Brother of Judas Maccabeus, is there highly commended for his Valour in killing the Elephant, on which the suppos'd King...
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Antichus was mounted, that he might thereby defy him likewise, though he might be afloat of his own Death, by the Elephants falling upon him: And the Zeal for the Christian Religion amongst the Primitive Christians was so great, that we may read in Tertullian, and divers Ecclesiastical Historians, of whole Troops of Martyrs, who, though unaccused, yet offered up their Lives at the Heathen Tribunals to a voluntary Martyrdom. And farther, Enuchus himself doth not condemn, but rather commends some Primitive Christians, that being like to be taken by their Heathen Persecutors, cast themselves down headlong from the top of their Houses, exclaiming (as he there tells us) a certain Death as an advantage, because they thereby avoided the cruelty and malice of their Persecutors. I could likewise give you (if it were not too tedious) several other Examples of Ancient Martyrs, who have given up themselves to certain Death, to save the Lives of some of their Friends, or else of Christian Bishops, whom they looked upon as more useful to the Church than themselves, and which St. Paul himself does likewise suppose to be Lawful, when he tells the Romans, That though forer for a righteous Man would one die; yet peradventure for a good Man some would even dare to die. That is, a Man highly beneficial to others. And the same Apostle, in the last Chapter of this Epistle, returns thanks to Prisilla and Aquila, not only on his own behalf, but also for all the Churches of the Gentiles, because they had for his Life laid down their own Neck; that is, hazarded their Lives to save his, and where ever they might have thus exposed them, freely they might have lost them too. And therefore I think, I may with reason affirm, that in most Cafes, where a Prince or Commonwealth may command a Man to do a certain Defeat for the public good of his Religion or Country, he hath Power likewise to do it of his own accord, without any such command, the Obligation proceeding not only from the Orders of his Superior, but from that Zeal and Affection, which by the Laws of God and Nature he ought to have for his Religion and Country, even beyond the preeminence of his own Life.

M. Well, I confess, that this that you have now said, carries some colour of reason with it, and is more than I had considered before. But pray resolve me one difficulty more, which still lies upon my Mind. By what Authority, less than a Divine Commission from God himself revealed in Scripture, do Supreme Powers take upon them to make Laws? And that under no less Penalty than Death itself, against such Offences, as by the Laws of Nature do no ways deserve Death, such as Theft, Counterfeiting the publck Coin, with divers other Offences, needful here to be reckoned up. And if a Father (as you will not allow him) hath no Right over the Lives or Persons of his Wife and Children, I cannot see how a Maker of a separate Family can have any such Power, more than his Wife, or any other of the Family; and the Scripture seems to countenance this Power of punishing for Murder, to be in any that will take it upon them; and therefore you see Cain said, whoever meed me, will slay me. And God tells Noah, whoever sheddeth man's Blood, by man shall his Blood be shed, without restraining it to any Man particularly who is to do it.

F. This Objection is easily answered, if you please to consider, what you yourself did a good while since urge to me, that God endowed Adam with so much Authority, as should enable him to govern his own Family and Children as long as he lived; which I readily granted you, and I only differed in the manner of its derivation, you affirming it to proceed from a Divine Charter or Grant by Revelation conferred upon him by God; and I maintaining, that both he, and every other Maker of a separate Family, derive it only from God's natural, and not revealed Law, which if it be well proved, such Makers of Families, as also all Civil Powers (whom I suppose to be ended with the Power of all such Makers of Families or Freemen taken together) may for the same end, viz. the good Government and Peace of their Families and Commonwealths, make Laws under no less a Penalty than Death it self, against such Offences as by the Law of Nature do not deserve it: since without such a Power (the wickedness of Man being come to this height it is) no Family or Commonwealth will be long preferred in Peace or Safety. And therefore you will not affirm, that such a Maker of a Family may very well inflict any Punishment less than Death for such Offences, which if they find too gentle to amend those Crimes, they may likewise for the same reason increase the Punishments ordained for it. And therefore I yield, that tho' Theft doth not in its own
own Nature deserve Death, yet if the Master of such a separate Family shall find his Children or Servants to be so addicted to this Vice, as not to be amended by any lesser Punishments than Death, he may, for the quiet of his Family, make a general Law, that whatsoever for the future shall commit Theft, shall suffer Death; and I doubt not but such a Law, when promulged, may be lawfully executed; since this Master of a Family is intrusted by God with the sole Power of judging, not only what are Crimes, but also what are fit Punishments for them, since both are alike necessary for the happiness and preservation of the Family. And I so far agree with you, that such Masters of Families have as much Power over the Lives of their Children and Servants, as the most absolute Monarchs have over their Subjects, that is, for their common good, and no farther. And upon the same Principles do all Kings and Commonwealths inflict capital Punishments for the Transgression of all such Laws, as do any way entrench upon the common Interest and Safety of their People; and upon this ground, they may justly inflict no lesser Punishments than Death, for Coining of false Money, which is but a sort of Theft from the publick Treasure of the Commonwealth. And the same may be said for all capital Punishments ordained against other Offences of the same Nature.

M. If Fathers or Masters of Families are endowed by God, (as you yourself now own) not only with this Power of Life and Death, for enormous Crimes against his Laws of Nature, but also to make new Laws, or ordain when Punishments they please for such Offences, as they shall judge defluentive to the quiet and happiness of their Families, I see no difference (notwithstanding what you have hitherto said to the contrary) between Oeconomical and Civil Power. For if we compare the natural Rights of a Father or Master with those of a King or Monarch, we shall find them all one without any difference at all, but only in the latitude or extent of them. For as the Father or Master over one Family in the State of Nature; so a King, as a Father or Master over many Families, extends his care to preserve, feed, cloath, instruct, and defend the whole Commonwealth; his War, his Peace, his Courts of Justice, and all his Acts of Sovereignty, tend only to preserve and distribute to every Subordinate, and Inferior Father and his Children, their Rights and Privileges. Hath a Monarch Power to make new Laws, and appoint what Punishments he will to enforce their Observation? So also hath a Father of a Family. Hath an absolute Prince Power to command or dispose of the Goods and Estates of his Subjects, for their common Quiet and Security? So also hath a Father or Master of a Family. So that all the Duties of a King are summed up in this universal Fatherly care of his People; and if the Sovereignty be the same, I cannot see any Reason, why the Rights and Prerogatives of it should not be so too. And therefore, if Nonresistance against their Authority be an unexceptionable Prerogative of Sovereign Power; then if a Father or Master of a Family be endowed with it, he ought no more to be refuted, than the most absolute Monarch.

F. I perceive your Head is very full of this Notion of the Identity of Natural and Civil Power, or else you would never insist so long upon it as you do, after what I have proved to the contrary. And therefore, since I see you look upon this as your topping Argument; I shall do my endeavour to shew you more plainly the difference between them. For though I allow that such Masters or Fathers of Families, (as we before treat of) are endowed by God with divers Powers, which are analogous, or perhaps the same with those of a King or Monarch, that is, of defending their Families, as far as they are able, from Foreign forces, and Domestick injuries, and of revenging and punishing all Offences that may prove prejudicial or destructive to the peace and happiness of their Families; yet doth it not therefore follow, that the Government of private Families and Kingdoms are all one, since they differ very much, not only in their Institution, but also in their End. For first, the Fatherly Power by the Law of Nature is ordained only for the Generation and Education of the Children, till they come to be grown up; and his Authority, as a Father, is ordained by God only for those ends; and therefore this Relation of a Father is so inherent in him, that it can never be parted with, or assigned over to any other, so as to make the Child or Son so assigned, owe the same duty to him, as he did to his Father.
There is also, besides the Power of a Father, that of a Master or Head of a Family over his Children and Servants, which they continue Members or Subjects of, which Power I grant may be alligned, or made over to one, or more Persons, over which Master they shall think fit to institute a Kingdom or Commonwealth: Yet, as Dr. Saururnson very well observes, this Power of a Master differs very much from that of the Civil Powers of a Kingdom or Commonwealth, as well in the Object, as End of this Power. For first, the Power of a Father is only over one single Family; whereas that of a Commonwealth is over divers Families, united under one Civil Head. Secondly, In respect of the End, the Power of the Master is chiefly ordained for his own Interest and Advantage; but that of the Civil Power chiefly respects the good of the whole People or Community. Lastly, the Power of the Master of the Family is only for the maintaining his own natural Property in those things which he hath acquired in the State of Nature; whereas one great End of Civil Government, is to introduce and establish Civil Property in things, according to the Laws of the Commonwealth, and also to maintain it when so constituted. To conclude; Fathers beget their Children, and Masters acquire to themselves Slaves and Servants, but it is from the consent of several Fathers or Masters of separate Families, that any sort of Civil Government commenced at first; so that the People as first made Kings, and not Kings the People: And further, it is the duty of Fathers and Masters to provide for their Children and Servants, but the People ought to provide for their Kings, nor only for their Necessaries, but for their Magnificence and Grandeur; so that the Power of Masters and Masters is Natural, whereas that of Kings and Republicks is Political and Artificial, as proceeding from Companions or the Consent of divers Heads of Families or other Free-men. And as Kingdoms and Families differ in the manner of their Institution, so do they likewise in their Ends, which is of a far larger extent in the latter, than in the former; the main design of instituting Kingdoms and Commonwealths, being not only to defend their Subjects from such injuries or violence that they may do each other; but chiefly, by their united Forces, to guard them from the violence and invasion of Foreign Enemies.

For though I grant, it may sometimes happen, that a Family may confess of so great a number of Children, Servants or Slaves, as may make a little Army, such as Abraham's was, when he made War against the four Kings; yet is this purely accidental, and not at all essential to the being of a Family, which is as perfect in all its constituted parts, if it confesses of three or four Persons, as of three or four hundred. Whereas a Kingdom or Commonwealth cannot subsist, unless it can either by its own Power, or united Forces, defend its Members from Foreign force and invasions; So also in private Families, in the State of Nature, there can be no Property acquired in Lands or Goods by any Member of it, without the Master's express will or permission. But in all Civil Governments, the very institution and preservation of Civil Property was one of its chiefest Ends, which may easily be proved by experience: Since in all Nations, where there is any Property either in Lands or Goods, there is a necessity of some Civil Government to maintain it. Whereas in divers parts of Africa and America, where there is no divided Property in Land, and where there are no other Riches, than every Man's small Cottage and Garden, with their Hunting and Fishing Instruments, there is no need of any Combination or Civil Power over them, higher than that of Masters or Fathers of Families, who own no Superiority among themselves, unless it be when they go to War, and then they chuse out of their own Numbers, for their Captains or Leaders, those whom they know to be stoutest and most experienced, whose Power determines as soon as the War ceases.

But to make an end of this long Dilecture, suppose I should grant all you can desire, that Oeconomical and Civil Government do not differ in kind, but in largeness or extent; yet will it not follow, that therefore it must be in all Cases irresistible, since I think I am able to prove, that no Power whatever (except that of God himself) can be ended with this Prerogative, if once it goes about to frustrate, and destroy all the main Ends of Government, (viz.) the happiness and safety of the Subjects, either by downright defroying of them, or else by reducing them to a condition of Slavery and Misery. But to let you see, I would deal fairly with you, I will discourse this Point of Adam's Sovereignty.
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reign no farther, but will at present take it as the Lawyers say, de bene esse, or
to gratuity and desire you would meet me in the next place, when Adam died;
by which, Lawyers either Divine or Natural, Cain or Sub (which you will)
righteousness and love toward all the rest of his brethren and their descendants. 'And
then again, if you could do this, what benefit this Doctrine would yield to all
Princes and States at this day, or how you intend to deduce a Title for them,
from Adam or Noah, or any of their Sons, to their respective Kingdoms, and
consequently to an absolute Subjection of their Subjects, without which all your
Hypothesis will be in vain.

M. I must beg you, Sir, for your own edification, and for the great
pains you have taken to enlighten my understanding in this important Question.
And though I doubt, you have laid down Principles not so suitable to God's Will
revealed in the Holy Scripture, yet I will not impute it to any want of sincerity
in yourself, who, I hope, are satisfied of the Truth of what you have maintained;
so on the other side, I desire you not to take it ill, if I cannot leave my own
Opinion, which I have always hitherto looked upon, as most suitable to the Doc-
trine of the Church of England, to the Practice of the Primitive Church, and
to the Laws of the Land, and must continue therein, till I am convinced I am
in an Error. But since I desire to have a further Conversation with you upon
this important Subject, pray let me know, when you will suit again, that I
may prove to you from the Holy Scripture, as well as these Authors I have per-
rused, that there is a Divine Right of Blood Inheritance, by God for the Succession of
Kingdoms, which cannot without a kind of Sacrilege, or highest Injustice, be
taken away from the Right Heir.

I will kindly accept your offer, and, if you please, that discourse this impor-
tant Question with you to-morrow in the evening, if your Occasions will give
you leave.

M. I expect you between seven and eight, and in the mean time ah your Ser-
vant.
Whether there can be made out from the Natural, or Revealed Law of God, any Succession to Crowns by Divine Right?

M. Oh, Sir, I see, a punchd Man to your Hour: Pray do me the favour to sit down by the Fire, I will but make an end of what I am writing, and wait on you prettily.

F. Your Servant, Sir, take your own time; but pray remember the point you are now to satisfy me in.

M. Now, Sir, I have done; and if I remember right, I am to derive a Title to all the Kings and Monarchs that have ever been, or shall be in the World, from that Supream Fatherly Power conferred by God on Adam. As for Commonwealths, which I must own to be of mere Humane Invention; tho' I will not say that they are absolutely unlawful, yet I think they are not the Powers ordained by God in Scripture.

F. Well, Sir, we will discourse farther of that anon; and therefore I do assure you, I do not desire any more of you now than that you should prove the Divine Institution of Monarchy, and I think that task sufficient if it can be made out in one or two Meetings.

M. It may seem indeed somewhat absurd to maintain, that all Kings are now F. P. Ch. 1. the Fathers of their People, since you'll allow Experience shows the contrary. It is true all Kings are not now the natural Parents of their Subjects; yet they all either are, or are to be reputed the next Heirs to those Primogenitors, who were at the first the natural Parents of the whole People, and do in their Right succeed to the Excelsis of the Supream Jurisdiction; and such Heirs are not only Lords of their own Children, but also of their Brethren, and all others that were subject to their Fathers; and therefore, I suppose, that God, when he conferred this Supream Power on Adam, did not intend it should die with him, but descend to his Heirs after his decease.

F. Well, I shall at present grant you all this likewise, though it might be questioned. But pray, who were those Heirs? many, or but one Person?

M. I suppose you will also grant me at present, what we before disputed, that the Power of Fathers over their Children, being the Fountain of all Regal Authority, by the Ordination of God himself, it follows that Civil Power not only in general is by Divine Institution, but even the Assignment of it specifically to the eldest Parents.

F. Pray whom do you mean by eldest Parents? our great Grand-mother Eve? For if you mean by it one that figur'd had Children, the must come in as next Heirs to Adam by these Words.

M. No, Sir, you altogether misapprehend me, I mean the eldest Son of Adam; Eve was his Wife, and could have nothing to do to inherit in an Hereditary Monarchy as this was.

F. I beg
Dialogue the Second.

F. I beg your pardon, Sir, if I misconstrued you, but you must thank the Loosefists or Impreciters for your Expression for it; for I suppose, you cannot deny, but eldest Parents commonly signify either the eldest Men, or Women that have Children, or those who have longest had Issue; and then in either of these Sense, our great Grandmother Eve was first to be Heir of this Divine Power of Adam: But this I am sure of, Parents can never signify Heirs Male or Female, much less a Child who may sometimes (according to your Hypotheticals) happen to be Heir. But since I am gotten into this Mistake, I shall not leave my hold, but shall make bold a little to argue our great Grandmother's Title; for indeed I cannot see any reason why her eldest Son (for Example) should have any right to govern his Mother, and all his Brothers and Sisters, whilst she was alive.

For first, if your Argument from Generation must be good, that every Man that is born, becomes a Subject to him that begets him, this Argument will serve for Eve as well as Adam; since (as I have already proved) the Mother hath as great (if not a greater) share in the Generation of the Children, than the Father: Or, secondly, if you insist upon the Divine Grace, you so much talked of last time, of Adam's Dominion over the Creatures, in which his Children were included; I then proved to you, that this Grant was made as well to Eve as Adam; and consequently, that either she must have thereby an equal right with him, or at least after his Decease, to this Dominion, as a Husband and Wife, when joint Purchasers have to an Estate at Common Law. And lastly, if the Commandment of, Honour thy Father and thy Mother, were then in force by the Law of Nature, or by express Command from God, and that by Honouring, obeying must be meant (as most Commentators agree) then it will follow, that after Adam's Decease, all Eve's Sons and Defendants, though never so remote, were to have obeyed, or been subject to her; and not to her eldest Son, unless you can shew me that the Salique Law, against the Succession of Women, was made by Adam the first Monarch, which, I suppose, you will not undertake to prove.

M. I must confess I did not consider this Difficulty; for indeed it might never have happened, since Eve might have died before Adam; or if the did outlive him (which is uncertain) yet she was then very old, and consequently (besides the natural weakness of her Sex) incapable or unfit for Government, and so might very well leave it to Seth; since Cain, the eldest, had by the Murder of his Brother, and his flying away into another Country, forfeited his Birthright, and made himself incapable of the Succession.

F. So then here is a Forfeiture, and an Abdication of this Divine Right of Succession in the very first Defect; whereas indeed I suppose, that this Divine Right had been at least as unforfeitible as the Crown of England; the very Defect of which, as our Lawyers tell us, purges all Defects in the next Heir, though he had murdered his Father and elder Brother too. But I only shew you the Aburdity of this Notion, and shall not longer insist upon it; therefore pray proceed.

M. I can't tell what might have been said, if Cain had come to claim his Birthright: But this is certain, that he neither did, or could come to do it, B. P. P., since God commanded him to live in a strange Country far from his Brethren: and we read, That Cain went from the presence of the Lord, and dwelt in the Land of Eden; and he built a City, and called the Name of it Enoch. And there are four Defects set down immediately, of his Family, which could be no other than the Princes of that City of Cain's Race. So that you see, even in Cain's Line, the Principality descended to the eldest Son.

F. I confess Cain's Children and Grand-children are particularly set down in Scripture; but that they were Princes or Monarchs over their Polity, or which way this City was governed after Cain's Death, whether by one, or by all the Sons of Cain, is no where mentioned: But I see some Men can find even absurde Monarchy in a Text, where the Scripture mentions no such thing; and no wonder for the Alchymists have found our likewife the Invention of their Elixirs, or Philosophers Stone, in such Texts as you and I can see no such thing. But to be more serious:

H. That
That a Father should be Lord over his Children and Polity, I confess there may be some colour of Reason, though none cogent enough to make it out: But that an elder Brother hath any Natural or Divine Right to be Lord over all the rest of his Brethren, I can find no ground for in Reason, even upon your own Principles; for if every Man by his Birth becomes the Subject of him that begetts him, it will necessarily follow, that a Man by his Birth cannot become a Subject to his Brother, who (sure) did not beget him.

Therefore, I suppose, you will still insist upon that place in the fourth of Genesis, which you cited at our last Meeting, when God told Cain, speaking (as you suppose) of his Brother Abel, His desir shall be subjected to thee, and thou shalt rule over him. From which Words I then told you, I thought an absolute Subjection of Abel, and of all younger Brothers whatsoever, could not reasonably be inferred: For you may remember I shewed you, that this Promise by God to Cain, concerning Abel, might be only personal, and relate to Abel only, and not to the rest of his Brethren, much less all other younger Brothers, that should be in the World. And in the next Place, this Ruling might only have been by Advice and Persuasion, and not by any Authority or Right of commanding him: So that if this be the Place (as I suppose it is) from whence you would deduce your Divine Right of elder Brothers being Monarchs over the younger in all Hereditary Monarchies, I must freely tell you, I think it a very bold Undertaking to found a Divine Right upon such doubtful Expressions, as thefe of God to Cain.

'M. I confess, I was now about again to urge this Place to you; for as I was not then well satisfied with your Explanation of it, which you now again repeat, I was now about to repeat Thoughts I am much more unfixed with your Paragraphs upon them. For you know to me plainly to pervert the Sense of the Words, and make them signify just nothing. For sure when God spake the same Words to Eve concerning Adam, as he did to Cain concerning Abel, can you conceive they were meant personally to Eve only, and concerned no other Wife that should be after her? Or can you assign any Reason why these Words should be rather meant personally in the last; and not in the first case? Unless you will do it out of pure love to Anarchy and Confusion. And if you say these Words do not signify any delpotick Power, but a ruling or governing by a fair means or Persuasion, this feemeth meet strifeing with God's Words, who says expressly, Thy Brother's desire shall be subjected to thee, that is, (lay you) as far as he thinks fit; and thou shalt rule over him, that is, if thou haft the knack to wheedle or persuade him. Would not this have been a mighty Matter for God Almighty to have appeared to Cain about, and an excellent Argument to comfort him, and to appease his Wrath against his Brother? So that it seems apparent, by this Law given by God to Cain and Abel, that this Regal and Paternal Authority was not to die with him, nor to be equally divided amongst all his Children at his Death; or that from henceforth no Man should have a Right, by Birth, of commanding another; for this Command to Abel could not be supposed to take Place in the Life of Adam, for then Adam was Lord over all his Children, and so none of them without his Permission could rule over the rest; and if it were otherwise by Adam's Appointment, then Adam was the Sovereign still, and the Son or Grandson, so exercising this Power, was but his Deputy: But after Adam's Decease, then it became a real Sovereignty in his eldest Son, as having none but God superior to it.

F. I hope you will judge more charitably of me, than to believe that the Sense that I have put upon these Words, though different from yours, is out of any love of Anarchy or Confusion, much less out of any design to pervert or wrest this place of Scripture: And if I should be more severe as you are, perhaps I might with more reason lay this Charge at your Door. For, in the first place, I am not satisfied with your Argument, that these Words could not be meant personally, or concerning Abel only, because the same Words, when spoken of Eve, do likewise concern her Polity; and therefore, when spoken concerning Abel, they must likewise relate to all younger Brethren in Hereditary Monarchies; which consequence I may with very good reason deny, for whatsoever Subjection may be due, by virtue of the like Words, from Eve and her Polity, to Adam and all other Husbands, is to be supposed to have been enjoined, because all Women are defended from Eve, and so were represented by her as their first Parent.
Dialogue the Second.

False. Thus St. Paul reproaches all Men to be in a State of Sin and Death, as represented by Adam, their Ancestor, by whose Disobedience all have sinned. But no Rom. 5. 12. Man will affirm, that all the elder Brothers or Monarchs in the World were reproached by Cain, and all younger Brothers by Abel; no Man at this day being (as appears in Scripture) defended from either of them: And I cannot but take notice, that the better to strengthen your Notion, you again insist in out of the Margin of our English Bible, His Death shall be subject to thee; whereas in the Hebrew it is no more than, His; or in his Death shall be to thee.

And that the Words rate ever are to be interpreted according to the Subject, and do not always mean a ruling by force, or command, appears by the same Hebrew Words made use of in the first of Genesis, concerning the two great Lights that God Ver. 17, 18. set in the Firmament, to give Light upon the Earth, to rule over the Day and over the Night; which cannot signify a ruling by force or command, but only by a natural influence or preponderance of the Sun and Moon above the Stars or Planets. And tho' you are pleased to ridicule this Explanation of mine, yet I think I may with as much reason treat yours with the like contempt. For since your self grant, that this Prince of Cain over Abel was not to commence till after the Death of Adam, and that this Murderer of Abel was committed above a hundred Years after Adam's Creation; appears by the time of the Birth of Seth (who was born some time after Abel's Death), would not this thing have been a mighty Comfort to Cain, when he was in his dogged Humour; if God had bid him cheat up; for the time should come, that, if he behaved himself well, about eight hundred Years hence, when his Father Adam should die, he should then lord it over his Brother, and be revenged of him for the Affront he had received in having his Sacrifice preferred before his own? So that this Interpretation of yours is so absurd, that I do much rather agree with divers learned Commentators, as well Jews as Christians, who make only one and the same Interpretation, but also a different Version of these Words from the Hebrew Text: And if you have the Learned Jesuit Monochioni's Notes upon the Bible, I pray let me see them. Here pray observe what he says upon this place: Sed sub te est appetitus ejus. In Hebrew & apud LXX et, Ad te competit ejus. So Senec. et, Peccatum ejusque appetitus & conspicientia te solicitarit ad conspicientiam; sed tui, ut ed te coeberit, & a te conspicientiam pete & imperant rex decet. Id soffer interpers ad prospetere clares oriet, Sub te est appetitus ejus. By which all he means no more, than that Sin should tempt or solicit him to offend, but that he should rule over it; that is, had a Power to do, if he would use it as he ought. So like wise Mr. Anfwerth upon this Place (as you may see in Pope's Critics) puts a like Sense upon the following Words, referring the whole Sentence to the Sin, in these Words: Peccatum posturum pro peccato tuo; fuit et Hbrian est acceptor, Gen. 19. 15. Lev. 20. 2. 1 Reg. 7. 9. Senec. et, Pepe te prompte pecatum, & ad te defideratum ejus; i.e. cupit te pecus pecatum tui, ut justus poss peccatum aspicientem: sed tu, et, dominatoris illi, i.e. potest declarare peccatum. Q. d. Peccas hoc scias non est, qui ad ostium tacent, cupientes ingrediri; sed in pontifici Domini ostium ne ingrediat, quod aperire se intueri. Provostae his praeceptis. 1. Peccatum deprimus loquitur, reportabitur sol. praeceptis, sed postea loquitur in peccato, peccatum jam inerat ejus, potius vero mundum, sed ad ostium creavit. So that, according to these learned Commentators, this Place is to be thus turned out of Hebrew: If thou dost not feed, Sin lieth at the door, and to the to its define; but thou mayst or shalt resist over it. Which seems to me to be a much more genuine and rational Interpretation than that of our English or Latin Bibles.

So that I think I may justly except against the Authority of so doubtful and obscure a Place, as insufficient to found your Monarchical Power of elder Brothers in the State of Nature.

W. Well, Sir, it's not your self, that are better satisfied with this Testimony out of Genesis, for the Dictate Right of Primogeniture, I will no longer insist upon it; tho' I am very contrary, but that my Interpretation of this Place is true than yours, since I have like wise great Authorities on my side, both antient and modern, besides our common Versions, to authorize it; and therefore since I have many other Examples out of Scripture of this kind, I shall let it pass upon it, but will now proceed to the Examples before the Flood. First therefore, it seems highly probable, if not certain, that whatever Civil Government there was in the World before that Period of Time (as it is very rational to believe there necessarily must be some in so long a Space as near 200 Years) it was chiefly administered by those first Patriarchs, whose Names you'll find particularly recited in the first of Genesis: And
And sure that long Chain we there have of them, by whose Lives the Chronology of the World is only reckoned 'till the Flood, were in their several Generations considerable Persones, now Princes over their own Families, which could not but be very numerous: And indeed the very counting the Age of the World by the Years of their Lives, is to me an Argument, that they were no obscure, unregarded Men, but that they were either Monarchs or Princes of all Mankind, or at least over that part of the World in which they lived: And Josephus is likewise of my Opinion, in the first Book of the Jewish Antiquities, where (as you may see) cap. 3. he expressly tells us thus: Selh autem cenagenos & quiros anno genuit Enos. Quia dum quiesque & vngentes visisset annos, verum curum tradidit, filio suo Came: And immediately after proceeds thus, Lamechum autem filiun gessavit Mathusalem, Encho ortus, cum annos ipse baleter exstant CLXXXVII. Imperium vero Lamechis eadem tradidit parenti, quem jam tenuerat ipse annos DCCCCLXXI. Lamechus pariter Principatum reliquit Nao filio, postquam regnavit annos DCCCCLXXI, Nae demet, versus fummarum tenuit annos millequatuor & quingagesima; Lamnoch, annos 183, matri holens genitus. And Noah, the last of the ten Patriarchs, and the surviving patriarch Call Mann, was declared by God the universal Monarch of the World, as soon as he came out of the Ark; to whom he granted the Domini-
nion over all things, as appears by those Words of God to Noah, Gen. 9. where by I conceive, that though it hath been thence concluded by Mr. Selden in his Mure Clavisum, that there was a general Community between Noah and his Sons, yet the Text doth not clearly warrant it. For although the Sons are therein joined with Noah in the Blessing, yet it may be well be understood with a Subordination, or a Benediction in Succession; and the Blessing might truly be fulfilled, if the Sons, either under, or after their Father, enjoyed a private Dominions: Nor is it probable, that the private Dominions, which God gave to Adam, and by his Donation, Affirmation or Cesson to his Children, was abrogated, and a Community of all things instituted between Noah and his Sons after the Flood. And when Noah was left the sole Heir of the World, why should it be thought that God would disinherit him of his Birth-right, and make him only Tenant in common with his Children? And if the Blessing given to Adam, Gen. 1. 28. be compared to that given to Noah and his Sons, Gen. 9. 2. there will be found a considerable difference between these two Texts. In the Benediction of Adam we find expressed a subduing of the Earth, and a Dominion over the Creatures; neither of which are expressed in the Blessing of Noah, nor the Earth there once named: It is only said, The Fear of you shall be upon the Creatures, and into your Hands are they delivered; then immediately follows, Every moving thing shall be Meat for you, as the green Herb, &c. The first Blessing gave Adam Dominion over the Earth, and all Creatures; the latter allows Noah Liberty to use the living Creatures for Food: Here is no Alteration or Diminishing of his Title to an absolute Propriety of all things, but only an Enlargement of his Commons.

F. As for the Government of the World before the Flood. I have already acknowledged, that the Scriptures being silent in it, nothing can affirm any thing positively concerning it, whether it was Regal, Aristocratical, or Paternal: Neither is it any Proof, that because God thought fit, for our understanding the Age of the World, or the Genealogy of Noah, from whom all Mankind now takes its Original, to set down a Series of the Patriarchs from Father to Son; or, that because they were no obscure, unregarded Men, that therefore they must all be absolute Princes or Monarchs over their Families. This is, as a Father said long ago, Divinum magis quam fere: But I see, when Prejudice once blinds our Reasons, we easily make good the old Saying, Facile credimus quod volumus. But as for your Operation out of Josephus, I grant indeed, that at the first sight it makes for you: But suppose it doth, I cannot see how a Man can lay any lights upon it, since the Scripture, being silent of any such Monarchy, or Principality in these Patriarchs; since this Author writes his History above three thousand Years after the Time that these Patriarchs lived, which he there mentions; and that we are sure there were no Authors then extant, that writy of the Anti-diluvian Patriarchs, but Moses only, Josephus could speak no otherwise than by guess, or from some uncertain Traditions preferred amongst the Psephets, of which see he was: To which Traditions, when not warranted by Scripture, how little credit is to be given, our Saviour himself teaches us: and also the many fitulous Traditions of the Rabbins, at this Day, do sufficiently shew us. But, I suppose,
suppose, that by this Word αὐτός, there used by Ἰσαάκ, (which is rendered by the Latin Version Principium) is not meant any Monarchical Power, but only that Principality or Eminency, or that Reverence and Respect which their Poffeignty paid them, either in regard of their great Age and Experience, or of the Spirit of God, with which they might be supposed to be endowed, sufficient to make them to be taken notice of, and reverenced above all other Men living in their Time. I have likewise, upon better Consideration, two other Reasons to add, why by the curam vernam, mentioned in this place, cannot be meant a Regal Power, becaufe Ἰσαάκ mentions no fuch thing of Adam the fift Father, and, as you suppose, Monarch of Mankind; which fure he would have done, had he believed him endued by God with fuch a Power.

The second Reafon is, that if you pleafe to obferve, he allcibes to Mabylelab, Lamech and Noah, as many Years of Empire, as of Life: So that either this place of Ἰσαάκ signifies nothing at all, or elie will make nothing to your purpose, to prove thefe ancient Patriarchs to have been fo many Monarchs.

I come now to the next Period of Time after the Flood, and wherein I grant we may discourse with more certainty: But I could have withifh you would have repeated more particularly the Words, whereby you suppose God granted to Noah alone, an absolute Dominion over the whole Earth, and all the Creatures therein contained. But I perceive you thought the Words not very favourable for you, or elie you would have repeated, or read them to me; which if you omitted, I pray give me leave to do it for you, and then I will leave it to your felf to judge whether there can be any thing drawn from this Text to counterbalance the Opinion. The Words are these: And God blessed Noah, and his fons, Gen. 9. 1, 3, and laid unto them, Be fruitful, and multiply, and replenife the Earth. And the fear of you, and the dread of you shall be upon every Beast of the Earth, and upon every foul of the Air, upon all that moveth upon the Earth, upon all the Fishes of the Sea, into your hand are they delivered. Every moving thing that liveth shall be Meat for you; even as the green Herb have I given you all things. Where you may plainly fee, that Noah hath no Prefumencence in this Grant above his Children, who were (for as much as I can fee) by this Text to be Tenants in common with him of the Earth, and all its Creatures. Nor is there much difference between this Grant to Noah and his Sons, and that made to Adam and Ece, which I proved extended alike, to all Mankind, more than that the Brute Animals are here expressly granted to Noah and his Sons for Food, which they were not before to Adam.

But I perceive you your felf are fensible, that this is the moft plain, and obviouf Seine of thefe Words, and therefore you have thought good to write them so as may beft serve your purpose; and indeed you deal very cunningly to fay, that this Grant may be beft understood with a Subordination in Succedion. This is true indeed, it serves beft for your purpose that it should be fo understood; but p. 41. that will be beft understood by any Body elie, which beft agrees with the plain and obviouf Seine of the Words. Nor will your Reafon fignify any thing, that the Blessing might be truly fulfilled if the Sons either under, or after their Father, enjoyed a private Dominion: Since that were to fay, that a Grant whole exprefs Words give a joint Title in preffent, (for the Text faih, Into your Hands they are delivered) may beft be understood with a Subordination, or in Succedion; becaufe 'tis poiffible that in Subordination, or Succedion, it may be fo enjoyed, is all one as to fay, that a Grant of any thing in preffent Poiffedion may beft be understood in Reversion, becaufe 'tis poiffible one may live fo to enjoy it. And as for the other parts of this Grant, they are fo expreffed that they must needs be underfood to belong to Noah's Sons, not with a Subordination, or in Succedion, but as full and equally as to Noah himfelf: The fear of you, and the dread of you (fays God) shall be upon every Beast, &c. Can any Body in reafon fay, that the Creatures were to fear, and stand in awe of Noah only, and not of his Sons without his leave, or till after his Death? And are the following Words, (Into your Hands they are delivered) to be underfood (as you fay) if your Father pleafe, or they shall be delivered into your Hands hereafter? You do alfo as plainly as be poiffible, think if Adam had a private Dominion given him by God, that he would not now abrogate it: For I grant, that if he had given Adam any fuch private Dominion, that there had been no reafon for him now to have changed it. But I think I have sufficiently proved at our laft Meeting, that he had no fuch private Dominion given him any more than Eve, and thofe Children, that
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that were to proceed from them. So that this Supposition being false, there will be no such considerable difference as you suppose between these two Texts. For certainly, (though it be not here expressed) Noah's Sons had as much right to inhabit or possess the Earth, as the Potency of Adam had before the Flood, and likewise to enjoy, or eat the Products thereof; only here it is granted to Noah, and his Sons a Power to kill the Creatures for Food, which was not granted to Adam, or those that lived before the Flood: And then you will have this Grant to be no diminishing of Noah's Title to a sole Propriety in all things, but only an Enlargement of his Commons; yet methinks it is a considerable Privilege not only to himself, but his Sons likewise, who are hereby empowered to use the Creatures for Food, as well as their Father, or else their Cattle had been very hard, if when the Creatures were sufficiently multiplied, they might not have killed so much as a Horse, or a Fattened Ox, without his leave. And if they had a right thus to use these Creatures, how this differs from an absolute Propriety in them whenever they are taken, my dull Understanding is not able to content.

M. Well, since you will not admit of this sole Dominion of Noah over all things in the World; I shall not longer insist upon it, but will pass over to those other Authorities I have to produce out of Scripture.

F. I pray, Sir, do; and let us see how fair an Adversary I will be. I will for the present admit, that Noah was a Prince of Monarch over all his Potency, and that his Power may be traced in the Texts Power of the Prince to all posterity. I can see nothing in Scripture that favours your Divine Right of Primogeniture, but that every one of Noah's three Sons was a Prince alike over their own Family, and had an equal Share in the Earth, and all its Products, the one as much as the other: So that here it is apparent that your Monarchy of the World dwindles into a sort of Gentry-kind, where all the Sons inherit alike.

M. I cannot deny the Matter of Fact to be as you have laid down; but then there might be a very good reason for it, which might render the sole Principle of Noah's eldest Son to be not only unlawful, but impracticable; for, in the first place, Mr. Selden in his Maps of the Antient World, (in the place subjoined) tells us from the ancient Tradition of the Jewish Rabbins, that Noah himself, as Lord of all, was Author of the Distribution of the World, and of private Dominions; and that by the Appointement of an Oracle from God, he did confirm this Distribution by his left Hand and Testament, which at his Death he left in the Hands of his eldest Son Shem; and also avowed all his Sons, that none of them should invade any of their Brothers' Dominions, or injure one another, because from hence Difcord and Civil Wars would necessarily follow.

Nor do I see any reason why Noah might not emancipate his two younger Sons from the Dominion of the eldest, and likewise give them a separate Share of the Earth, and also an independant Power over their own Family and Potency. In the second place, it might be impracticable for one Man to govern all Mankind, when in a little time it became so multiplied and dispersed over the Face of the Earth, and the Languages so confounded by the Aes, or Will of God, that it was impossible for the three elder Sons of these three great Patriarchs to govern them. But during the Life of Noah, we do not read that any of his Children, or Descendants, withdrew themselves from him without his leave, but rather the contrary; for it is said, The whole Earth was of one Language; and of one Speech; and it came to pass, as they journeyed from the East, that they found a Plain in the Land of Shinar, &c. By which Words it appears they kept well enough togetherness, and the very reason why they began to build the Tower, was, left (laid they) We should be scattered abroad upon the Face of the whole Earth: So that there was no Diffusion amongst them, nor so much as a desire of it which whist Noah lived.

F. I pray give me leave to answer what you have said concerning this Distribution of the Earth by Noah's last Will, and also his making all his Sons Lords, or Monarchs alike, both which favour so strongly of the Rabbimical Liberty of Invention, that you know how any learned Man can have such juic Stories, especially when the Scripture, and the most ancient Hiftories and Records tell us that we are extant in the World, mention no such thing. And though Josephus may, in the place you have cited, suppose that every one of the Patriarchs he mentions, were Princes of Monarchs, yet he doth not lay any thing like it, concerning the three Sons of Noah's being Monarchs, or of this Partition of the Earth between them; but maketh them to live together in those mountainous Parts, till they defended
Defended from thence into the Plain: So that it was impossible for Noah to make a Distribution of those Parts of the Earth, which were not yet discovered. And it is apparent by the Scripture it itself, that a considerable time after Noah's Death all Mankind lived together; and therefore there was no Impossibility (as you suppose) why Noah's eldest Son could not have commanded his Brothers and their Descendants, they being not as yet dispersed, or separated from each other; as you may see by the fifth Verse of the 11th of Genesis, which you cited but now. So that if Noah's eldest Son was disinherited of his Right of governing his Brethren, and their Descendants, that could not be the cause of it, which you assign: And if Primogeniture be a Divine Right, appointed by God himself, and unsailable by Human Laws, as you suppose, I cannot see how the Will of a Father, which is but a Human Institution, can ever alter it: For I remember you laid it down as a Maxim, at our last Meeting, That the Divine Right of the right Heir over due, can be left, or taken away; so that if there hath been any such thing as a Divine Right of Primogeniture belonging to the eldest Son of Noah, it is not likely that he would have permitted his two Brothers to have usurped it from him.

M. I shall not insist longer on this Tradition, concerning the Distribution of the Earth amongst the Sons of Noah. But certainly it is not a thing to be made of Light of as you do, since Credous, a modern Greek Historian, is very particular in it; and many other learned Men (and many among the well) have given countenance to it: And though I grant that Primogeniture is of Divine Right, yet that might very well be altered by Noah's Will, especially since his Children might be satisfied that he being a Prophet, and Preacher of Righteousness, made this Division of his Paternal Power by a Divine Command.

But I shall not dwell longer upon this, but proceed to the next Period of Time; (viz.) that of the Confusion, and Dispersion of Tongues, in which there were more evident Footsteps of this Right of Primogeniture, as also of the Patriarchal Power I maintain: And therefore pray turn to the 10th of Genesis, and there you will find (after the Recital of the Genealogy of every one of the Sons of Noah, whose Descendants are more particularly set down) these Words in the fifth Verse; By these were the Lands divided among their posterity. And likewise in the 10th Verse, These are the Sons of Ham, after their Families, after their Tongues, in their Countries, and in their Nations. And in the 11th Verse, These are the Families of the Sons of Noah, after their Genealogies, in their Nations; and by these were the Nations divided in the Earth after the Flood. So that if we consider the first Plantations of the World, which were after the Building of Babel, and the Confusion of Tongues, we may find the Division of the Earth into different Kingdoms, or Nations, by several Families and Languages, whereas the Sons, or Grand-children of Noah, were the Kings, or Governors, by a fatherly Right. And for the preservation of this Power, and Right in their Fathers, God was pleased to bellow upon several Families a Language on each by itself, the better to unite it into a Nation or Kingdom. So that it becoming impossible (as I said before) for the elder Sons or Descendants of these three great Patriarchs to govern all Mankind, who now no longer understood each other's Language, it was absolutely necessary that the Heads of the several Families should take that care upon them, and their Children submit to them; wherein they had the Direction of God Almighty, who had commanded them to obey their Parents; and a miraculous Declaration of his Will for their Dispersion, by the confounding of their Language; and that so ordered by God too, that the Descendants of the same Person, and Family, spoke one Tongue: Was not this a declaring these Fathers Princes of these several Families, and Tongues by God himself, who by his Providence had thus confounded their Tongues, and dispers'd them by Families, that they could no longer understand each other's Language, but they should have as many different Governments, as there were different Tongues, there being no means at present of any Intercourse, or Correspondence one with another, or with their former Governors? So that however in this Confusion of Tongues (by which, as Joseph supposeeth, there were seventy two different Nations erected) yet were they not confounded Multitudes without Heads, or Governors; and at liberty to choose what Governors, or Government they pleased; but were so many different Families...
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B.P. § 10-milnes which had Fathers for Rulers over them of the same Speech: Whereby it is manifest, that even in the Confusion, God was careful to preserve Father Authority, and Monarchical Power entire, by distributing the Diversity of Languages according to the Diversity of Families; which shews that God was full for Government, and that Paternal too; since it is evident that every People followed their Auncellor, or Patriarch, as their Prince or Leader in this Dispersion, who had a Patriarchal Authority over their Posterity: For by what else can you suppose they could have made their Children and Defendants to have followed them as far as the utmost Iles of the Gentiles?

F. I confess there are many Difficulties as well in the time, as manner of this Dispersion, according to our common Chronolohy; for if you suppose, that the Building of the Tower of Babel fell out within two hundred Years after the Flood; as most of our Chronologers, who follow the Hebrew Account, do; then it is certain, that Noah, and his Sons, were still alive, who lived 'till above four hundred Years after the Flood; so that either Noah, and his Sons, did not travel with the rest of their Defendants into the Plain of Shinar, where they built the Tower of Babel, which yet seem contrary to the Text, which says, All Man-kind being of one Language, they travelled, &c. And, if these Children and Grand-children left their Auncellors at home, what became of their Monarchical Authority, when their Subjects were gone? And you yourself do affirm, that none of Noah's Posterity divided from him, as long as he lived. So mean the other side, if you suppose that Noah and his Sons marched along with them in this Expedition, you must make them either to have quitted their Authority over their Defendants, or else to have joined with them in this wicked and foolish Enterprise of building a Tower, whose top should reach to Heaven; which is very hard to conceive of Noah, a Preacher of Righteousness, or his Sons, whom the Scripture no where mentions, or blames for having a hand in this Attempt.

But if you will lay the fault of building this Tower upon Nimrod, as Josephus doth, who makes him a great Tyrant, and a wicked Man, this will make against your own Hypothesis, which supposeth no Rebellion, or Uproarition, to have been during the Life of Noah. So that to avoid these Aburdities, and Difficulties that will follow by the placing the Building of the Tower of Babel within two hundred Years after the Flood, (as you must do, if you follow the present Hebrew Account) I think it were much better to embrace the Account of the LXX, which by adding a hundred Years to the Lives of each Patriarch between Noah and Abraham, makes the Confusion of Tongues to have happened not 'till about five hundred Years after the Flood; which takes away these Aburdities I mentioned, of making Noah and his Sons to have had a hand in the building of the Tower of Babel, or else that Nimrod did it, whether they would or not; which is likewise as hard to supposeth All which Difficulties, according to this Account, may very well be taken away; since then, Noah and his Sons were dead, before ever this Tower began to be built. And for the further Proof of this, I refer you to the learned Isaeus Polio's his Vindication of the Translation of the LXX, and his Chronology accommodated to that Account, as most agreeable to the ancient Hebrew Original: But this is only by the by.

M. I thank you, Sir, for your Solution of this great Difficulty, which I am satisfied cannot be better solved, than by this Account of the LXX Version. But I pray answer my Argument, which in my Opinion clearly makes out the Divine Institution, as well as Necessity of Patriarchal Power.

F. I was just coming to it; and therefore in the first place I must tell you, that I cannot imagine how you can prove from this Text concerning the Dispersion of Nations, and their following certain Leaders of their own Family, and Language, when otherwise they could not have converted together; that therefore God must be careful in all this Translation to preserve your Imaginary Patriarchal Power entire; of which the Scripture is altogether silent. And you might as well tell me, that because in Hamath's, or Darim's Army, there were whole Squadrons of different Languages, who were ranged under Captains of their own Language, or Country, that therefore Fathers, or Grand-fathers were Leaders of each Squadron; or that Darim, or Hamath, were careful to preserve Paternal Authority.

But

But suppose I grant you the utmost you can ask, yet, since God thought fit at this Confusion of Tongues, that all those of one Tribe should speak the same Language, which was not understood by any other, it is likewise very reasonable to suppose, that they could not travel so far as the utmost parts of Asia, without chusing, and following some Captains or Leaders to be their Guides, and Commanders in so long a Journey; and whom could the People sooner cleave to follow for this purpose than their Fathers, or Grand-fathers, to whose natural Affection, Wisdom, and long Experience, they had from their very Infancy always paid a great respect and submission: Yet both it is not therefore follow, that such Fathers or Grand-fathers thus led or commanded their Children and Posterity (now grown up to be Men and Women) by any natural or Divine Right, or that they followed them otherwise, than as an Army of Volunteers, or than as a Caravan in the Deserts of Arabia doth a Captain of its own Chaining. But if you will suppose any thing beyond this, you will find yourself involved in greater Difficulties and Aburdities. For pray tell me, what great care was there to preserve a Patriarchal Authority in this Confusion and Dispersion, by breaking it into so many Parts? Indeed I am forc'd to say, I cannot see it. For as I will not deny, but it was God's Will to confound the Language, and divide the Families of mankind, both for a Punishment, and also for the better peopling of the World; So am I not convinced, that God, in acting thus, was at all careful to preserve the Patriarchal Authority derived from Adam. For you cannot deny, but that at the same time he destroyed the true Supreme Fatherhood of the natural Monarch, or Heir of Adam, who could be but one Person, as you yourself have already allowed: Or, can it be any Reason to say, that God, for the preservation of Patriarchal Authority, let so many several new Governments, with their Governors, start up, who must all enjoy this Authority? And is it not more reasonable to say, that God was careful to destroy actually in Possession of it, to have their Monarchy torn in pieces, and shared by so many of their Subjects? And would it not be an excellent Argument for Monarchical Government to say, when any Monarchy was shattered to pieces, and divided among many revolted Subjects, that God was only careful to preserve Monarchical Power, by rending a great divided Empire into a Multitude of little Governments. So that it is altogether irrational to conceive, that if any three or more right Heirs of Noah had Patriarchal Authority or Sovereignty by Right of Fatherhood, the same People, divided into so many distinct Governments; Either then these Three or more Fathers should have a like Sovereignty by Right of Fatherhood over the same People, divided into so many distinct Governments: But these Three or more Fathers were actually Rulers just before the Confusion, and then they were not one Person, but an Aristocratical Commonwealth, and then where was your Monarchy? Or else these Three or more Fathers had Patriarchal Authority, but knew it not, which is hard to suppose. And if these Three or more Grand-children of the Sons of Noah had a Right to divide this Supreme Patriarchal Government as there were Heads of Families, why might not their Sons have done so in Vain? And then there could never be any common Monarch or Monarch set over them all, but by Force or Compulsion, or else by Election; either of which destroy your Notion of the Divine Right of Monarchy.

M. 'Tis a very pleasant Notion methinks this of yours, that the Posterity of B.P.P. the first Planters of the World should follow their Ancestors, not as Children of Adam, but as Subjects, but as Volunteers, and from a Sense of the Right of their Age, Wisdom, and Experience. Indeed, I am thus far of your Mind, that those Children followed their Fathers freely, and were not driven afore them, nor dragged after them with Chains: But to infer from hence, that they obeyed their Father none of this Service or Attendance, but out of mere good Nature and Gratitude, which are due to Strangers that have obliged us by being derived from Patriarchal or Paternal Power; and since there were none of these Patriarchs, who were the Leaders of mankind in this Dispersion, but must be one of two hundred Years old, if not more; can any thing in Nature look more ridiculous, than for Children and Descendants of those old Men, to elect them who begat them, to be their Leaders and Governors, at a hundred Years of Age?
And to give you an Answer why Governments might not upon my Principles crumble into new ones, in infinitum, I think it may be sufficient to tell you, that, First, God prevented it, and that for the most part by Monarchs, ever since the Creation of the World; and although he was pleased to permit many Divisions after this time; yet he would never suffer Mankind to be crumbled into such small Divisions, as to make every different Houblond an Independent Government. Secondly, Those Monarchs prevented it, who would be for to reduce to their Subjection any Person that should attempt to divide himself or Family from the rest, and set up for an Independent State, without his leave and liking. Thirdly, The necessity of Mankind prevented it, such small parcels of Men not being able to preserve themselves, but by uniting with the rest, for their Support and Protection: So that if you could never so clearly prove, that here was no Subordination to the eldest Son or Heir of Noah, yet this signified nothing, for God ordered it so to be; and if these Grand-fons of Noah were Independent Governors of their own Families, without any Subordination to the eldest Son’s Son or Heir of Noah; yea, were they still Sovereign Princes, and much less had any dependence upon their own Children and Descendants. So that hitherto the Multitude were kept under Subjection, and could not set up a Commonwealth, without rebelling against those Independent Governors.

Now if in this horrible Confusion of Tongues, the People, by the Will of God, still fell under the Monarchical Government of these Fathers of Families; I desire to know when they could obtain their Freedom, and in what Age it began?

F. I must confess you had some reason to look upon my Notion of the Descendants of the Sons of Noah following their Ancellors in this Division, not as Children or Subjects, but as Volunteers, to be as ridiculous as you are pleased to make it, could you have any way proved at our last Meeting, that the Power of Parents over their Children and Grand-children to all Generations, is as absolute and perpetual, as that of a Master over his Slaves, and that a Son and a Servant were all one at the first; but since you failed in that Proposition, which is the Groundwork of all the rest, I must beg your pardon, if I cannot find the Descendants of Noah, following their Fathers or Ancellors in the Division, upon any higher ground, than mere Gratitude and Esteem: I mean for all such of them, who were themselves at that time Masters or Heads of separate Families; and I desire to know of you, by what other Motive or Obligation, a great Grand-son (for Example) was obliged to follow his great Grand-father to the World’s end, as his Prince or Leader, when perhaps his own Father thought fit to lead him another way; and I desire you to shew me if they had (as they might very well have) commanded different things, which was to be obeyed? And how Disobedience to a Man’s own Father in this case would have concurred with that Law of Nature, which you so much insist upon, of honouring a Man’s Father? But indeed all this would be under your first false Notion, which I see you cannot yet be quit of, in still supposing the Obedience and Subjection of Children to their Fathers to be absolute and perpetual: The contrary to which, I have already made out at our last Meeting: And therefore I must tell you again, that this Notion of these Grand-children, or Descendants following their Fathers or Ancellors, not out of Duty, but Choice, is not so ridiculous as you are pleased to make it; and though I do not suppose, that they elected these Ancellors of theirs for their Leaders by a Balloting Box; yet this much I am sure of, that they might prefer, if they pleased, the following of their great Grand-father, or Grand-father, rather than of their Father, if they perceived that he had doted through Age, or else by Weakness or Infirmities was unable to lead them; or that his natural Temper was so Impetuous and Tyrannical, that there was no living under his Government? Neither doth the Scripture it itself any where declare the contrary, only says in general, that by these Grand-fons of Noah, the Isles or Countries of the Gentiles were divided, according to their Families and Nations, without particularly telling us, who were the Princes or Leaders of each Tribe or Family. And to instance: if this Division happened in the Time of Helg or Phleg, as the Greek LXX makes it, then Arphaxad the great Grand-father, or Selah the Grand-father, but Heber the Grand-son was the Prince or Leader of his Family at this Division: Since it is
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from him that He is supposed the Hebrews not only to have defended, but to have taken their Names.

Nor do you any better answer the other Difficulty, how all these Seventy two Patriarchs, or great Grand-fathers, could all of them claim alike Regal Power from Adam or Noah, whose right Heir could be but one Person. Indeed you tell me, that God ordered it so, by appointing every Nation a distinct Language, and to be led by the Ancestor of their Family. This is altogether great diversions for though it be true, that the Scripture says, that this Division of Tongues was made according to the different Tribes or Families of these Defendants of Nebuchadnezzar; yet it was in no place mention being led or commanded by Seventy two Grand-fathers Patriarchs; and there might be for ought that you or I know, not only seventy two, but seven score such Captains or Leaders of them; Nay, every distinct Father of a Family, when this Monarchical Power came to be crumbled up into so many parts, might as well have claimed a share in this Regal Power, they being by this Constitution newly reduced again into a State of Nature.

Nor are your Reasons sufficient to convince me of the contrary. As for your first Reason, that God hath not specified it to be so, signifies little; for either he hath hindered it by an express Command, or by the ordinary Course of his Providence: The former I am sure you can no where shew me; and as for the latter, whenever any Nation or People shall be preferred with the like Neceffity of separating themselves from the Government under which they were born, as the several Families of Mankind had at this particular of Tongues; I see no reason why they may not have a like Right of quitting their Country, and becoming Subjects to another Government; or else of setting up one of their own if they can.

As for your second Reason, that Monarchs would be sure to reduce to their Subjection any Person that should offer to divide himself and Family from the rest, and set up for an Independent State, without their good leave and liking. This is a good Argument indeed, that they were not able to do it, but none at all, that they ought not to do it if they could; since this were but to exercise that Supreme Internal Authority which God hath invested them, as much as ever he did any of those Seventy two Defendants of Noah, who set up for many new Governments, without the consent of Noah's right Heir.

Your third Reason, I confess, is somewhat better; That the Neceffity of Mankind prevented it. But this also makes quite against you, and only proves, that the Heads or Masters of Families being unable they could not preceive themselves, but by uniting with others for their mutual Safety and Protection, were fain to submit (though by their own Consent) to some Common Power, for their own safety, and their Families Preservation. So that I cannot see from anything you have said, that God had that great care you suppose of maintaining your Patriarchal Power, much less this Divine Right of Primogeniture.

M. I see it is in no purpose to dispute with you any further about the Patriarchal Power of the Sons of Noah, and therefore I shall proceed to the Times E.P.C.1.8, after the Coalition of Tongues; in which, the first Instance I shall give you, is that of Jassob, who when he had brought his Brothers Birth-right, Jacob blessed them thus: Be Land over thy Brethren, and let the Soul of thy Brother be dear before God Gen. 49. 19.

By which I plainly denote a Regal Power or Dominion over all the Brethren, in the right of his Brother, and that he had of his Brothers, if he had any. So likewise we find—

F. I pray give me leave to intreat you a little, for I have a great deal to say to this Instance you have now brought of Jacob and Esau; and therefore I desire not but observe, that this Divine Right of Primogeniture, which you suppose here to be meant by the Word Birth-right, was capable of being held for a Man of Portage, and all Esau's Heirs disinterested of their Right, because their Father preferred his Belly before his Honour and Interest. But if your Principles are true, a Divine Right never dieth, nor can be lost, or taken away.

The second thing I must take notice of, is your making Jassob, presently after T.C.G. 1.11. this Son of the Birth-right, and as it were in confirmation of it, to have given F. 145.

Jassob his Blessing; whereas it is apparent by this Story in Gen. 27. that many Years past (perhaps twenty or thirty) between Jassob's buying of this Birth-right, and Jassob's conferring of the Blessing upon him, as any one that will but read the 10th of Gen. 2 may easily see. But if you had better observed this Text, you
you would have found that this Blessing was not intended for Jacob, but Esau, for whom Issac then mislooked him. But be it as it will, whether the Blessing was given to Jacob or Esau, it matters not; for from these Words I can by no means gather, that any Government or Superiority was thereby conferred on Esau over Jacob, or Jacob over Esau. For, first, as to Jacob, this Blessing was never fulfilled, as to be Lord over Esau, who was Prince of Mount Seir in Jacob's Lifetime: And as for bowing, or any other Token of Superiority, we read indeed, that Jacob at his meeting his Brother Esau bowed seven times towards him to the Ground, though he had before fold his Birth-right to Jacob; and therefore this Birth-right cannot mean any ruling Power, or Lordship over his Brethren; since it is manifest from the Text, that Jacob had no more Brothers than Esau; nor had Issac any Confidencation of Jacob's having then sought this Birth-right; for when he thus blessed him, he took him not to be Jacob, but Esau; nor did Esau understand any connexion between the Birth-right, and the Blessing; for says he to his Father, 

* He hath supplanted me these two times, he took away my Birth-right, and behold now be hath taken away my Blessing.

Whereas, had this Blessing to be Lord over his Brethren, belonged to the Birth-right, Esau could not have complained of this second Act as a Cheat, Jacob having got nothing, but what Esau had fold him long before.

So that it is plain, Dominion was not then understood to belong either to the Birth-right or Blessing. And therefore it is more rational to suppose, that this Word Birth-right only relates to the Right of Priesthood, which the Jews supposed always to descend to the eldest Son, before the Law was given: And that by Blessing, is meant no more, than that double Portion of Goods, which by the Jewish Law was due to the First-born; and that this is the true Sense of this place, I desire you to look in Gen. 21. 10. (if you please to give me your Bible, I will shew you the place, and will read the Words to you) where Sarah taking Isaac to be Heir, says, 

* Cut out this Bond-woman, and her Son, for the Son of this Bond-woman shall be to me as my Son: Whereby could be meant nothing, but that he should not have a Pretence to any equal share of his Father's Estate after his Death, but should have his Portion presently, and be gone. And farther we read, Gen. 25. 5, 6. That Abraham gave all that he had unto Isaac; but unto the Sons of the Concubines which Abraham had, Abraham gave Gifts, and sent them from Isaac his Son, while he yet lived; that is, Abraham having given Portions to all his other Sons, and sent them away, that which he had reserved, being the greatest part of his Subsistence, Issac as Heir possified after his Death; but by being Heir he had no Right to be Lord over his Brethren; For if he had, why should Sarah desire to rob him of one of his Subject or Slaves, by deferring to have him sent away?

So likewise, if you look into the first of Chron. chap. v. 1. you will find a
dabet, that plainly confirms this Interpretation, where it is said; Reuben was the first-born, but forasmuch as he defiled his Father's Bed, his Birth-right was given unto the Sons of Joseph, the Son of Israel; and the Genealogy is not to be reckoned after the Birth-right. For Judah prevailed above his Brethren, and of him came the chief of the Tribes: but the Birth-right was Joseph's, though he was the youngest Son. And that this Birth-right was Jacob's Blessing on Joseph, Gen. 48. 20. tells us in these Words; Moreover I have given thee one Portion above thy Brethren, which I took out of the Hand of the Amorites with my Sword, and with my Bow. Whereby it is not only plain, that the Birth-right was nothing but a double Portion of Right due to the eldest Son; but the Text in Chronicles is expressly against your Opinion, and thence that
dominion was not part of the Birth-right; for it tells us, That Joseph had the Birth-right, but Judah the Dominon. So that unless you were very fond of this Word Birth-right, without considering in what Sense it is to be take, you would never bring this Infancy of Jacob and Esau, to prove that Dominion belongs to the eldest Son over his Brethren; For if this Blessing upon Jacob signifies any thing more than this, it could not relate to his own Person, who never ruled over his Brother at all; and therefore it is at most no more, than a Prophecy, shewing that the Jews, as being defenced from Jacob, should in after Times rule over the Edomites, or Polterity of Esau, according to what Rebekah had been foretold from God; Two Nations are in thy Womb, and two manner of People shall be separated from thee, and the one People shall be stronger than the other People, and the Elder shall serve the Younger. And so Jacob blessed Judah, and gave him
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him (though not in his own Person, but in his Person) the Scepter and Dominion: From whence you might have argued as well, that the Dominion belonged to the third Son over his Brethren; as well as from this Blessing of Jacob, that it belonged to Jacob, they being both but Predictions of what should long after happen to their Posterities, and not declaring any Hereditary Right of Dominion in either Jacob or Joseph.

M. I will not rigorously insist, that Primogeniture is such a Divine Right as cannot be altered by any Humanae Aliis or Constitution; but yet I take it to be such a Right, that without the Father orders it otherwise in his Life-time, or that the eldest Brother doth of his own accord depart from his Right, he will have a good Title to his Father's Government or Kingdom, and consequntly to command over the rest of his Brethren; and therefore Grotius makes a great deal of difference between Hereditary and Patrimonial Kingdoms, the former being to descend to the eldest Son only, but the latter are divisible amongst all the Sons, if the Father pleases: And hence I suppose it was, that as Mankind increased; one petty Kingdom grew out of another. Thus the Land of Canaan, which was peopled by six Sons of Canaan, and Philistia the Son of Mizraim, had eight or nine Kings in the Time of Abraham, and above thirty Kings in Josue's Time; which could proceed from no other Caufe, but the Fathers dividing their Kingdoms in their Lifetimes, or at their Deaths, amongst their Sons and Descendants; for their not of one tittle of Popular Election in those early Days. And I have Proof enough of this in Scripture. Since this we find it to have been amongst the Sons of Ishmael and Elisa, as appears by Gen. 15. and 18, where it is F.P. 1. p. 16. the Kings and their Titles are in the Names by them Called and given. Thus, Tenor, (see) Ptolemy Prince of their Tribes and Families. And these are the Names of the Judges that came of Elisa, according to their Families, and their Places by their Nations: And hence it is, that in after Ages, Princes did often divide their Kingdoms amongst their Children, of which you may see divers Examples in Grotios De Jus B. l. 2. cap. 7. which Divisions, when made and submitted to by the eldest Son, is, that the Son, I doubt not but were good. Yet I think it cannot be denied for all this, that the Law of Nature or Nations, where there is no Will of the Father declared as contrary, the eldest Son ought to inherit. And this is the Judgment not only of Chaffinian, but Heathen Writers. Thus Herodotus, the Herod. Polyb. most ancient Greek Historian, lays it down for a general Custom of all People or Nations, that the eldest Son should enjoy the Empire; and the Romans were likewise of this Opinion; and therefore Livy, when he speaks of two Brothers of the Alter-brother contending for the Kingdom, says, The Younger was more strong in Power than the eldest. And in another place, he calls this Right of the eldest Son, the Right of Jusfin. 1. 11. Age and Nature; as also doth Trogus Pompeius in his Epitome of Jusfin, when he calls it the Right of Nations; and in another place, a Right of Nature, when he says, that Archelaus, the eldest Son of the King of Persia, challenged the Kingdom Jusfin. 1. 2. himself, which the Order of his Birth, and Nature itself appointed amongst Nations. I could give you many other Authorities from more Modern Authors, but I rather chuse to give you these, because you cannot except against them, as Writers, prepossessed by either Jewish or Christian Principles: 'So that if this Right of Primogeniture be not absolutely Divine, yet it is at least most Natural and Reasonable.'

F. I see you are convinced, that this Divine Right of Primogeniture is not to be proved out of Scripture, and therefore you are contented to fall a peg lower; and to take up with the Right of Eldership by the Law of Nature or Nations, which however you are pleased to confound them, are for all that two distinct things; for if the Succession of the eldest Son were by the Law of Nature, it were no more to be altered by the Will of a Father, than the Law of God itself; and therefore notwithstanding all your Quotations, your Right of Primogeniture amounts to no more than this, that it hath been a common and received Custom in many Kingdoms or Nations to observe it; and therefore Herodotus, whom you have now quoted, calls it very rightly a Custom of Nations, that the eldest Son should enjoy the Empire. Which yet it is not true amongst all Nations or People, by your own Constitution: For then there would have been no difference between Hereditary and Patrimonial Kingdoms; but the eldest Son should have inherited alone in the one, as well as in the other. Unlesse you can suppose, (as sure you will not) that some Kingdoms are to be dispofed according to the Law.
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Law of Nature, and others not. But if you would have considered Grotius, (whom you have now made use of) he would have instructed you better. For in the Chaper you have now cited, he makes the difference between them to depend upon the manner of acquiring the Kingdoms he speaks of; if you please I will shew you the Words, Sed in Regnavum Successionem diffingui debet Regna que plura modo possidentur, & in Patrimonio sibi, ab his que medius habendi accipiant ex populi consenfu, de qua quaeque regium quaeque. Priori genera Regna deinde possunt etiam inter Martes, & Farnesius, & in Aegyptio, & Britannia, etiam suadent videntas.

Nullo discrimine Senecas, Regnum se facere Pharaos,

sæ Lucasius; de Britanniis Tacitus, Nego enim Sexum in imperio different. But look a little farther, and you will find the reason of the difference between them: As sa Regna que populi libero consensu saeua sunt hereditaria, ex præstantia populi voluntas defferuntur. Praemium autem populus ut velisse quod maxime expedia. And of this you may see he giveth divers Examples, which we need not particularly recite; but this much is apparent, that Patrimonial Kingdoms are divisible among all the Children, because they are appointed to be wholly in the Father's Power, either by Consent, or in Fidei Plurimorum of them: But Hereditary Kingdoms, which descend to the eldest Son, can only become so by the free consent of the People, by whom they were instituted; and therefore both Hæres and Ebes, whose Territories were wholly Patrimonial, might very well divide them alike, amongst all their Sons; but then your natural Right of Primogeniture is quite destroyed. The like may be said of other Kingdoms where this Custum took place: And therefore those Passages you have cited out of the Greek and Roman Authors, for the Succession of the eldest Son to be by the Law of Nature, is to be understood according to the Sense of those Authors, who often confounded the Law of Nature or Rights properly so called, with those commonly used, or received Customs among civilized People; which they called the Law of Nature, which yet were not Laws properly so called, since they may, without any transgression of the Law of Nature, be practiced different ways.

And therefore, though I allow Primogeniture, as well in Families as Kingdoms, to have had a just Preeminence by the practice of many civilized Nations, and look upon it as an excellent fort of natural Lot (where the elder Brother is fit to govern) that he should succeed before the younger, to avoid Strife among such Relations, and Civil Wars in Kingdoms: Yet that this is still to be understood according to the Custum of the Country, or Will of the People, that instituted the Monarchy, I desire to go no farther, than that Example that you have but now brought of Aristocrates, who was the eldest Son of Aristocrates, but born before he was King, and Xerxes his younger Son, but born after his obtaining the Crown; the Matter being referred to the People, they determined it in favour of Xerxes; as you will find in Herodotus and Justinian, whom you have but now quoted. And though I grant, that when afterwards in the same Kingdom, the like Controversy was started between Cyrus and Artaxerxes (who was afterwards called Artaxerxes Memnon) it was judged just the quite contrary way, whether by Right or Favour I will not determine; yet this may let you plainly see, that this Ancient and Wise Nation had no settled Law, either natural or municipal, concerning this Matter. I could give you several other Instances of the same kind, which you may consult at your leisure in Grotius, and other Authors; only this much may be certainly gathered from what yourself as well as I have said concerning it, that there is no certain Rule or Law, either of Nature or Nations, concerning this Matter: And therefore, your Instances of the Sons of Etes and Hiram are so far from making out your Hypothesis, the more if their Fathers could divide the Kingdoms into as many Parts as they had Sons, without any Subjection to the eldest Brother, I can see no reason why every one of their Children or Descendants might not have done the like if they had pleased, till their Principalities had become as small, as those of the Dukes of Saxony are at this day: so that I cannot see, to what purpose you have brought these last Instances out of Scripture, unless it were to make against yourself, and to prove that there were then, as there are now in the World, a fort of Princes who may be lawfully so, without claiming any Title from Adam or Noah, much less by any Right of Primogeniture.

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M. It is sufficient for my purpose to be able to shew you, from these Examples of the Sons of Esau and Ishmael, that as well Hereditary as Testamentary Kingdoms, did antiently commence according to the Law or received Custom amongst Nations, without any Consent of the People or Defendants of those who were to be governed by them: And as long as the Succession to such Kingdoms were by any certain or known Rule constantly practiced among Mankind, the matter is not much whether the eldest Son succeed to his Father alone, or that his Brethren shared with him in the Inheritance. For since it was God’s Will to institute Civil Government amongst Mankind, it must be also his Will to make the Succession to it clear and certain to all the Subjects that were to submit to it, as he hath done, whether one Brother or many succeed; since the Will of the Father is as certain a Rule of Succession, as that by Inheritance; and therefore what you have said in answer to my last Inferences of the Sons of Esau and Ishmael signifies not much.

F. I did not then deny, but grant at our last Meeting, that Families might at first grow up into Kingdoms; but yet I do still (as I did then) assert that such Governments could not be instituted by any Father or Grandfather alone, without the express or tacit Consent of his Children and Defenders, supposing them once married and separated from their Fathers or Ancestors Families. But it is needless to repeat what I then said; only give me leave to mind you, that at the beginning of this Discourse you maintain’d, that not only Kingly Power in general, but also the Succession to it by the eldest Son, or his nearest Brother, is of Divine Right or Inheritance, or else that all you urged concerning the natural Right of Dominion of Cain over Abel was to no purpose: But now you insist, that Succession by a Testament or Will of the Father is also as much by the Law of Nature as the other; in which I think you are very much mistaken, since the Right of bequeathing Kingdoms, or any thing else, by Testament, is neither prescribed by the Revealed Will of God, nor the Laws of Nature; since all settled Property in Lands or Goods, before the Institution of a Civil Government, proceeding only from Occupancy or Possession, must cease in the State of Nature with the Life of the Occupant or Possessor. Therefore in that State a Testament cannot take place by the Testator’s Death; since, as soon as he dieth, his natural Right in the thing bequeathed is quite loft and extinguish’d: So that the Dead not having an Interest in any thing, the Legatee cannot sustain the Person of the Testator, whose Right ceases before that of the Legatee can take place; and therefore the Testament or Disposition of such things may then without any Crime be neglected or altered by the Survivors, unless all those who pretend an Interest in it do agree to it, or swear to it fulfilled during the Testator’s Life-time. And for this cause we find Abraham binding his Servant that ruled over his House by an Oath, not Gen. 14. 7, 8, to take a Wife for his Son of the Daughters of the Land; and Jacob taking an Gen. 49. 29.

Oath of Joseph, not to bury him in Egypt; because they doubted whether they could oblige their Sons or Servants to do it by their Testaments. So that it appears evident to me, that the Power of making Testaments, and bequeathing Lands or Goods, is but a Consequence of that Propriety in Lands, Goods, or Dominions, which arises from Compact or common Consent in a Kingdom or Commonwealth, after it is instituted, as I think I am able to prove whenever you please to discourse with me farther about it. But as for the Right of bequeathing Crowns or Kingdoms by Testament, I will not deny but that some Kingdoms may have been bequeathable by their original Constitution, and others become so by Custom; yet I cannot grant that this Right belonged to the Prince or Monarch by the Laws of God or Nature, but proceeded purely from the received Law or continued Custom of that Kingdom: So that you must either confess, that there is no such thing as a Divine Right of Succession, or else it is such a one as signifies as much as nothing, since humane Laws or Constitutions can alter it or take it away. So that after all this pother about this Divine Right, it is not so good as an old Estate Tail, which formerly no Fine could bar. And I must farther tell you, that I cannot assent to your Opinion, that Succession by a Will or a Testament is so certain as that by Inheritance; since all such Testaments must depend upon the Credit of the Witnesses, whose Credit may often be question’d by the Subjects, and who may very well for their own ends make a younger Son to have the whole, or at least a Share in the Kingdom, to whom his Father never intended any; and which was likewise more easy to be done before such time as
written Wills or Testaments, solemnly published according to Forms of Law, came in use.

But because you suppose that the natural Laws of Succession to Kingdoms are so plain and certain, that I may a little convince you of your Mistake in this matter, I shall for the present suppose that the Succession of an elder Son or Brother is sufficiently easy to be known; yet I doubt it will not prove so in many other Instances: And therefore to let you see I do not make this Scruple without cause, suppose Abel for (for example) to have left a Son or a Daughter behind him, when his Brother murder'd him, pray tell me who was to succeed after the Death of Adam, this Son or Daughter of Abel, or Seth their Uncle?

M. We do not read of any Children that Abel had, and therefore I cannot tell what to say to it.

F. Well, but since it is probable he might have had Children, pray tell me (supposing he had) whether this Child, were it Son or Daughter, or Seth the Uncle, was to succeed?

M. Since you will needs have me speak my Opinion in a thing so uncertain, I think this Child, were it Son or Daughter, ought to have succeeded before the Uncle.

F. Pray, Sir, tell me by what Law or Rule you thus judge? whether by the Law of God or Nature?

M. I must confess, God hath prescribed nothing expressly concerning it, more than he says, Num. 27. that if a Man dies leaving no Sons, ye shall cause his Inheritance to pass unto his Daughter; with divers other Rules of Succession to Inheritances there specified: And besides, it is more suitable to the Laws of Nature, that the Children of the elder Brother should inherit before their Uncle, there being no reason that they should be punished for their Misfortune, in having their Father die before he could succeed to the Government.

F. I doubt the Place of Scripture you have cited doth not reach this Case of Kingdoms: For first, this being a Municipal Law of the Jews, could only concern that Commonwealth; and secondly, it only relates to private Inheritances: And that this is so may be proved from the next Verse, where it is said, that a Man's Brethren shall be his Heirs; that is, all of them were to be Heirs alike, only the eldest was to have a double Portion. And if this Law concerning Daughters were to reach the Succession of Kingdoms at this day, the Laws of France and other Countries, where Women are barred from succeeding to the Crown, would be against the Laws of God and Nature: And the like may also be said concerning the Succession of the Nephews before their Uncles, or of Uncles rather than the Nephews, whole Fathers never enjoy'd the Crown; divers Nations having different Customs, and that with a like appearance ofReason, concerning it. For on the one hand, if the Son of Abel might have pleaded, that he was the First-born of the eldest Son of Adam, and so ought to represent his Father; or Seth the Uncle might likewise with as good reason urge, that he was more nearly related in Blood to Adam, as being his Son, than the Son of Abel, who was but his Grandson; and besides, being older than he, was endued with more Wisdom and Experience, and consequently was fitter to govern. But if Abel left only one Daughter, or more, I doubt not but the Question would have been harder to be decided: since, if Women are not permitted to govern in private Families, they will not (especially amongst Warrlike Nations) be admitted to govern Kingdoms, especially since it would be left in her power, not only to govern her self, but by marrying to chuse a King for her Subjects, whom they do not approve of. And therefore we read, that in divers of the ancient Kingdoms of the World Women were excluded from the Succession, as they are in France at this Day.

Nor are these the only Questions that either might then, or else have in latter Ages been started concerning Succession in Kingdoms and Principalities, and have been the cause of great Disputes between Pretenders to Crowns, where a King dies without lawful Issue: As, whether a Grandson by a younger Daughter shall inherit before a Grand-daughter by an elder Daughter; Whether the elder Son by a Concubine before the younger Son by a Wife? From whence also will arise many Questions concerning Legitimation, and what by the Laws of Nature is the difference between a Wife and a Concubine? All which can no ways be decided but by the municipal or positive Laws of those Kingdoms or Principalities. It may further be enquired, whether the eldest Son, being a Fool or Mad-
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Mad-man, shall inherit this paternal Power before the younger, a wife Man? And what degree of Folly or Madness it must be that shall exclude him? and who shall be the Judges of it? Alio whether the Son of a Fool so excluded for his Folly that he succeeds before the Son of his wilder Brother who left reign'd? Who shall have the Regal Power whilst a Widow Queen is with child by the deceased King, until he be brought to bed? These and many more such Difficulties might be propos'd about the Title of Succession, and the Right of Inheritance to Kingdoms, and that not as idle Speculations, but such as in History we shall frequently find Examples of, not only in our own, but likewise other Kingdoms. From all which we may gather, that if the Laws of God or Nature had prescribed any set Rules of Succession, they would have gone farther than one or two Cafes; as concerning the Succession of elder Sons or Brothers, where an elder Son dies without issue; and would also given certain infallible Rules in all other Cafes of Succession besides thefe, and not have left it to the Will or particular Laws of divers Nations to have establishes the Successions so many several ways, as I am able to these have been practis'd in the World.

M. I must confess you have taken a great deal of pains to perplex the Succession to Adam, which seems designed for nothing else, but to make me believe, that if Adam or any of his Sons were Kings or Princes, it must have been by the Consent of the Children or Descendants: Which is all one as to say, that those ancient Princes derived their Titles from the Judgment or Consent of the People, the contrary to which is evident as well out of Sacred as Civil History. F. Since you appear to His-tory, to History you shall go; and to let you see, that I have not invented these Doubts about Succession of my own head, and that there might have very well been a real Dispute about the Succession to Adam in the Cafes I have put, may appear by the many Disputes and Quarrels that have been in several Nations concerning the Right of Succession between the Uncle and the Nephew; of which Grotius is so forcible, that he confesses, in the latter end of the G.R.P. LI. was lain to be so by Civil Wars, as well as private Combats; and therefore he is forced ingeniously to confess, that this Right been practis'd divers ways according to the different Laws and Customs of Nations: And he gives us here a Difference amongst the Germans, as also the Gauls and Vandals, Nephews were not admitted to the Succession of the Crown before their Uncles. The like may be said of the Saxons and Normans; and therefore we find in our ancient English History, that before the Conquest the Uncle, if he were elder, always enjoyed the Crown before the Nephew; which I can more particularly shew you, if you think fit to question it. The like manner of Succession was also amongst the Irish-Staes for above 300 Years after Farus their first King. The like Customs was also observ'd amongst the Irish, as long as they had any Kings amongst them, and it is called the Law of Tomb while the same was also observed in the Kingdom of Cathilo, where, after the Death of Alphasso the Fifth, the States of that Kingdom admitted his younger Son Senna to be King, putting by Ferdinando de la Corda, the Grandson to the late King by his eldest Son, tho' he had the Crown left him by his Grandson behind him by his eldest Son, as also a younger Son named Robert, Pope Clemens V. he gave Judgment for Robert, the younger Son of Charles, who Brother to King Richard the Firth, was declared King of England by the Edicts, and the King of England by the Edicts, by Arith Earl of Britam, Son of Geoffrey the elder Brother. The same, who was Lord Chief Jutico under Henry the Second, in that little Treatise we have of his, makes it a great question who should be preferred to an Inheritance, the Uncle or Nephew. But as Daughters, whether they shall inherit at all or not, or at least be preferred before their Uncles, is much more doubtful; since not only France, but most of the Kingdoms of the East at this day, from Turkey to Japan, do exclude Women from the Throne: And it was likewise as much against the grain of the ancient Northern Nations; and hence it is that we find no mention of any Queen to have reigned amongst the antient German or Irish-Staes, and never but two among the English-Staes, and those by Murder or Uprightness, and not by Election.
as they ought to have done. And upon this ground it was, that the Nobility and People of England put by Maud the Empress, and preferred Stephen Earl of Blu to the Crown before her: For tho’ he derived his Affinity to the Crown by a Woman, yet being a Man, he thought himself to be preferred before her. So likewise in the Kingdom of Arragon, Mariana in his History tells us, that ancietly the Brother of the King was to inherit before the Daughter. Examples may also be given of divers of the other Iniances, but these may suffice.

I pray give me leave to interrupt you a little: For by these Examples you would seem to infer, that these Laws about settling the Succession of Crowns in several Kingdoms depended upon the Will of the People; whereas I may with better reason supposeth, that if such Laws and Alterations have been in such Successions, they were made by the fole Will of the firth Princes, in which the People had no hand: For in the most antient Monarchies there was a Time, when the People of all Countries were governed by the fole Wills of their Princes, which by degrees came to be so well known in several Iniances, that inferior Magistrates needed not refer to them in those cases; and the People being for a Confirmation of the Estates, and to such Usages, they grew easy and familiar to them, and so were retained, tho’ the Memory of those Princes who first introd’ed them was lost; and after Kings finding it better to continue what was so received, than to run the hazard and trouble of changing them, were, for their own ease and the good of their Subjects, contented they should be full from Age to Age so continued. Which Custom may hold as well in Laws about Succession as other things; and therefore we find that even in those Monarchies, where the People have nothing to do in making Laws, Women are excluded; which could proceed at first from nothing else but the declared Will or Law of the first Monarch. So likewise the Original of the Salique Law, is wholly attributed to Pharamond, the firth French King: And Mariana (whom you lately cited) tells us, that Alphonso, King of Arragon made a Law, that where Heirs Male were wanting, the Sons of a Daughter should be preferred before the Aunt; which Law is wholly attributed to the King, for he adds presently after: Sic jure usque ad Regum arbitrium jura regnandi comman-mentur.

F. Granting all this true that you have said, you cannot but confess, that the Laws of God and Nature have established nothing in this matter, or else it could not be in the power of Kings to make or alter Laws concerning the Succession, as your last Quotation intimates they may: Yet even in the most absolute Monarchies the Laws about the Succession of the Crown must wholly depend upon the Consent of the People, who are to see them obsered, or else every Monarch might alter these Laws of Succession at his pleasure; and the Great Turk, or King of France (now the Assembly of the Estates is lost) might leave the Crown to a Daughter, if either of them pleased, and disinherit the next Heir Male.

But as for the Original of this Salique Law in France, you’ll find your self much millatken, if you supposeth, that that Law was made by the fole Authority of Pharamond: For the antient French Historians tell us, that the Body of Salique Laws, which are now extant, were made by the common Consent of the whole Nation of the Franks, who committed the drawing of them up to three Judges or Commiffioners, and which Laws Pharamond did only confirm: And any one that will but consul tho’ Historians may see, that Kings were so far from having the sole Legislative Power in their own hand, that they were frequently elected by the Estates. Nor is that true which you cite from Mariana, that the Kings of Arragon had Power alone to make Laws: It appears quite contrary from the Constitutions of that Kingdom, where the King could do nothing of this kind without the Consent of the Estates, and was not admitted to the Crown without taking an Oath to the Chief Justice in the Name of the People, that he would observe the Laws and Constitutions of the Kingdom, otherwise that they would not be oblig’d to obey him.

But at once to let you fee, that about the Succession of the Sons or Defendants by Daughters, the Cafes are much more nice and intricate; and that when such Cafes happen in limited Monarchies, where there is an Assembly of Estates, they are the fole Judges in such Differences, may appear by two famous Examples in modern History: The first is in Scotland, about 400 Years ago, when after the Death of King Alexander III who died without Issue, when two or three severall Competitors claim’d a Right to the Crown, as descended from severall Daughters of
of David Earl of Huntington, great Uncle to the last King, the chief of which being John Baliol and Robert Bruce, the Estates of the Kingdom not being able to decide it, they agreed to refer it to Edward I. King of England, who adjudged the Crown to Baliol: Yet did not this put an end to this great Controversy: for not long after Baliol being deposed, Bruce revived his Title, and the States of Scotland declared him King, whose Polterity enjoy it at this day.

A like Case happened in the last Age in Portugal, after the Death of King Henry, renamed the Cardinal, without Illue, when no less from four eminent Competitors put in their Claims; some claiming from the Daughters of Don Duarte, youngest Brother to the last King Henry; but the King of Spain, and other Princes, as Sons to the Sifters of the said King, Henry dying without Illue, left ten Governors over the Kingdom, to deckle, together with the Estates, the Differences about the Succession; who quarrelling among themselves, as also with the Estates, before it was decided, Philip II. King of Spain, raised an Army, and soon conquered Portugal: And yet we have seen in his Grandson’s time, that the Estates of Portugal declared this Title void, and the Crown was settled in the Polterity of the Duke of Braganza, who still enjoy it.

And how much even Kings themselves have attributed to the Authority of the Estates in this matter, appears by the League made between Philip the Long, King of France, and David King of Scots, wherein this Condition was express’d: That if there should happen any Difference about the Succession in either of these Realms, he of the two Kings, which remained alive, should not suffer any to place himself on the Throne, but him who should have the Judgment of the Estates on his side; and then he should with all his Power appole him, who would after this censel the Crown. To conclude, I cannot see any means how, if such Differences as these had affen in the first Generation after Adam, I say, how they could ever have been decided without a Civil War, or else leaving the Judgment thereof to the Heads or Fathers of Families, that were then in being: Which how much it would have differed from the Judgment or Declaration of the States of a Kingdom at this day, I leave to your self to judge.

M. I shall not trouble my self to determine how far Princes may tie up their own hands in this matter of the Succession, and leave it to the States of the Kingdom to limit or determine of it; but from the Beginning it was not so; and therefore give me leave to trace this Parental Government a little farther: For F.P.O. 17: that I grant, when James and his twelve Sons went into Egypt, together with their Families, they exercized a Supreme Patriarchal Jurisdiction, which was intermitted, because they were in submission to a stronger Prince; yet after the Return of the Kings of Scotland out of Bondage, God from a Special Care of them chose Moses and Joshua successively to govern as Princes, in the place and stead of the supreme Fathers; and after them likewise for a time he raised up Judges, to defend his People in time of Peril. Yet that all these were endowed with Regal Authority, may appear, in that Moses is called Deuteronomy, a King in Jethron, (that is, over Israel.) And when Moses saw that he was to die, he befor’d God, to be a Man over the Congregation, that the Congregation of the Lord he was as Sheepe which have no Shepherd. And as for the Judges, it is apparent from the Book that bears their Name, that they had Power of making Peace and War, and of judging in all Causes of Appeal; infomuch that whoever would not hearken to the Priest, or to the Judge, even that Man should die. But when God gave the Judges Kings—

I pray give me leave to interrupt you a little, for I have a great deal to say against your Notion of the Government of the Israelites before they had Kings actually nominated by God; for notwithstanding all you have said, it doth not appear to me, that either Moses, Joshua, or the Judges, were any more than figuratively or in a larger Sense to be called Kings: For as for Moses’s being called King in Jethron, he only calls himself so Poetically, in that excellent Hymn of Blessing, which he befor’eth upon the twelve Tribes; For certainly God did not suppose him to have been a King, when in Deut. 17. 14. he speaks of the Children of Israel letting a King over them, as a thing that was to happen many Years after, and there lays down Rules how he should govern himself, which had been needles, if they had had a King already. And that Moses was not a King, Jeshaphat himself test us in his Antiquitie, lib. 4. where he makes Moses to have instructed the Children of Israel at the time of his Death to this purpose: Artificery is the left Form of Government, and the Life that is led under it the most happy; and these-
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therefore let not the design of any other sort of Government take possession of you, owing no other Master than the Laws, and doing every thing according to it: For God is your King, and that is sufficient for you. And if Moses was no King, then certainly Jethro was none neither.

M. Pray give me leave to answer what you have now said against the Kingly Power of Moses and Jethro: For if you will please to remember, that tho' the Sam- terth in had been constituted before this time, yet Moses esteemed them as Shee pine, without a Shepherd, if a Man was not set over them which might go out before them, and which might lead them out, and bring them in; and God approved his Desires, and appointed Jethro to succeed him, and the People received him accordingly, and told him: All that thou commandest us we will do, and whatsoever thou sendest us we will go: according as we hearken unto Moses in all things, so will we hearken unto thee. If this were not Kingly Power, then is there no such thing. So that this Dinecouse, which Jethro puts into Moses's Mouth, seems directly contrary to Moses's Thoughts and Practice. And whereas he makes Moses to have opposed Obedience to the Laws to Kingly Government, it is a pure Greek Notion: For whilom the Greeks lived under Kings, they had few or no Laws; but when they set up Commonwealths, they then found the Necessity of having Laws, and then the Dominion of Laws was opposed to the Government of Princes: But this was contrary to the Practice of Israel; for they were to live according to their Laws, as well under Kings as without them, in all Matters and Conditions; and their Kings were bound to govern them by the Law, and not by their Will. And this was contrary to the Law. So that in this Jethro clearly made the ancient Custom of his Country to comply with a Greek Notion, that had no being for some hundred of Years after Moses was dead.

And as for the Time of the Judges, even in the Intervals between them, when every one did that which was right in his own eyes, even then the Israelites were under the Kingly Government of the Fathers of the particular Families, over whom the Prince or Head of it had likewise a supreme Power.

F. But pray give me leave to speak a little farther: Let me ask you, what is an Aristocracy, if this be not? viz. an Assembly of the Elders, or chief Fathers of Families of each Tribe, meeting, consulting, and resolving of the publick Affairs of the Commonwealth, under their Head or President, the Chief of the Tribe. And this is the Government for which Jethro makes Samuel so much afflicted, when the People would quit it for a Monarchy.

M. I think you are much mistaken in this point; for it is no where declared, that these Fathers of Families governed their own Families independently; for then there would have been no publick Government at all: Nor yet is it said, that these Fathers governed by Majority of Voices chosen out of themselves; for then, I grant, it would have been a Democracy: Nor yet doth it appear, that a few of the better sort of Fathers of every Tribe governed it by a Council and Magistrates, or that there was such Council of the several Tribes; but on the contrary, every Tribe was governed by the Prince or Head of it; and the Prince Moses calls, the Heads of the House of their Fathers, in Numbers, 2. 2 and who were over those that were numbered and made their Offerings. And Moses tells us particularly what every Man's Name was; as, Nathan the Son of Amminadab, of the Tribe of Judah; and Nathaniel the Son of Zuar, Prince of Issachar, &c. Now if there was in those days any Government at all in Israel, then were these Princes the Governors of the several Tribes, and so every Tribe was under a Monarch, tho' the whole State of Israel was not under any one Person, or confiant flandeing Council, and consequently was a System of little Monarchies.

F. I am not at all better satisfied with your last Reply: For in the first place I have Jethro on my side, who must needs know what the Government of his Country had been, better than you or I; and he expressly calls it an Aristocracy, in which the Judge (when there was one) was only in the nature of a General or Statholder, to whom the last Appeal was to be made in all Causes: And it is also as plain, that neither Moses, Jethro, nor the Judges, had Monarchical Authority: For tho' it be true, the two first could make War and Peace, yet this was also with the Consent of the Princes of the Congregation, as plainly appears by the Story of the Peace made with the Gibeonites, which the Princes of the Congregation confirmed by an Oath. Neither could they raise Taxes upon the People, or take any thing from them without their Consent; and therefore Samuel appeals to them, how little
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little he had oppress'd them, Who is Ox or whose As I have I taken? whom have I defrauded? whom have I oppress'd? Neither could they, nor the Judges their Successors, make any new Laws for the People; God himself being their King and Legislator: And therefore what you urge as to the Regal Power of Moses and Joshua, after the Sancdunity had been constituted, amounts to no more, but that both of them were Heads, or Captains of the People, to lead them out to War, and bring them back again, which is express'd by going in and out before them; and their Obedience to their Military Orders, as also to such things which God hath expressly commanded, is underfoot by these Words: All that thou commandest no, we will do; and whithersoever thou sendest us, we will go: Yet shall this was with respect to their obtaining the Land of Canaan; for otherwise, if either Moses or Joshua should have gone about of their own heads to have led them again into Egypt, I suppose you will not say, the Israelsites were bound either to have followed them, or submitted to them; but rather might have refilfed them in such case.

And therefore Josue's Speech, which he makes Moses to deliver, is not so ridiculous as you are pleased to make it: For the Laws here mentioned by him, and here let it in opposition to Monarchy, were not such Laws as were made by the Greek Commonwealth, as you suppose, but the Law given from God by his hand; and these he might well think were sufficient, with such Power as he and Joshua enjoyed, without having any recourse to a humane Monarchical Government, since God himself was their King: And as for the Judges that succeeded them, they had much less Power than either Moses or Joshua; since it is apparent by the Story of Deborah and Barak, Judges the 4th, who were the Princes or Generals of the Tribes of Zebulun and Naphtali, that they had no Power to force the People to go out to fight against the Canaanites, whether they would or no. And therefore you will find in the next Chapter, in the Song of Victory which they sung, that many of the Tribes came not into their assistance; therefore it is there said, That for the Drunken's Reuben there were great thoughts of hearts; and therefore they ask, Why abidest thou among the Shepherds? etc. And presently after it is said, Gilead abode beyond Jordan: and why did Dan remain in the Ships? After concluded on the Sea-shore, and abode in his Breach. And so they conclude with, Curfe ye Meron, curfe ye bitterly the Inhabitants thereof, because they came not to the help of the Lord against the mighty.

So that I am persuaded it was the want of this Power in the Judges of making Laws, of imposing Tributes or Taxes, and of forcing Men to serve in the Wars against their Enemies (which they did before only as Volunteers) that made the Israelites the more disinclined to have a King over them, like those of other Nations, who were ended with these Prerogatives. And therefore the best Commentators do interpret the Prediction of Samuel concerning the manner of the King that should reign over them, and would take their Sons for his Charities and his Horsesmen, and to be Captains over thousand, &c. to relieve his Royal Power of enrolling, and making them serve in his Army, either as Officers or Soldiers, and the taking of their Fields and their Vineyards, and the Tenth of their Seeds, &c. to give his Officers and Servants; to signify no more than his Power of imposing publick Tribute, and Impositions on the People, to maintain his Royal Splendor, and the Necessities of the State, as other neighbouring Kings were wont to do; all which they not being used to before, they should cry unto the Lord by reason of them, as a great Oppression: And that Saul, when he came to be King, used this Prerogative, of forcing the People to come and serve in the War, in a higher manner than Samuel or the Judges had done before, appears by the 1st Chapter of this Book, when Nahor the Ammonite came to make War against Teleph: Saul took a Yoke of Oxen, and brake them in pieces, and sent them through all the Coasts of Israel by the hands of Messengers, saying, Whosoever cometh not forth with Saul, and after Samuel, so shall he be done unto his Oxen: And the Fear of the Lord fell on the People, and they came out with one Consent.

And it seems evident to me, that the Power, which Samuel had before the Children of Israel desired a King, was not Monarchical, but mix'd of Arisocracy and Monarchy together, in which Samuel as Judge had a Judicial Authority, and likewise a Supreme Military Power of leading them out to War against the Philistines and other Enemies; and yet notwithstanding, the Supreme Power, in all other things, remained wholly in the principal Heads or Fathers of the Tribes, which whether they were chosen by the People, or enjoyed it by Right of Inheritance, I con-
I confesse the Scripture is silent; and therefore I am not at all satisfied with your Notion, that the Government of these People, when they had no Judges, consist'd of twelve petty Monarchies, under the Heads or Princes of the Tribes; for there is no Authority in Scripture to countenance any such Opinion, the place you bring for it out of the first and seventeenth of Numbers not at all proving it. For, though I grant there were twelve Princes of the Tribes, whose Names are there set down, and who are called Heads of the Houses of their Fathers, yet is it no where said, that these were endued with Civil Power, or were chief Rulers over the Tribes; for it is apparent all Civil Power remained then in Moses and the Sanhedrim, who under him decided all Controversies: So that it is most natural to suppose, that these Heads of the Tribes were not Civil Magistrates, but the Military Leaders, or Captains of each Tribe, when they went out to War, and are the same, who, in this Chapter, are called the renowned of the Congregation, &c. and Heads of the Thonfands of Israel.

Nor doth it follow, that because there were such Officers in Moses's Time, that they must continue the same under the Judges, after so many Slaveries and Oppressions that this People had undergone; or that if they did still continue, that their Power was Monarchical; or that they could do any thing without the Consent of the Heads, or Fathers of Families of each Tribe, in whom I suppose the Supreme Authority was in the Intervals of the Judges: And therefore we find in the ninth of Judges, that the Men of shechem, and all the House of Millo made Abimelech King; that is, not over all the Tribes of Israel, but over Ephraim and half Manasseh only, which is to be understood by Israel in this Chapter; where it is said, ver. 18. by Jotham the Son of Gideon, speaking to the Men of shechem, That they had made Abimelech, the Son of a Maid Seruant, King over the Men of shechem, because he is your Brother.

So likewise after Abimelech was dead, the Children of Ammon made War against the Children of Israel, as appears by the tenth of Judges; and they encamped in Gilead, which was a Country on the other side of Jordan, which was inhabited by the Reubenites, the Gadites, and the other half of Manasseh, who by themselves consulted for their own Safety; for it is said in the last Verse of this Chapter, And the People and Princes of Gilead said one to another, What Man is he that shall begin to fight against the Children of Ammon? He shall be Head over all the Inhabitants of Gilead. From which Assembly and Confutation it plainly appears, that they looked upon themselves to have a Right of setting a Prince or Head over them, distinct from the rest of the Tribes of Israel: And in the next Chapter you will find, that Jephthah was made Prince, or Judge by the Elders of Gilead. And tho' it is said that Jephthah went with the Elders of Gilead, and that the People made him Head and Captain over them, yet that can't be meant of all Israel, but only of the two Tribes and a half, which inhabited the Land of Gilead; for we find, Chapter the 12th, the Men of Ephraim making War upon Jephthah, because he had not called them out to fight against the Ammonites; and you will find, ver. 7., that Jephthah gathered together the Men of Gilead, and fought with Ephraim, and that the Men of Gilead smote Ephraim. In all which Story it appears, there was none concerned in this War but the Gileadites only; that is, those Tribes that inhabited that Region.

I have likewise another Authority for this separate Power of each Tribe, when there was no common Judge over them; as may appear from the Story of the Danites in the 18th Chapter, who wanting a Country to dwell in, it is there said the Children of Dan lent five Men of their Family to spy out a Country for them; which thing could not be done without an Assembly of the Chief of the whole Tribe; Neither is there any mention in all this Story of any such Chief, or Prince of the Tribe, as you suppose, only that six hundred Men went by common Consent, who made War, and conquered the City and Country of Laish, which they called Dan.

But that all the Children of Israel, during the Intervals of the Judges, did meet in one common Council or Assembly, upon any great Accident or Emergency, appears by the 30th Chapter of this Book of Judges; where, after the Rape and Murder committed upon the Levite's Wife, it is said in the two last Verses: Then all the Children of Israel were one, and the Congregation was gathered together as one Man, from Dan even to Beer sheba, with the Land of Gilead, unto the Lord in Mizpeh. And the Chief of all the People, even of all the Tribes of Israel, presented them-
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themselves in the Assembly of the People of God, four hundred thousand Postmen that drew Sword: Who being thus met, the Levite, the Husband of the Woman that was lain, having told them the Story, concludes thus : Behold ye are all Children of Israel, give here your Advice and Counsel ; and the Rebut is, All the People arose as one Man, shouting, We will not go up to do his Thing, neither will we any of us turn into his House, &c. Now if this were not as Democratical an Assembly, as you can any where meet with in either the Roman or Greek Histories, I leave it to you your self to judge; though I grant the chief of the People, or Tribes of Israel, might prelude in it. To conclude ; I think I may with very great Reazon maintain with Josephus, that the Government of the Tribes of Israel was Aristocratical before their setting a King over them: For had Samuel been endued with an absolute Monarchical Power (as you suppute) it had been a very needful Request of the Children of Israel, to ask him to make them a King to judge them, as other Nations.

M. You have made a very long (I had almost said a tedious) Discourse to prove, that the Government of the Children of Israel was not Monarchical before the Time of Saul: And though I cannot now well remember all the Particulars of your Discourse, yet this much I can gather from it, that you are fin to confute, that during the Intervals of the Judges, and when there was no King, Judges 21. 16. in Israel, but that every Man did that which was right in his own Eyes: Even then the Israelites were under the Kingly Government of the Fathers of particular Families: For in the Confusion after the Benjamin War, you mentioned, for the five Young Wives for the Benjaminites, we find the Elders of the Congregation bore the only way: To them also were Complaints to be made, as appears by Verse 22. And though mention be made of all the Children of Israel, all the Congregation, and all the People; yet by the Term of all, the Scripture means only all the Fathers, and not all the whole Multitude, as the Text plainly expounds it self, in the second of Chronicles, where Solomon speaks unto all Israel, 1 Kings 8. 14. the Elders of Israel are expounded to be the Chief of the Fathers of the Chiefs of the Tribe of Israel.

But I am as edified with your Notion, in making any of the Tribes to have for a Judge, or Captain over themselves distinct from the rest of the Tribes of Israel. For the Example you quote of Abimelech makes directly against you; it being said, Verse 22d of that Chapter, that Abimelech reigned three Years over Israel; and in the next Chapter it is said, there arose to defend Israel, Tola the Son of Puah; and that he judged Israel, that is, all the twelve Tribes, twenty Years: And if Gideon, the Father of Abimelech, was Judge over all Israel, as it appears by the Story he was, it will likewise follow, that Abimelech his Son succeeded (though by Force and Murder) into the same Power. It is likewise as plain, notwithstanding what you have said to the contrary) that the Elders of Gilead did not alone make Jephthah their Head or Captain. For though I grant Jephthah tells them, that if he fought, and delivered them from the Children of Ammon, that he would be their Head; yet it is plain by the 11th Verse of that Chapter, that Jephthah went with the Elders of Gilead, and it was the People (viz. of all Israel) made him Head and Captain over them; and it appears, that Jephthah sung all these Words before the Lord in Mizpah; where it appears by the 11th Verse of the former Chapter, the Children of Israel were then assembled and in-camped.

Nor am I yet satisfied, but that though God, out of a special Love and Care to the House of Israel, did chuse to be their King himself, yet did he govern them at that time by his Vice- Roy Samuel, and his Sons: And therefore God tells Samuel, They have rejected thee, but me, that I should not reign over them. It seems they did not like a King by Deputation, but defined one by Succession, like all the Nations. All Nations beike had Kings then, and thole by Inheritance, not by Election; for we don't find the Israelites prayed that they themselves might chuse their own King: They dreamt of no such Liberty, and yet they were the Elders of Israel gathered together. If other Nations had elected their own Kings, no doubt but they would have been as defirous to have imitated other Nations, as well in the electing, as in the having a King: And therefore I am sure there is nothing to be found in Scripture that countenances your Notion of the Peoples having a King of their own Kind. But this only by the by.

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But
But to prosecute the matter in hand: When God gave the Israelite Kings, he re-establish’d the ancient, and prime Right of Lineal Succession to Paternal Government. And whenever he made choice of any special Person to be King, he intended that the Issue also should have benefit thereof, as being comprehended sufficiently in the Person of the Father, although the Father only was named in the Grant. Which Lineal Right of Succession continued in the Family of David until such time as his Successors, by their Idolatry, so far provoked God’s Angel as to deliver them up to the King of Babylon, under whose, and his Successors’ Power, they, and their Proliferity, continued Subjects for many Ages, &c.

F. I shall not dispute any farther with you (since I see this to no purpose) concerning the Government of the Israelites, whether it was Monarchical or Aristocratical before the Reign of Saul; nor yet that I positively affirm, that Absimelech or Jephthah, and other of the Judges, were Rulers of some particular Tribes only. Yet very learned Men are of this Opinion, since they can find no other way, but by a Synchronism in the Time of the Judges, as also of the Years of Reh and Servitude, as may appear from Judges 10. ver. 6, 8. compared with Judges 13. 1. to reconcile that great Difference that will be found in the Sacred Chronology, from the Time of the Children of Israel’s coming out of Egypt, to the fourth Year of Solomon, in which the Temple was begun to be built, which doth amount to four hundred and eighty Years; whereas, if you please to take the pains to call up the Years from the Children of Israel’s coming out of Egypt to the beginning of Saul’s Reign, according to the common Account of the Years of the Judges, reckoned with the Reign of Saul, and David; so that that time, if it will amount to 600 Years, which is more by 130 Years than all the time from the said Epocha to the fourth Year of Solomon taken altogether.

But as for the several Tribes, alone, consulting and ordering their own Affairs, it is so plain, from the Examples of the People, and Princes of Gilead, as also from that of the Danites, that you have nothing to object against it. And so likewise in the Instance of all the Children of Israel meeting and conferring what to do with the Benjamites; where, since you cannot deny the Matter of Fact, you have no way to evade it, but by supposing I know not what Egregious Authority in the Fathers of particular Families, whom you do suppose to have then bore the only sway; because it is said, in that Chapter you quoted, that in the Consolation after this War, the Elders of the Congregation proposed it to them, saying, How shall we do for Wives for them that remain, seeing the Women are defiled out of Benjamin? And then follows the Refutation of the Congregation in the next Verse; And they said (ver. 48.) all the Congregation agreed that there must be an interdiction for them that be escaped out of Benjamin, &c. all which amounts to no more than what I granted at first, that the Heads, or Elders of the Tribes presided in this Assembly, and put the Question to them: Which is so necessary in all great Assemblies, that without such Officers they cannot come to a Resolution and therefore you should do well to prove the Monarchical Power of these Elders by some better Authority than this Text.

But if the Judges had Monarchical Power, as you suppose, notwithstanding all you have said against the Peoples electing them, it plainly appears, by the Examples of Abimelech and Jephthah, that the People did often elect a Judge, or Captain over them, without any Nomination by, or Inspiration from God.

But to return to that which is most material: Your supposed Restauration of Patriarchal Government under Moses and Joshua, after the Israelites returned from the Egyptian Bondage, I cannot but here by the way take notice, that the Truth will sometimes slip from you before you are aware: For if it be true what you at first asserted, at our last Meeting, That a Servant, or Slave, and a Subject, were all one at the first; and also that all Monarchs are exalted with Fatherly Power; then if Pharaoh was a Monarch, the Children of Israel were not, according to your Principle, brought into Bondage by Pharaoh, but they were only adopted into another Fatherly Power. But you should have done well to have shewn more clearly than you have hitherto done, that this Patriarchal Jurisdiction was exercised by Abraham, Isaac or Jacob before the Descent into Egypt, since all the Inferences you have yet given of such a Power, have proved very unlucky. For though I read in St. Stephen’s Speech in the Acts, that the Patriarchs moved with Envy out Joseph into Egypt; yet it is no where mentioned, (nor I believe will you your Self affirm)
that these Patriarchs ever had a Monarchical Power. For 'till Jacob went into Egypt, that Power was solely in him, according to your Principles; and after that in Pharaoh as King of Egypt: So that though I can find the Word Patriarch (but once) in Scripture, yet I can see no ground for your Patriarchal Authority, or Jurisdiction; and therefore that could neither intermission, which never had any beginning in Nature.

But after this you tell me, that God chose Moses, and Josua successively to govern as Princes, in the place of those Supreme Fathers, or Patriarchs; which is easily, I confesse, affirmed, only it wants Proof: For though you endeavou're to prove that all Patriarchal Power was Regal, yet it 'll remain unsproved that all Regal Power is Patriarchal. It is true, that God did appoint Moses and Josua to be the Rulers of his People under him; but that doth not at all make out that they succeeded in the Head of Supreme Fathers, much less that they succeeded as Heirs, or Successors, to the Patriarchal Power of Adam. For Moses and Josua being chosen by God to be Rulers of his People, will no more prove, that Government belonged to Adam's Heir, as to his Fatherhood, than God's chusing Aaron, of the Tribe of Levi, to be Priest, will prove that the Priesthood belonged to Adam's Heir, or the prime Fathers, since God could have chosen Aaron to be Priest, and Moses Ruler over Israel, though neither of those Offices were ever settled on Adam's Heir, or the first Patriarchs. So likewise for what you say concerning the raising up the Judges to defend his People, proved Judicial Authority to be the Original of Government just after the same time and came from God raise up such Men, unless Patriarchal Power give a Title to their Government. But to come to your dating Instance, the giving of the Judges to Kings, where by you suppose God re-establish'd the ancient prime Right of Lineal Succession to Patriarchal Government. This I can by no means understand; for if by Lineal Succession, you mean to Adam, I desire to know how you will make it out, that either Saul, or David could be Heirs of Adam's Power, or how the Power that those Kings were invested with by God, was the same Power which Abraham, Isaac, and Jacob enjoyed before. For if you please to consider it, your Hypothesis consists of two Propositions: The first is, that all Patriarchal Power is the same with Regal Power; which if it be proved not to be true, the other convertible Proposition, viz. that all Regal Power is Patriarchal, will likewise be as false. Nor is what you said of all any truer than the rest, that whensoever God made choice of any Perfon to be King, he intended that the Ifue (I suppose you mean his Ifue) should have the benefit thereof: For either Moses, and Josua, and the Judges, were no Kings, (though you have asserted the former to be so) or else they had not the benefit of this Grant. But certainly Saul was a King, and yet his Ifue never succeeded. But you speak very warly so suppose this Grant to be made to the Ifue in general, without specifying in particular who should enjoy it; because I suppose you are sensible, that Solomon, whom God expressly appointed to be David's Successor; and Jehoshapha, whom the People of the Land made King in the room of Josua, were neither of them edles Sons of the Kings their Fathers. To conclude, I desire you would shew me what Relation or Title all Kings, or Princes now a-days have, or can claim as Heirs to Adam, or Noah; or how that Power with which God endued those Fathers of Mankind, is the same which you fay all Princes, or Monarchs, may now claim to be given them, by God: For, I confesse, I can see no Relation at all between them.

M. It may indeed seem absurd to maintain, that Kings now are the Fathers of their People, since Experience shews the contrary. It is true, all Kings are not F. P. 8. the natural Parents of their Subjects, yet they all either are, or are to be reputed the next Heirs to those first Progenitors, who were at first the natural Parents of the whole People, and in their Right succeed to the Exercise of Supreme Jurisdiction; and such Heirs are not only Lords of their own Children, but also of their Brethren, and all others that were subjected to their Fathers. And tho' I have all along supposed, that Patriarchal Government was at first Monarchical, yet I must likewise grant, that when the World was replenished with People, that this Patriarchal Government by Succession ceased, and a new kind of it started up either F.D.O.P. 6. by Election, Conquest, or Iurisposition; yet this was still Patriarchal Power, which can never be loft, or ceafe, though it may be transferred, or usurped; or it may be ordained anew in a Person who otherwife had no Right to it before. Thus God,
God, who is the giver of all Power, may transfer it from the Father to the Son, as he gave Saul a Fatherly Power over his Father Kiñ.

So that all Power on Earth is either derived or usurped from the Fatherly Power, there being no Original to be found of any other Power whatsoever; for if there should be granted two forts of Power without any Subordination of one to the other, they would be in perpetual strife which should be Supreme, for two Supremes cannot agree; if the Fatherly Power be Supreme, then the Power of the People must be Subordinate, and depend on it; if the Power of the People be Supreme, then the Fatherly Power must submit to it, and cannot be exercised without the Licence of the People, which must quite destroy the frame and court of Nature.

F. If this be all you have to say for the Proof of so weighty an Hypothesis, I confess I wonder how you, or any rational Man can lay so great stresses upon it: For though I should grant you, that some Fathers of Families at first became, by the tact or express Consent of their Children and Descendants, to be Kings of Princes over them; yet doth it therefore follow, that all Kings govern by Right of Fatherhood at this Day.

'Tis true you tell me, that all Kings, though they are not the natural Fathors of their People; yet as such be esteemed as such; and in turn they are Successors to such as were so. I grant indeed, if any Kings nowadays could prove themselves right Heirs to Adam or Noah, this were somewhat to the purpose; but to talk of a Paternal Power, proceeding from Election, Consent, or Usurpation, is perfect Jargon to me; for pray tell me, can a Man become the equal of a Father with Paternal Power over me, by my Electing him to be my King? Or can a Man, by Consent or Usurpation, oblige me to yield him a Fiduciary Duty, and Obedience? For it this were so, if a Father of a separate Family (such as Abram was) should be conquered by the Head of another separate Family, may though he were a Thief or a Robber, if once the true Father were killed or destroyed, all the Children and Descendants of the Family must pay the same Duties and Obedience to this unjust Conqueror or Robber, as to their true Father; And the same may be said in Usurpations, in case after the Death of such a Father of a Family, a younger Brother or Nephew should get Possession of the House and Estate, and force all his Brethren and Kindred to submit to him, they must then all own him to be enced by God with the same Paternal Power, which their Father or Grandfather had; and consequently must Honour and Obedience him as their true Father: Both which Examples, being contrary to the common Sense and Reason of Mankind, may shew you, how absurd this Argument is; whereas indeed, Fatherhood being a Relation of Blood, the Duty and Respect we owe to our Father, proceeding from that Piety and Gratitude we owe him, both for our Generation and Education, how can this Relation, or these Obligations be ever transferred to, or usurped by another; so that any other Man can become my Father, or I owe him the like Fiduciary and Respect, as to him that begot me and brought me up?

And though I grant that God may confer a Royal Power on whom he pleases, either by his express Will, or the ordinary course of his Providence; yet when such a Person, who was not a King before, doth become so, I utterly deny that the Power he hath then conferred upon him, is a Paternal Power in relation to his Subjects; which is evident from your own Instance of Saul's becoming a King over his Father Kiñ. For though you say, that God then conferred a Fatherly Power on Saul over his own Father, this is a great mistake: For then Saul would have been immediately discharged from all the Duties of Piety and Gratitude, which he owed his Father; and they were all transferred from Kiñ to Saul; so that after he became King, he might have treated his Father with no more Respect or Duties than any other Subject; which is contrary to God's Commandment, that bids all Men Honour their Father and Mother. And I know not how Kings can be excepted out of this Precept. So that your mistake arises from this preposterous confounding of Paternal Authority with Royal Power; And because Adam, Noah, or any other Father of a separate Family, may be a Prince over it in the State of Nature, that therefore every Monarch in the World is also endued with this Paternal Power: Which that they are distinct, may farther appear from your own supposed Monarchical Power of Adam, who, though granting him to have been a Prince over his Polity, yet did not this discharge any of his
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his Descendants from their Duty and Obedience to their own Father: And though I confess you talked at our last Meeting of a Fatherly Power to be exercised in subordination to the Supreme Fatherly Power of Adam; yet this is a mere Chimera: For Filiation and Obedience, being due by the Commandment only to a Man's own natural Father, can never be due to two different Persons at once, since they may command contradictory Things; and then the Commandment of Honour (that is, obey) thy Father, cannot be observed in respect of both of them; and therefore granting Adam, or Noah, to have exercised a Monarchical Power over their Children and Descendants, it could not be as they were Fathers of Grand-fathers, when their Sons or God-children were separated from them, and were Heads of Families of their own, for the Reapers already given; so that if they were Princes in their own Families, whilst their Sons or Grand-children continued part of them, it was only as Heads or Masters of their own Families, but not by any such Patent or Patent Authority as you suppose. But as for the Conclusion of your Discourse, it being all built upon this false Foundation, that all Power on Earth is derived or usurped from the Fatherly Power; I need say no more to it: For if that be false, all that you argue from thence, concerning the subordination of all other Powers to this, will signify nothing.

I will make out my Hypothesis, notwithstanding all you have said against it: For though I grant the Patent or Patent Authority can never be usurped or transferred; yet you may remember, I at first affirmed, that Adam was F. P. not only a Father, but a King and Lord over his Family, and a Son, a Subject, a Servant, or a Slave, were one and the same thing at first; and the Father had Power to dispose of, fell, or alien his Children to any other; whence we find the Title and Gift of Children to have been much in use in the beginning of the World. When Men had their Servants for a Position and an Inheritance, as well as other Goods; whereupon we find the Power of Castrating or making Eunuchs, much in use in old Times. And as the Power of the Father may be lawfully transferred, or aliened; so it may be unjustly usurped. And though I confess no Father, or Master of a Family, ought to use his Children thus cruelly and severely, and that he sins mortally if he doth so; yet neither they, nor any Power under Heaven can call such an Independent Father or Monarch to an account, or punish him for so doing.

F. I am glad at last we are come to an Issue of this doubtfull Controversy. And though I forced you at our last Meeting to confess, that Fatherly Power was not despotic, nor that Fathers upon any account whatsoever were absolute Lords over their Children, and all their descendants, in the State of Nature: yet now I see, to preserve your first Hypothesis, you are far to recive to this Desertical Power of Fathers in the State of Nature: Because without supposing it, and that it may be transferred or usurped, Princes at this Day (whoom without any Caue you suppose to be endowed with this Patent, Despotic Power) could never claim any Title to their Subjects Allegiance. And then much good may do you with your, and Sir R. F.'s excellent discovery: For if, as you yourself acknowledge, Princes are no longer related in Blood to their Subjects, any nearer than the Children of Adam are to our common Ancestor, the Relation being now so remote, signifies little or nothing, so that the true Patent Authority being lost (as you confess) the Despotic Power of a Lord over his Servants, or his Slaves, only remains: Since therefore you make no difference in Nature between Subjects and Slaves, then all Subjects lie at the Mercy of their Kings, to be treated in all things like Slaves, whenever they please; and they may exercise an absolute Despotic Power over their Lives and Estates, as they think fit: So that I can see nothing that can hinder them from selling their Subjects, or castrating them, as the King of Mongolia doth his Subjects at this Day, and as the Great Turk and Persian Monarchs do use those Christian Children, whom they take away from their Parents to make Eunuchs for their Seraglio's; and then I think you have brought Mankind to a very fine Pass, to be all created for the Will and Lust of so many angle Men, which if it ever could be the Ordinance of God, I leave to your self to judge.

M. I was prepared for this Objection before, and therefore I think it will make nothing against this absolute Power, with which I suppose God to have endowed Adam, and all other Monarchs at the first: So that I am so far from thinking that this Doctrine will teach Princes Cruelty towards their Subjects, that on the B.C.P. 13.
contrary, nothing can better inculcate their Duty towards them: For as God is the Author of a Paternal Monarchy; so he is the Author of no other. He introduced all but the first Man into the World, under the Subjection of a Supreme Father, and by so doing, hath shewn, that he never intended there should be any other Power in the World, and whatever Authority shall be extended beyond this, is accountable to him alone; so that Princes are bound to treat their Subjects, as their Children, with Mercy and Lenity, as far as they are capable of it, and not as their Brutes. And granting that Subjects and Servants, or Slaves, were at first all one, yet I think even they ought to be treated only as younger Children, yet as Children still: Nay even conquered People, that are in some Countries treated as Slaves, and but a little better than Brutes, have certainly a very good Appeal to the Tribunal of God against their Princes, who will undoubtedly right them in another World, if they suffer patiently in this. If it be the Character of a good Man, that he is Merciful to his Beasts, I doubt not but the very Brutes have a Right to be governed with Mercy and Justice, and that God who is their Creator, as well as ours, will punish cruel Men if they tyrannize over them; and much more if any Man shall exercise Cruelty on another Man, who is of the same, not only Nature, but Blood.

Whereas all other Hypotheses leave the Prince at Liberty to make his Bargain with his Subjects as well as he can; and if they be bought by Force, or Fraud, to an entire Submition at Discretion, they may then be treated accordingly, and must stand to their Compact, be the Terms never so unequal, and then the Cafe of a Man, and a brute, may differ very little; and if the Subject may refiil, the Prince may take care to prevent it, and the War may be just on both sides, which is impossible.

I could likewise shew you many other Benefits that would accrue both to Princes, and Subjects, were this Hypothesis but once generally taught, and believed by both of them.

F. I pray, Sir, spare the giving yourself so much trouble, for I will not dispute how honestly this Hypothesis may be designed, or what mighty Feats it might do, were it once universally received. But this neither you, nor I, can ever except will come to pass, because neither Princes, nor People, will ever believe it to be true: For in the first place, the People will never be convinced of it, it being above a vulgar Understanding, that their Princes, whom they are very well assured are not their Fathers, nor yet right Heirs to Adam or Noah, should notwithstanding lay claim to a Paternal Authority over them. In the next place, Princes can never believe that they are Fathers of their People, for the same Reason: I grant indeed, that they may be very willing to believe one half of your Hypothesis, that they are absolute Lords and Maiters over them, and so would be willing upon that account to use their Subjects like Slaves; but that they should look upon themselves as Fathers of their People, and the Heirs or Aignes of Adam or Noah, I think no Prince in Christendom can be so vain to believe. So that whatever Power Adam or Noah, or any other Father, might have been intrenched with by God, because of that natural Affectation which they were supposed to bear towards their Children; yet sure Princes at this Day can lay no claim to it, since none but true Fathers can be ended with this Paternal Affectation.

And whereas you suppose, that Princes ought to treat their Subjects, nay even those that are conqured, like Children, and not like Slaves, or Brutes; this can have very little effect upon them, who can as little believe it, as the People. For if Monarchical Power is not Paternal (as I think I have clearly made out) then there can be no Obligation upon Monarchs to treat their Subjects like Children: And therefore, since the Despotical or Masterly Power only remains, which is ordained principally for the good and benefit of the Maiter, and not of the Servant or Slave; who can blame Princes, if they exact the utmost of their due Prerogatives, and fo treat their Subjects like Slaves, whenever it serves their Humour or Interest so to do? Nor are they any more to be blamed for thus exercising their Power, than a Maiter of Ngeger in the West-Indies is, for making the bell of the Servant, of those Slaves, whom he hath bought with his Money, or are born in his House: Whom though I grant he is not to use like Brute Beasts, for the Reasons you have given; yet doth it not therefore follow, that he is obliged to use them like his younger Children; for then sure he could not have a Right to keep them for Slaves as long as they lived, and to let them enjoy no-
thing, but a bane miserable Subsistance. And there is very good reason for this, for almost every Planter in Barbadoes knows very well the difference between the Relations of a Father, a Master, and a Prince, and that the one is not the other; and it is from your jumbling together these three different Relations, of a Son, a Slave, and a Subject, that hath led you into all these mistakes. For though it should be granted, that the Right of a Master over his Slaves may be acquired by Conquest, or signified to, or usurped by another; yet certainly, the Authority or Relation of a Father, and the Supremacy or Civil Power of a Monarch, can never be acquired by Conquest, nor yet usurped, without the consent and submission of the Children and Subjects.

And therefore, I do not think your Hypothetical are the better, by your sounding it upon an Imaginary Paternal Power, rather than upon Conquest, which I am sure can never be made upon unequal Terms, as to render the Case of a Man and a Slave very little different; since it would be to no purpose for any Subject to make a Bargain with their Monarch, or Conqueror; and yet, to leave themselves in as bad, or worse condition, than they were in the State of Nature: So that however convenient your Hypothetical may be, either for Prince, or People, it signifies no more than the Papish Hypothetical of the Infallibility of the Pope, and a General Council, which because they suppose necessary, and is indeed very beneficial to their Church; therefore God had preferred it upon them; but how false a way of Reasoning this is, hath been sufficiently demonstrated. The Application of this Comparison is so obvious, that I leave it to you to make.

M. I cannot but think, for all you have yet said, that God hath ended all Princes with a Paternal Authority, and for this, I have the Church of England on my side, which in its Catechism, in the Explanation of the Duties contained in the Fifth Commandment,Multiplicity thy Father, &c. doth comprehend under that Head, not only to Honour and Sustain our Fathers and Masters, but also in Hypocrisy, and Obe the King, and all them that are put in Authority under him; as if all Power were originally in the Father: So that this Command gives him the Right to govern, and makes the Form of Government Monarchical. And if Obedience to Parents be immediately due by a natural Law; and Subjection to Princes, but by the Mediation of an Humane Ordinance, what reason is there, that the Laws of Nature should give place to the Laws of Men? As we see the Power of the Father over his Child gives place, and is subordinated to the Power of the Magistrate. And that this is not the Doctrine of Christianity alone, but was also believed by the best Moralists amongst the Heathens, may appear by this remarkable Passage out of Seneca de Clementia, which is so put to this purpose, that I took the pains to translate it into English in my Common-place-Book: Some of which I will now read to you. What is the Duty of a Prince? That of kind Parents, who use to chide their Children sometimes severely, and at other times with more forbearance, and sometimes correct them with blow. And after having forgiven, that a good Father will not proceed to disinherit his Son, or inflict any more severe Punishments upon him, till he be guilty of all sorts of Amendment; he proceeds thus: No Parent proceeds to Expiration, till he hath sent from all other Remedies. That which becomes a Parent, becomes a Prince, who is filled without fearness the Father of his Country, and all our other Titles, we confide them (i.e. the Emperors) Honour. We have called them the Great, the Happy, the August, and hoped upon ambitious Majesties all the Titles we could invent, in giving these to them: But we hope filled him the Father of his Country, that the Prince might consider the Power of a Father was given him: Which is the most temperate of all Powers, confounding the Welfare of the Children, and preferring their good before its own.

And as for your Objection, why Princes cannot be loved and revered, as if they were our Fathers, because not being our Fathers indeed, they may possibly want that Natural and Fatherly Affection to their Subjects; and consequently may tyrannize over them; I think this is easily answered: For,

Eph, God, who is, and ever was the true Dispenser of Kingdoms, hath in his Hands the Hearts of all Princes, and endows them with such Affections, as he thinks fit, not only towards the People in general, but towards each particular Person: And therefore, as he was the Author of all Government, and is still the Preferer of it; so no inconvenience can happen, but he is able to redress it.
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Secondly, That there was as great, or rather greater Inconveniences, which sprung at first from the too great Lenity of these natural Princes, for want of Power or Will to punish the disorders of their Subject Children, as have ever sprung since from the Tyranny and Cruelty of the worst Princes: And I believe, to this was owing that excessive Wickedness, which forced as it were God Almighty to put an end to the first World, by that time it had flowed about 1600 Years. And we see afterwards Eli and Samuel, good Men, and severe Judges towards others, were yet too indulgent to their own Children; which shows the weakness of your Realms, and the greatness of the Wisdom of God, in making all Government to spring from Paternal Power, which is the mildst of all Powers, and to defend by degrees to Hereditary Monarchies, which are the Drunkest, the most Natural, and the best of all Governments, and in which the People have the least Hand.

F. I see plainly, that you think the Law of Nature or Reason are not on your side, and therefore you are forced to recur not to the express Words of Scripture, but to the Paraphrase or Explanation of them in our Church Catechism, which certainly never was intended to have that consequence drawn from it which you have made; for though you are pleased to omit one part of the Commandment, and translate the Words are, as you, your Authority from Adam’s Honour thy Father, and thy Mother; and if from Honour thy Father, you will gather that all Power was Originally in the Father, it will follow by the same Argument, that it must have been as Originally in the Mother too: Father, and Mother, or Parents, being mentioned together, in all Precepts in the Old and New Testament, where Honour or Obedience is enjoined on Children: And if these Words, Honour thy Father, must give a right to Government, and make the Form of Monarchical; and if by these Words must be meant Obedience to the Political Power of the Supreme Magistrate, it concerns not any Duty we owe to our natural Fathers, who are Subjects; because they, by your Doctrine, are deprived of all that Power, it being placed wholly in the Prince, and so being equally Subjects, and Slaves with their Children, can have no Right by that Title to any such Honour or Obedience, as contains in it Civil Subjection. But if Honour thy Father, and thy Mother, signifies the Duty we owe our natural Parents, (as by your Saviour’s Interpretation, Matthew 15.4. and in all the other places ‘tis plain it doth) then it cannot concern Political Obedience, but a Duty that is owing to Persons who have no Title to Sovereignty, nor any Political Authority, as Monarchs over Subjects. For Obedience to a private Father, and that Civil Obedience which is due to a Monarch, are quite different, and many times contradictory, and inconsistent with each other. And therefore, this Command, which necessarily comprehends the Persons of our natural Fathers and Mothers, must mean a Duty we owe them distinct from our Obedience to the Magistrate, and from which the most absolute Power of Princes cannot abrogate us. And to make this yet plainer, suppose upon your Hypothetics, that Seth, as eldest Son of Adam, was Heir of all his Patriarchal Power, how could all his Brethren and Sitters Honour, that is, Obev Eve their Mother, supposing Seth, and be, to have commanded them things contradictory at the same time?

So, that though I grant the Compilers of our Church Catechism did intend in this Explanatio to comprehend all the great Duties towards our Governors; yet it is plain, they never dreamed of this far-fetched Inference, that you have drawn from their Explanation of it; for though under this Command of Honour thy Father, and thy Mother, they do indeed comprehend Obedience and Honour to be due to the King, Or this so more proves that they believed all Kingly Power to be Paternal, than that because they likewise there infer from this Command, a Submission to be due to all Governors, Teachers, Spiritual Fathers, and Masters, that therefore all these Persons by name do likewise derive their Authority from Adam’s Fatherhood. or that because under the Command against bearing False Witness, we are taught to refrain our Tongues from Evill Speaking, Lying, and Slanderous, that therefore all Lies, and Evil Speaking whatsoever, is downright bearing False Witness against our Neighbour; since nothing is more certain, than that a Man may commit either of the former, without being guilty of the latter. And to answer your Query, if Obedience to Parents be immediately due by a Natural Law, and Subjection to Princes but by a Human Ordinance, what reason is there that
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that the Law of Nature should give place to those of Men? I can easily reply, that the Power of a Father over his Child gives place and is subordinate to the Supreme Power, because they are both ordained so by God in the Law of Nature; it being highly reasonable, that the good of a private Family should give place to the common good of the Commonwealth, which is a sufficient reason, and extends to all Nations, which never so much as heard of the Ten Commandments.

But to come to your Quotation out of Seneca, I think this hath a great deal left weight in it, than your Argument from the Fifth Commandment: For though this Philosopher went to the Emperor, to persuade him to Clemency; yet this I am sure of, that he never dreamt of this Notion of Adam's Sovereignty, or believed that every Prince was endued with Paternal Authority, because amongst other Titles he was styled Pater Patriae. And therefore what this Author here says, is to be looked upon only as a Rhetorical Flourish, or, at the most, to be understood but in a Metaphorical sense; the Arguments of this Author not being to be always taken strictly as a Logician, but only as an Orator; who was to make use of all Appearances of Reason to persuade a young Prince to Mercy and Clemency; and yet all this was not sufficient, as Seneca himself found; before he died, by woful Experience. And Seneca very well knew, that Tully was styled Pater Patriae by the Senate, though he was never endued with your Imperial or Paternal Authority.

But to reply to your Answer against my last Argument, that Princes not being our Natural Fathers, must often want that Natural and Fatherly Affection towards their Subjects, and therefore may tyrannize over them; I think the first part of your Reply will make nothing in confusion of what I have said: For though I will not deny but God, who hath the Hearts of Princes in his Hands, may sometimes enure them with such Affections as he thinks fit, not only towards the People in general, but towards each particular Person; yet this may be as well evil as good Affections: As God is said in ‘Judg. 9. to have seen an evil Spirit between Abimelech, (one of your usurping Monarchs) and the Men of Shechem, his Subjects: And therefore God may as well send the one for the punishment, as the other for the benefit of a Nation: And that God is more likely to incline the Hearts of Princes to such evil, than good Affections towards their Subjects, may appear from Mankind’s more often deferring God’s Anger, for their evil Deeds, than Favourites for their good ones.

And I define you would show me in how many Absolute Monarchies now in the World, God Almighty pleased to declare this wonderful Operation of the Fatherly Affection towards their People. I pray deal ingeniously, and tell me, is it to be found in our European Monarchies, where most Princes do not only misuse, but harass and oppress their Subjects, by intolerable Taxes, and flouting Armies, till they reduce them to the lowest condition of Beggary and Defection; and where, for the least differences in Religion, they take away their Subjects Lives by that cruel Tribunal of the Inquisition, without any fair or legal Trial; or else, where, notwithstanding all Edicts, Oaths, and Vows to the contrary, they feign upon, and spoil their Subjects of their Estates, and impress and torment their Perfoms by those booted Apollos the Dragons; because Faith is not to be kept with Heretics; or else, in another Country, where the Prince took upon him a Prerogative to dispence with all Laws at his pleasure, and to impress, and turn Men over the thresholds, contrary to the known Laws of the Kingdom? Or, to conclude, must we look for these Divine Operations amongst the Eastern Monarchies, where they treat their Subjects like Slaves, and allow them no Property either in Lands, or Goods, farther than they think fit, and to have their Persons and Lives wholly at their Mercy, to be calirated, made Slaves of, or killed, as often as it shall please their Humour or Passion? And I doubt, if you will but read Ancient as well as Modern Histories, and also survey the States of Mankind in all those Absolute Monarchies between France and Spain; you will find more frequently Examples of the evil, than good Affections of thefe your Artificial Fathers towards their Adopted Children.

M. I cannot deny, but you have given a very Tragical Account of the Tyranny and Oppressions under divers Absolute Monarchies now in the World; yet this is not the fault of the Government, but of the evil Principles, bad Education, or Tempers of, those Monarchs; as also, oftentimes from the unquiet and rebel-
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B.C.P. 4: Disposition of their Subjects, from the diffusing of which, they place all their Security in standing Armies, and Guards; so that I must grant, that all those Governments, that are maintained by Armies too strong for the Subjects in general, are uneasy, and degenerate into Deyspotic Monarchies, and are unsafe both to the Prince and People. And to let you see, that it is not my intention to maintain or defend Oppressio or Tyranny, I must freely affirm, with Sir R. F. (whose Principles I here take upon me to maintain) that all Princes are bound to treat their Subjects as their Children, and that it is contrary to the Nature of Man-kind, to make their Offspring Slaves; and that all Kings, (say Conquerors too) are bound to preserve the Lands, Goods, Liberties, and Lives of all their Subjects, not by any Municipal Law, but by the Natural Law of a Father, which binds them to unite the Arts of their Forefathers and Predecessors in things necessary for the public good of their Subjects: But yet you have not done fairly, not to take notice of the great Oppressions that are exercised in some Communarchies likewise towards their Subjects, which if you would please to consider, and weigh the fewness of these against the great number of Monarchies now in the World, I believe you will have good cause to confess, that there are many more good Monarchies, than equal Communarchies. And I do believe there was as much Tyranny exercised in these three Kingdoms during our late Civil Wars and Commonwealth, till the Return of the late King Charles, as in all the Absolute Monarchies between France and China, or from the North to the South Pole. And it is very remarkable, that when Oliver Crompton set up the most Absolute and Tyrannical Government that ever was in this Island, there was yet no noise of any Fears or Jealousies of it in all his Times.

B.P.P. 5: I am very well pleased to find you do heartily agree with me, in condemning of Tyranny and Oppression in all sorts of Governments whatever. And I do assuredly, I do as little approve of it, if it be any where exercised in Communarchies, as you can do in Monarchies. Only I must needs tell you, I am not at all of your Opinion, that the Oppressions or Abuses, committed by the Magistrates in Communarchies, are to be compared with the Tyrannies, and Cruelties exercised by Absolute Monarchs, and their Subordinate Ministers. For though I grant they often lay very heavy Taxes and Imposts upon their Subjects, especially such as they have acquired by Conquest, and so act like Absolute Monarchies over them, yet are thee Oppressions not at all to be compared to those under Arbitrary Monarchies; for though perhaps divers Communarchies may impose greater Taxes upon their Subjects than some Neighbouring Monarchies; yet doth it not follow, that their Government is more severe for all that; since the People having an opportunity by free Trade, and Liberty of Commerce in such Communarchies, to acquire a greater share of Riches, are also thereby enabled to contribute more to the maintenance of the Government, by which they reap so great Benefits. Thus we see a Citizen of Amsterdam is able to pay the Taxes of one of Anwerp: And therefore I dare, for all that, appeal to any common Subject (though a Papist) of the United Provinces, whether he had not rather live under the States of Holland, than under the French King; or to any Subject of the Communarchies of Fries, Grom, or Lucen, whether he doth not prefer his Condition, as bad as it is, to that of any of the Subjects of the Pope, Duke of Florence, or any other Italian Prince; not to go over into Turkey, and those other Eastern Monarchies, where the Yoke of Slavery lies yet more heavy upon the Subjects than in Europe.

And as for what you say, in the comparing of those illegal Arbitrary Proceedings, that were exercised in England, during the late Civil Wars, and afterwards, till the King's Coming in, I must beg your pardon, if (besides the great Hyperbole in your Expcriptions on that occasion, which I am sure are very far from Truth) I impute those Misfortunes, not as the fault of this or that person of Government, but rather to a powerful Faction, back'd by a standing Army, which was more like a Tyranny, or corrupt Oligarchy, than any settled Government. Nor is what you say concerning Oliver's Government more true than the former; for all Men, except his own Faction, were not only afraid, but really sensible of the loss of their Liberties under his Tyrannical Disposition; Though indeed, there was a very good reason, why there should be fewer Fears or Jealousies of it, than in his late Majesty's Time, when his Government began to grow uneasy through the People
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The Fear of Popery and Arbitrary Government, which they had no jealousy of in Cromwell’s Time; and as for the latter, they had no occasion to fear that which had already happened.

But that you may not mistake me for a Commonwealth Man, I must so far agree with you, that to condemn Monarchy as such, were to repine at the Government of God himself; so that I also grant, that the fault lies not in the Form of Government, but in the frail Nature of Men, which can rarely administer that great Trust committed unto them, as becomes what they take upon them to be, God’s Viceregaunt upon Earth: And I must own, that I esteem Monarchy limited by known Laws, as the best and most equal Government in the World; and under which both Prince and People may live most happily and easily, if each of them will be but contented with their due share.

But I beg your pardon for this Digression; and to come to a Conclusion, I must freely tell you, it is not a Straw matter, what your’s or Sir R. F.’s Principles are concerning the Fatherly Power of Princes; for as long as there is no ground for it in Scripture or Nature, you cannot expect that either Princes or People will ever believe you. Neither is it true, that Princes as Fathers are bound to treat their Subjects in all things like their Children, for then Princes ought to maintain their Subjects, and not Subjects their Princes; since it is the Apostle’s Rule, That Children ought not to lay up for their Parents, but the Parents for the Children: And though you pretend not to plead for Tyranny or Arbitrary Government, yet I cannot at all understand, why if it were not for this End, you should affect not long since, in your answer to me, that God thought fit to change Paternal Government into Hereditary Monarchy, because of the excessive Wickedness of Mankind before the Flood, proceeding from the too great Lenity of those Patriarchal Princes, in not punishing the disorders of their Subject Children; which is a very bold Assertion; since you know no more than I, what that Wickedness was in particular, for which God drowned the World, much less what was the occasion of it. And therefore, if God thought fit to change Paternal Power into Hereditary Monarchy, which (as I have proved) do not at all proceed from Paternal Power, it will also follow that the Government of your Patriarchs was not sufficient for the well being and happiness of Mankind, or else God would never have thought fit to have altered it for a more cruel and severe way of Government.

But as for what you say concerning those Princes that place all their Security in Guards and Armies too strong for the Subjects, that they are unsafe, and degenerate into Dеспotic Monarchies, (you might as well have said Tyrannies) and that they are unsafe both for Prince and People, is very true, and I altogether agree with you in it. But those of your Principles have no reason to find fault with Princes for so doing; for since they do but use their just Prerogative over their Slaves or Vassals, it is but fit that they should be made to undergo what Yoke, whether it were no, which they would not bear willingly; and as long as Princes look upon themselves to be (what they really are upon your Principles) the Masters, and not the Fathers of their People, as they suppose the Goods and Estates of their Subjects to be wholly at their Disposal, so can they never command them as they please, without the Assistance of Standing Armies. Nor have you any reason to complain of those Princes for keeping them too strong for the Subjects to oppose; since, upon your Principles, be they strong or weak, the Subjects are not to set them.

But if Princes, without your extraordinary fondness of using their People like Children, would but always use them like Subjects, with ordinary Justice and Moderation; and not oppress them with excessive Taxes, and unnecessary Penal Laws about Religion, you would find there would be no need of Standing Armies to keep the People in awe, who would themselves be the best defence not only against Domestick, but Foreign Enemies. And this I'll assure you is a much better Receipt against Rebellion, than all your new Receipts of Paternal Power in Monarchs, which is not only without all ground of Reason, but above common Apprehensions.

M. You have made a long Speech in answer to my Hypothetical, which since you are not a lawyer, I can likewise show you another very good reason, why the People should love and reverence their Princes; and that is, those great Liberties and Concessions that all the Monarchs of Europe have granted their Subjects,
which are now paid into the settled Laws and Customs of those Kingdoms, with, which the People ought to be very well contented. Not ought they to rebel, or riot, though they may sometimes out of wantonness and necessity indulge, or interest upon those Privileges, which they or their Ancillors have conspired upon them; since they can never forsooth that Power they have originally own, them.

F. I do not very well understand what you mean; for I have hitherto suppozed that the Subjects have a Property in their Estates, and a Freedom for their Persons by the Laws of Nature; and which no Civil Power whatsoever could deprive, them of without their Consent: And therefore I desire you would shew me, that if Children, Subjects, and Slaves, were all one at the first, how we in this life off the World came to be in a better condition than those in Asia and Africa? But that we Englemonians can claim a Property in our Estates, and a Right to our Lives, which the Prince cannot take away, but according to some known Laws?

M. I think I can easily do this, not only in relation to England, but any other Kingdom, which is now governed by known Laws, and that upon Sir A. K's Hypothesis; which I shall do, as near as I can remember, in the Words of the Excellent Person the late Earl of Clarendon, in his Survey of Mr. Hob's Leviathan, who supposes, according to this Hypothesis, That some of the Noah's Descendants was an Absolute Monarch at first over all his People, which might continue to his Line for some Ages, till at last their Relation by Blood to their Subjects was remoyed so great in difference, that the Accounts of their Kindred or Relation to each other was scarce remem- ber'd; whereby they had the Sovereign Power, still express left Paternal Affection in their Government, looking upon these they governed as mere Subjects, and not as theirs. Kinmen or Allies; till by degrees, according to the Custom of Exportation, Powers, they considering only the extent of their own Jurisdiction, and what they might, rather than what they should do, treated them who were under them, as we Subjects, but as Slaves, who having no Right to any thing but what they permitted them, they would allow them to possess nothing, but what they had occasion to take away. Eftsos they considered that they could call their own, because when their Prince called for them, they were his. Their Forces were at his Command, when he had either occasion or appearance to make use of them; and their Children inherited nothing but their Father's Subjects; so that they were happy, or miserable, as he who had the Power over them, pleased to exercise it with love or left them go or indulge; yet they submitted alike to both, acknowledging his Dominion to be necessary as absolute at their Subjection and Obedience.

These Princes might for some Ages have pleased themselves with this Englishman's empty title of their Power, which thought it had been always the same, yet the Englishman of it had been very moderate, since they remained the Vassalage of Tradesmen, of any Relations. But these Princes began at last to differ, and he contented, what the great strength they seemed to possess of, would in a short time degenerate into weakness, and the Rights they seemed to enjoy, would end in sorrow and misery, as well in themselves, as in their Subjects; that as a Man would build a good House, that his Children could make it more useful, or cultivate their Land with any good Husbandry and Expenses, the more profit there might be grown to another Man. And yet if the Subjects did not enjoy the Consequences of Life, they could not be sure of their Help and Affection, whenever they should have War with another Prince as absolute in themselves; but they would rather choose to be Subjects to him, under whose Government they might live with greater Liberty and Satisfaction. And lastly, that if they ingrati'd the Whole Power into their own Hands, they should find more who would defend them in the Possession of it: And that there was a great difference between their Subjection, which Love and Duty pays, and that which results only from Fear and Force; since Fear often pass on us and so that Duty, which Love, and it may be Congenial ones, would otherwise have persuas'd them still to continue: And therefore, I say, it was necessary that their Subjects should find safe and proper in obeying, as well in King's great Commanding. Those safe and wholesome Reflections might prevail with Princes, if their own, as we Subjects, benefit, to restrain their Power, and to make it less absolute, than it might be more useful; and so give their Subjects, such a Prosperity as their Country and Lands, as should not be revoc'd, but in such cases, and on such occasions, as the necessity of the Government really required. But as they found the benefit arising from these Considerations highly sent to the Improvement of the King's, and Consider'd by their Subjects with all those Additions of Pleasure and Indulgence, which render Man's Life, as well in the Government safe and pleasant, they still in several Generations enlarged these Great and Conciliatory to their Subjects, yet reverting all in themselves that they did not part
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part with in their voluntary Graces or Consessions. And if we take a view of the several Kingdoms of the World, we shall see another face of things, both of Power, and Riches, in those Governments, where the Consessions and Consquences have been both obtained, than in the same Kingdoms where the Sovereigns either retain, or refuse to themselves all their Rights, or Privileges, which are invested in them from their original Nature of Government; for there still remains enough in the Prince's Hands to be made use of for the performance of his main Power, and the defence of his Subjects, for whose benefit it was intrusted with him by God. So far the late Great Chancellor.

And their Pauvileges and Consequences being once parted into.opens and landing Laws by the Princes that gave them, and also solemnly sworn by their Coronation Oaths, do for ever bind not only those Princes that granted them, but also their Successors, to their observance: And I then look upon them bound, under pain of Damnation not to break or infringe them, without very great necessity.

But however, if they shall happen so to do, since, they were Matters of mere Grace and Favour at the first, and not of Right, the Princes that thus transgress are only accountable to God, and punishable by him, and not by their Subjects, for any Breaches or Infringements of such Liberties and Immunities: And this may serve against the Factions of all those, who think Princes have nothing but what the People have given them; and likewise against such as Mr. Hobbs, who maintains to much is conferred on them, that they have a Right to leave no body else say thing to enjoy, that they have a mind to take from them. And this I take to be but a much better Security for the Peoples Liberties, to leave it to the Honour and Conscience of their Princes, and that Fear they ought to have of the Divine Vengeance, in case they oppose their Subjects contrary to Law, than your heady and violent Methods of Reforming for the Supremacy or Tyranny of Princes, which would but give the common People a Pretext of taking Arms, and rebelling against their Princes upon every slight Provocation.

Yet have made a very plausible Dilemna, whether of your own, or from the Author you quote, is not much material: For when it comes to be examined, it will appear much more like a Romance than a true History: And therefore granting as present your Principles to be true (tho' they are not,) I do not your globerme in your Principles to be true (tho' they are not,) I do not think, for you can make it out, either from sacred or profane History, that any Limited Kingdom now in the World ever had its Original from there are under new Consissions, or Consessions of Princes, as you here mention; Nor by all that ever I can read or observe, either from our own or foreign History, all the Liberties and Privileges, which Subjects enjoy at this day, proceeded at least either from the original Concessions, Obligations, or Concessions of those Kingdoms or Nations, at the first-influence of their Government; or else were forced from the Princes, by their Subjects, who would no longer endure the Severity of their Yoke: so exigently granted by some of them, who believing they had such Trusts under their Commissions to the Crown, were willing to engage the People to their side; by granting them greater Privileges than they before enjoyed.

And let us grant, the Rebellions you make upon the Exercise of arbitrary Power, and the Movi[s] is impose both upon the Prine and People, are very true; yet I shade the Practice of most absolute Monarchies throughout the whole Word hath not quite contrary to your Suppositions. For Princes are so far (by what I have read and observed) from being willing to part with any of their Powers, that they have rather increased by degrees to enlarge it, and render it more adequate than it was first: as you may observe in the Government of France, Spain, Portugal, and, indeed, in this last Age, and what Encroachments were made in this Kingdom, by the Prerogative, upon the Peoples Liberties, during the Reigns of our last sovereigns, he is a Stranger to the History of the Country, that hath not read all stray do not remember them; and how much higher they would have been, if they strange and sudden Revolution had not put a Stop to it, I had taken you and I should understand in Idea than by Experiment.

But if in the conduct of your selves, we are able to work upon the first Monarchs, I desire to know the reason why those of Turkey, Egypt, Russia, and the African Empire and Mexico, and of the Abbess [Ms. quote has been as if we them] mention, and restrain their Subjects' Power within some moderate Limits, I say, to the contrary, one of the most ambitious and aspiring
aspiring Monarchs in Europe is making what haste he can to reduce his Kingdom into the same Model. And what, do you think, would the Princes and Counsellors of these Empires say to such a one as you or I, who should offer to preach this strange Doctrine to them, that they ought under pain of Damnation to use their Subjects as their Children, and not as Slaves or mere Vassals? I doubt they would make us pay dear for publishing such false Doctrine in their Dominions, or at least would despise us for half-witted Fellows, without any true Notions in Politics; since they believe, that the true Security and Glory of a King consist in voll Standing Armies, great Fleets, and a Power to take from their Subjects and Neighbours whatever they please, thereby to enjoy their own Pleasures and Honours in all their Hearts can desire, and to extend their Empires (per fas & nefas) as far as ever their conquering Swords will give them leave. And if you should tell them, that their Subjects could not love them, nor live happily nor contentedly under such a Government; I suppose their Answer would be (if they could speak Latin) Oderint dum metuant; or, in the Language of their own Country, that they would rather tru a Standing Army than the Affections of their People; and that it is better to take from their Subjects what they have a mind to, than to leave it to their Good-will what they will give them. These are all the antient and modern Politics that I can observe in most absolute Monarchies, or in those Kingdoms where Kings are taken upon them to govern their Subjects at this day: But I defy you to shew me any one Kingdom in the World, where the People owe all their Liberties and Privileges merely to the Good-will and Favour of their Princes, who granted them only out of those wise Considerations you have now mentioned.

But as for the Expedient at the latter end of your Speech, that these Privileges and Condescensions, when once granted by Kings to their Subjects, and past'd into Confant and lasting Laws, and also solemnly sworn to by Princes at their Coronation, do not only bind those Princes that granted them, but also their Successors, under pain of Damnation; I so far agree with you, tho' I must beg your Pardon, if I cannot think this a sufficient Security, for several Reasons I can give you at a more convenient Time, 'when I shall, when you please, more fully discuss this Point.

M. I must freely tell you, Sir, I am not yet satisfyed neither with the Infinacies you have brought, nor yet with your Replies to my Answers; and I think I can shew you, as to this Kingdom, that they are false in Matter of Fact. For if that the first and most antient Kingdoms and Monarchies began by Convoypt at first, and that perhaps for the most part by Wars unjustly made, as I may also in England, if this were a proper Season for it; so that indeed the greatest Liberty in the World (if it be duly considered) is for a People to live under a Paternal Monarchy. It is the Magna Charta of this Kingdom, all other Shews or Pretexts of Liberty are but several Degrees of Slavery, and a Liberty only to destroy Liberty.

So that I think I may very well keep my first Opinion, that Paternal Government is the Foundation of all other; and I have ever thought God's Love and Kindness to Mankind did never appear in any thing more (except in Man's Redemption) than in creating only one Man, and out of him only one Woman: So that Adam was the Head of a Father to his Wife, that Marital, as well as all other Power might be founded in Paternal Jurisdiction; that all Princes might look upon the meanest of their Subjects as their Children, and all Subjects upon their Prince as their common Father, and upon each other as the Children of one Man; that Mankind might not only be united in one common Nature, but also be of one Blood, of one Family, and be habituated to the beit of Governments from the very Infancy of the World.

Were this well considered, as there could be no Tyrants, so neither would there be any Traitors and Rebels; but both Prince and People would strive to outdo each other in the Offices of Love and Duty. And now do you or any Man living read Sir R. F's Patriarcha, or other Works, and see if either he or I have ascribed one Dram of Power to Princes, which will not naturally spring from this Supreme Paternal Power.

So that upon the whole, I think Reason itself would conclude, that this way of solving the free Rite of Government is true, and that it is the Duty of all, who by the Blessing of God are under Paternal Monarchies, to be very thankful for the Favour, and to do the utmost that in them lies to preserve and transmit that best
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Form of Government to their Children after them. And first those are no Nation under Heaven hath more Reason for this than the English, who are under a Parnassal Monarchy, which has taken the best care that can be to foster them, not only from Oppression and Wrong, but from the very Fear of it.

I. Since you lay the chief stress of your Argument upon the Original of all of the Kingdoms and Monarchies now in the World, and of our own in particular, I think I may safely join issue with you on both points, and in the first place affirm, that an unjust Conquest gives the Conqueror no Right to the Subject's Obedience, much less over their Lives or Estates; and if our Norman William and his Successors had no Right to the Crown of England than mere Conquest, I doubt whether they might have been driven out after the same manner they came in: But I believe you will find, upon second thoughts, that unjust Conquests and Obligations of Crowns be no firm Titles for Princes to rely on; left the old English left Power be turned upon you, see; That which is Sauce for a Goose is Sauce for a Gander. But I shall defer this Discourse concerning Titles by Conquest, and in particular that of our Kings to this Kingdom, to some other time; when I doubt not but to shew, that it is not only false in Matter of Fact, but also that it will not prove true for which it is brought.

And therefore what you say in your Conclusion, in exaltation of God's Love and Kindness to Mankind, in creating one Man, and out of him only one Woman, that Adam might be a kind of Father to his Wife, is a very pretty and ingenious Argument; and you would do very well to move the Conversation, next time it fits, that this Explanation may be added to the fifth Commandment, that Women may be taught in the Cathedral, that Obedience to Husbands is due by the Precepts of Honour thy Father and thy Mother.

And therefore I need give no other Answer to all the rest you have laid: For however specious the Hypothesis may seem (as you have dressed it up) for Princes and People; yet till you have proved, that all Parnassal Power is Monarchical, and that all Monarchical Power is derived from Fatherhood, it signifies nothing. Nor can the Holy Scriptures do any more good in Politics than Religion; For as Superstition can never serve to advance the true Worship of God, but by creating false Notions of the Divine Nature in Mankind, which doth not render it, as it ought to be, the Object of their Love and Reverence, but servile Fear; so I suppose this ascribing of such an unlimited despotic Power in all Monarchs, and their an unjust Objection as Sir R.F. and you your selfe exact from Subjects, can produce nothing but a servile Dread, without that Esteem and Affection for their Princes Person and Government, which is so necessary for the Quiet of Princes, and which they may always have, whith they think themselves obliged in Conscience and Honour to protect their Lives and Fortunes from Slavery and Oppression, according to the just and known Laws of the Kingdom, and not to dispence with them in great and essential Points, without the Consent of those who have a hand in the making of them: And all false Notions of this Supreme Power, as derived from I know not what Fatherly (but indeed despotic) Power, are far from settling in Peoples Minds a sober and rational Obedience to Government, that they rather make them desperate, and careless who is their Maker; since, let what Change will come, they can expect no better than to be Slaves.

Notice is also put in a better condition by this Doctrine of such Power, since all Princes are not to be generous a narke, as not to tyrannize and flout the more over those, whom they suppose will not, or else dare not resist them; and therefore I cannot see how such a Submission can further the Hearts of the most Grateful Princes in the World, as you suppose; much less how a Power to Rob the Rich and enrage the mildest and meekest Princes to their Peopels Ruin; since all Robbery is not unlawful by it. But where the People are already ruined in their Liberties and Fortunes, or are just at the brink of it, and have no other Means left but that to avoid it.

To conclude, I do far agree with you, that I think it is the Duty of all that are born under a Kingly Government limited by Laws, to be very thankful to God for the Favor, and to do the utmost that in them lies to preserve and transmit this best Form of Government to their Children after them, without maintaining such unprintable Fictions as a Parnassal Monarchy derived from Adam or Noah, And the I own that some of our former Kings have taken the best care they could
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to secure this Nation from Popery and Arbitrary Power; yet whether the Method of our three last Kings has been the readiest way to secure us from the Fears of it, I leave it to your own Confidence (if you are a Protestant) to judge.

But since you defy me to thaw you out of Sir R. F.'s Patriarcha, that he hath ascribed one Dram of Power to Prince, which doth not naturally arise from a Supreme Political Power, and that this is no exorbitant Height; I think I am able to prove from many Passages in his Patriarcha, as well as other Works, that no Author hath made bolder Affirmations to render all Mankind Slaves, instead of Subjects; and all Princes Tyrants, instead of Kings; and that his Principles are so far from being safe, that if they are duly looked into and weighed, they will prove destructive as well to the Rights of Princes, as to the Liberties of the People.

M. I should be very glad to see that proved; for I must always believe, till you show it to the contrary, that this excellent Author lays it down for a Ground, that Princes, being as Fathers to their People, are bound to treat their Subjects as Children, and not as Slaves: And therefore waving this last Controversy, which we have argued as far as it will go; pray make out what you say from his own Words, and I will give up the Cause.

F. I wonder how you can be so partially blind as not to see this, since you yourself have already made use not only of a great deal of his Doctrines, but also of his very Words. And therefore, pray see his Obedience to Government in doubtful Times; as also in his Preface to the Observations upon Aristotle's Politicks; where you will find he affirms, That Adam was the Father, King and Lord even over his Family, a Son, a Subject, and a Servant, or a Slave in one and the same thing at first: The Father had power to dispose of, or sell his Children, or Servants.

"Whence we find, that at the first reckoning of Goods in Scripture, the Man servant, and the Maid servant are numbered among the Possessions and Sub stances of the Owner, as other Goods were." So that then, if the Power of a Father, and of a Monarch be all one, and that all Monarchical Power is Despotic, the Confidence is also as evident, that all Subjects are also naturally Slaves, unless their Princes shall please to lay an easier Yoke upon them.

M. Perhaps Sir R. F. may have carried this Matter a little too far; yet if you please to look into his Patriarcha, Chap. 3, Part 1. you will find, that he hath this Passage, which plainly speaks the contrary: The Father of a Family governs by no other Law, than by his own Will, nor by the Laws and Wills of his Sons and Servants. There is no Nation that allows Children any Allusion, or Remedy, for being unjustly governed; and yet for all this, every Father is bound by the Law of Nature to do his best for the preservation of his Family; but much more is a King always tied by the same Law of Nature to keep his general Ground, That the Safety of his Kingdom be his chief Law. Whence you may observe, that though he takes away all Remedy from Children against their Parents, he be not all governed, yet doth he not set the Fathers free from all Obligation to preserve the Good of his Family, of which sure a Man's Children are a principal part.

And if you please to look back to the second Chapter of his Patriarcha, you will find these Words: To answer in particular to the first Text, it may be said the Sense of these Words, By the Law of Nature all Men are born free, must needs mean a Freedom only that is opposite to such a Subjection as is between Father and Son. This is made manifest by the Text of the Law: For Ulpius in this place speaks only of Manumission, who is a passing into Liberty of Servants from Servitude, and not of Emancipation, and is the freeing of Children from the Fathers Traffic. Servitude, as the Law teacheth, is a Confusion of the Law of Nations, by which a Man is subject to the Dominion of any other Man against Nature. So not every Servitude is Servitude, but Servitude contrary to the Law of Nature. Yet every Man is born subject to the Power of a Father. This is the Law itself, In Potestate custoda Liberis Liberi sunt. So that you see here he maketh a Difference between Servitude, and that Servitude that is due to Fathers.

F. Give me leave to answer these two Inferences before you proceed any farther; and shall in the first place make bold to answer your last Inference first, because I shall be much shorter upon it. But pray take notice by the way, that this Author is very high and rigorous for the absolute Power of Life and Death in all Fathers over their Children in the State of Nature, and that they may exercise it for very slight Offences; And therefore in this Chapter you have last quoted, he seems very well satisfied with the Example of Cæcina, who threw his Son.
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Son out of the Confusion for publishing the Agrarian Law, for the Deception of Lands; and I think this was no such great Crime, for which a Father might justify the putting his Son to Death. And in the Section before this, he justifieth the Power of Fathers amongst the Romans, as being ratified and amplified by the Law of the Twelve Tables, enabling Parents to sell their Children two or three times over. So that these things considered, I cannot see how this Distinction of Sir R. F. out of the Civil Law will do him any Service. For though I grant indeed, that Magnanimity, and Emancipation, are two different Words, yet do they both signify the same thing. And though for the greater respect which they would shew to the Condition of Children above that of Slaves, they were pleased to make use of different Expressions; yet whoever will look more closely into the Nature of the Subjection that Children were in, under their Parents, by the Roman Law, will find, that the Condition of Children was no better than that of Slaves. For First, The Father had such an absolute Power over the Person of the Son, that he could sell him three times, whereas he could sell a Slave but once. Secondly, He had such an absolute Power over his Life, that he could take it away whenever he pleased. Lastly, A Son could have no Property in any Goods without his Father's Consent, 'till he was emancipated, or made free: So that if his Father were harsh and ill-natured, the Condition of a Son was worse than that of a Slave, as long as his Father lived.

And therefore, I am full of the Opinion of the antient Civil Lawyers, who assert the natural Freedom of Mankind, according to the Maxim you have now cited. And they acknowledge, that the Servitude, or absolute Subjection of Children to their Fathers, was not by the Law of Nature, but by the Civil or Roman Law, peculiar to themselves, as I have already proved in our last Meeting.

But to come to your first Quotation, whereby you would clear Sir R. F. from maintaining any unjust Severity in Fathers, or Tyranny in Princes, because they are both to endeavour the common Good of their Families and Kingdoms. 'Tis very true he says so; but of this common Good they themselves are the sole Judges. So that if the Father pleases to sell one or two of his Children, whom he left lovethe, to provide Portions for the rest, he may lawfully do it for any thing I see to the contrary. So likewise immediately after he affirms the Superiority of all Princes above Laws, because there were Kings long before there were any Laws. And all the next Paragraph is wholly spent in proving the unlimited Jurisdiction of Kings above Laws; as it is described by Samuel, when the Japhethites defined a King: So that it signifies little what Laws Princes make, or what Privileges they grant their Subjects, since they may alter them, or abrogate them whenever they please.

M. But pray take along with you what he says in the next Paragraph you quote: where you may see these Words: It is there evidently forced, that the Scope of Samuel was to teach the People a dutiful Obedience to their King, even in these things which themselves did esteem liberty or as inconveniences: For by telling them what a King would do, he indeed inculcates them what a Subject must suffer; yet not so, as that it is right for Kings to do injury, but it is right for them to go unpunished by the People if they do it. So that in this point it is all one, whether Samuel describe a King or a Tyrant; for partial Obedience is due to both: No Remedy in the Text against Tyrants, but in crying and praying unto God in that Day. And that Sir R. F. is very far from justifying Kings in the unecessary Breach of their Laws, may farther appear by what he says, cap. 3. pars 6. of this Treatise: where pray see this Passage. Now albeit Kings rule make the Laws, be (as King James teaches us) above the Laws, yet will they rule their Subjects by the Laws; and a King governing in a settled Kingdom, leaves to be a King, and degenerates into a Tyrant, so soon as he leaves to rule according to his Laws; yet where he sees the Laws rigorous, or doubtful, he may mitigate and interpret them. So that you see here he leaves the King no Power or Prerogative above the Laws, but what shall be directed, and employed for the general Good of the Kingdom.

F. But pray, Sir, read on a little farther, and see if he doth not again undo all that he hath before so (especially laid down; and if you will not read it, I will: General Laws made by Parliament, may, upon known reflections to the King, by his Authority, be mitigated, or suspended upon Consent only known to him. And although a King do frame all his Actions to be according to the Laws, yet he is not bound therein, but at his good Will, and for good Example: Or so far forth as the General Law of the Safety of the
that the Commonwealth doth naturally bind him; for in such fort only, positivus Lawus may be said to bind the King, not by being positivus, but as they are naturally the best, or only means for the preservation of the Commonwealth.

So that if the King have this Prerogative of mitigating, interpreting, and suspending all Laws, in Cases only known to himself, and that he is not bound to the Laws but at his own good Will, and for good Example. I desire to know what greater Prerogative a King can defire, than to suspend the Execution of any Law, as often as he shall think fit. For though I grant the Sufsenfion of a Law differs from the Abrogation of it, because the former only takes away the force of it in this or that particular cafe, whereas the latter wholly annuls the Law; yet if this Sufsenfion be general, and in every cafe, where the Law is to take effect, it amounts to the fame thing with an Abrogation of it; as may be plainly seen in the late King’s Disturbing Power. For though it be true he pretended to no more, than to dispence with this; or that Perfon, who should undertake a publick Employment, either Military or Civil, without taking the Oath of Civil; yet since he granted this Dispensation generally to all Papifs, and others that would transgress this Law, it amounted to the same thing, during his Pleasure, as an absolute Abrogation of it. And therefore I do very much wonder why divers, who are so zealous for the Church of England, and the King’s Prerogative, should be so angry with him for erecting that Power, which not only this Author, but all others of his Principles have placed in him: And if the King may suspend this, and all other Laws, upon Causes only known to him, I do not see how he differs from a Monarch, as the Great Turk himself; and may, when he pleases, notwithstanding all Laws to the contrary, take away Mens Lives without any due Forms of Law, and raise Taxes without the Consent of Parliament.

M. But pray read on a little farther, and you will find that he very much refrains this absolute Power, in these Words: By this means are all Kings, even Tyrants and Conquerors, bound to preserve the Laws, Goods, Liberties and Lives, of all their Subjects, not by any Municipal Law of the Land, but by the Natural Law of a Father, which binds them to raise the Arms of their Forefathers and Predecessors in things necessary for the publick Good of their Subjects. Now this Patronal Power is large enough of all Confidence to discharge Princes from any Obligation to the Laws farther than they please. For it before appears, that the Father of a Family governs by no other Law than by his own Will, and not by the Laws and Wills of his Sons or Servants; therefore if the Power of the King be wholly Patronal, he may alter this Will of his as often as he pleases: Not can his Subjects, who are all one with Sons and Servants, have any reason to find fault with it. For he says, There is no Nation that allows Children any Measure for being unjustly governed. And though it be true, that he refrains this Prerogative both in Fathers and Kings to the publick Good of their Children and Subjects; yet as long as he is left the sole and uncontrollable Judge of what is for the publick Good, all these fine Pretences will signify nothing. For he is bound to obverse or ratifie no Laws or Acts of his Predecessors, but what he is satisfied tend to this End: So that if he thinks fit to judge, that Magna Charta, for Example, or the Statute de Tallagio non concedendo, or any Liberty we enjoy, are not necessary, or contrary to the common Good, he is not tied to observe them. And upon this Prerogative it was that the Judges in the Reign of King Charles the First, founded the King’s Treason for Shilling-money. For they supposed that the King, in case of necessity, (that is, for the publick Good of the Subjects) might lay a Tax upon the Kingdom, though without Consent of Parliament. So that upon this Pretence the King being the sole Judge of the Necessity, he might quickly have raised what Taxes, and as often as he had pleased.

But, let our Kings should think themselves too stringently bound by their Coronation Oaths, to obverse the Laws, pray see in the next Paragraph how this Author endeavours
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endeavours to help the King to creep out of that Obligation too. Therefore pray read on. Others ther' be that affirm; that although Laws of themselves do not bind King, yet the Oaths of Kings; at their Coronation; tie them to keep all the Laws of their Kingdoms: How for this is true, let us but examine the Oaths of the Kings of England at their Coronation. The Words whereby they are tied? Are thou pleased to cause to be administered in all thy Judgments, justice and uprightness, and to use a Difference with Mercy? Are thou pleased that our upright Laws and Customs be observed; and dost thou promote, that these shall be protected and maintained by thee? These two are the Articles of the King's Oath, which concern the Laws, or Subjects in general; to which the King answers affirmatively; being first demanded by the Archbishop of Canterbury. 'Pleaseth it you to confirm, and observe the Laws and Customs of ancient Times granted from God, by just and due Your Kings unto the English Nation; by Oath into the said People, especially the Laws, Liberties and Customs granted unto the Clergy, and Laity, by the Kingdom of England? They are the Words of the Articles of the Oath, and if the King is required to observe not all the Laws, but only the upright, and that with Difference and Mercy. The Word upright cannot mean all Laws, because in the Oath of Richard the Second, I find evil and unjust Laws mentioned, which the King swears to abolish: And in the old Abridgment of Statutes for forth in King the English Days, the King is to swear wholly to put out evil Laws which be not good, if he be bound to all Laws. Laws are Oaths, and what Evil, who shall judge but the King? If this be true, and the King hath to administer upright Justice with Difference and Mercy; or (as the Words express) ut ratione et justitia, or, ut in iis quos administret, administer his Oaths with upright Justice with Difference and Mercy; then to add, that he shall observe the Laws of his Kingdom, is neither true, or necessary, this according to the Equity of his confidence, joined with Mercy, which is properly the Office of a Chancellor rather than that of a Judge. And if a King did first swear to observe all the Laws, he could not, without Parlyour, give his Consent to the Repealing or Abolishing of any Statute by All of Parliament, which would be very uncharismatic to the Subjects.

But it is supposed, that Kings do swear to observe all the Laws of their Kingdoms; yet that cannot be reason; that Kings should be more bound by their voluntary Oaths, than common Persons are by theirs. Now if a private Person make a Covenant with Oath, or without Oath, he is no farther bound than the Equity and Justice of the Covenant will bind; for a Man may have relax against an unreasonable and unjust Promise, if either Error, Decret, Force, or Fear induced him therein; or if it be lawful or given for the performance. Since the Laws in many Cases give the King a Prerogative above common Persons. The true reason why he should be denied the Privilege which the rest of Men have, is this: The law of God, that no Man shall win a Thing; or the law of Parliament, that no Man may win a Thing, which is reasonable. This is the true Reason, why Kings may not make any such Paraphrase upon the Words: It is sufficient that the King is here left to the Judge of what Laws are upright, and what unjust; and consequently what Laws he pleases shall be observed, and what not. So that no Laws, thought thought nearer to just, and necessary by the Parliament at the time of making them, shall signify anything, if he thinks fit afterwards to judge, otherwise. And itself such would not be sufficient, if he hath found out another way whereby Princes may abolve themselves of this troublesome Obligation of Oaths; and therefore he would have them no more bound up than common Persons, who, because they may have Relief in pechick Courts of Justice, against an unjust Promise, if either Error, Decret, Force, or Fear, induced them thereby; may more, if it be lawful or given in the performance; Kings who have a Prerogative above common Persons, and who acknowledge no Tribunal above themselves, may abolve themselves of their Oaths whenever they think good; by saying it was extorted from them by Decret, Force, or Fear: Or if they cannot satisfy themselves without is, they might have had formerly the Pope's Dispensation for Money, which we read King John, and Henry theThird obtained to be abolved of the Oaths they had taken to observe magna charta. But this author hath found out a better way also; which makes Kings both Judges and Parties, and the Subject, therefore they are abolved by a Fundamental Right of Government. And what hath proved the Conclusion of such Princes who have taken this Author's Liberty of breaking their Coronation Oath at their pleasure? It hath only taught their Subjects to imitate their Example, and to make as light of their Oath of Allegiance.
M. I will not deny, but perhaps Sir R. F. may have carried the Prerogative in this Point a little too far; yet that he meant honestly towards the Commonwealth in all this, I pray see the 8th Section of this Chapter, where you'll find these Words; Many will be ready to say, it is a frivolous and dangerous Conclusion to be subject to the Will of any one Man, who is not subject to the Laws; But such Men consider not, 1. That the Prerogative of a King is to be above all Laws, for the good only of them who are under the Laws, and to defend the People's Liberties, as his Majesty graciously affirmed in his Speech, after his late Answer to the Petition of Right; besides, some are afraid of the Name of Prerogative; yet they may assure themselves, the Cafe of Subjects would be desperately miserable without it. So that you see here he affects no Prerogative in the King to be above all Laws, but only for the good of the People, and to defend their Liberties; which I think is a sufficient restraint of Prerogative.

F. But read a little lower, and the People will have no such great cause to thank him, as you may see by these Words: In all Aristocracies the Nobles are above the Laws; and in all Democracies, the People. By the like reason, in a Monarchy the King may be above the Laws; there can be no Sovereign Majesty in him that is under them; that which gives the very Being to a King, is the Power to give Laws; without this Power he is but an Equivocal King.

And most part of what follows in this Treatise, is only to prove, that the Parliament, or Assembly of Ellates, was a Creature wholly of the King's Creation, and consequently, that he alone makes the Laws in it: And he hath also written a whole Treatise, called The Prelates' Grand Impeach, to prove that it is the King's Authority alone that makes the Laws; and therefore that he can interpret and dispense with them at his pleasure. So that Richard II., had this Author liv'd in his time, might have made him a Judge as well as Treffilian and Bulstrode, if he would have maintained the same Principles. But, left we should mislead you, let us see what he says at the Conclusion of this Treatise: For the confirmation of this Point, Aristotle saith, That a perfect Kingdom is that wherein the King rules all things according to his own Will; for he that is called a King according to the Law, makes no kind of Kingdom at all. This, it seems, also the Romans well understood to be most necessary in a Monarchy; for 'tis they were a People most greedy of Liberty, yet the Senate did free Augustus from all necessity of Laws, that he might be free of his own Authority, and of absolute Power over himself, and over the Laws, to do what he pleased, and leave undone what he liked; and this Deceit was made while Augustus was yet alive. Accordingly, we find that Ulpian, the great Lawyer, delivers it for a Rule of the Civil Law, Principis Legibus necessarium est. The Prince is not bound by the Laws.

So that upon these Principles, all Kings are not only discharged from the Penalty, but also the very Obligation of observing Laws, farther than they shall think fit. And indeed, this Author carries this Prerogative beyond what the most moderate Roman Emperors ever pretended to, as I can easily show you from your own Civil Law Books; and therefore pray reach me down your Volume of the Code, and see here what the Emperor declares on this Matter De Tulliemnit. Ex imperio Tulliemnit: Imperatorum hereditatem vindicat in what is called the Code, 15. Lex Imperii Solemnibus juriis Imperatorius est, nisi suam sui proprium Imperii est, quam

See likewise in the Theodosian Code these words: Digna esse Majestatis Regni; Legibus aliorum se Principis profiteri, obiis de Authoritate juris, sive nocere auctoritate, si vere majoris Imperii est subminister Legibus Principatus, sive de auctoritate. Ebd. de obtius dicto ut nostres novis, alios indicatores. (xv. Successoribus Theodosio & Valentinum.)

So that you may here see, that even the Roman Emperors were more modest, than to declare themselves discharged by their Prerogative, or thought of any of these subtle distillations of this Author, from their obligation to the Laws, however they were from the Penalty; which is the true Sense of this Phrase of being Legibus solutus.

But God be thanked, most of our own Kings have been more conscientious, than to maintain that they were not bound by their Coronation Oath farther than they required. For you may see in the Preamble to the statute of Provisions, made in the 35th of Edward III., where it is declared and acknowledged by the King himself, and both Houses of Parliament, that the Right of the Crown of England, and the Law of the Realm is such, that upon the Mischiefs and Damages which happen to the Realm, he ought, and was bound of his said People in his Parliament thereof, to make Remedy, and Law, in voiding the Mischiefs which come thereof: And the
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King seeing the Mischief and Damage aforesaid, and having regard to the said Statute (foll. the former Statute of Provojud) he here farther acknowledges, that he is bound by his Oath to do the fame to be kept, as the Law of his Realm, tho' by sufferance and negligence it hath been hitherto attempted to the contrary.

So likewise, King Henry IV. declares in full Parliament (as appears by the Parl. Roll) that whereas the Commons in Parliament had granted, that the King should be in as great Liberty as any of his Noble Progenitors; on which our said Lord of his Royal Grace, and tender Confidence, had granted in full Parliament, that it is not his intent, nor will be alter the Laws, Statutes and good Usages, not take any Advantages by the said Grant; but will keep the ancient Laws and Statutes ordained and used in the times of his Noble Progenitors, and do Right to all People in Mercy and Truth. Schol. Sermon. i.e. according to his Coronation Oath.

M. I will not affirm, but Sir R. F. observing how much the King's Prerogative was run down by the long Parliament; and how the leaf flips and miscarriages in Government were aggravated by the Demagogues that then domineered, as open and violent breaches of his Coronation Oath, might be willing to make the best defence he could for such Miscarriages; and this Treatise of Patriarch, being a Pothumous piece, perhaps he would have altered many things in it, had he lived to publish it himself; but I doubt not, but he was a very honest Man, and meant well to the Kingdom for all that. And therefore I hope you will not be too rigorous in your Censure of him.

F. I'll assure you, Sir, I shall not, because he hath been dead many Years, and the King's Or is to the Writings, than his History, which I rather knew. But, if I may judge from his Works, he was certainly no Friend to Parliaments, or the Power of the Laws above the Prerogative: But that I may also shew you how dangerous and derogatory his Opinions likewise are to the Titles of all Sovereign Princes and Monarchs now in the World, however he may seem to write in their defence, pray turn to his Par. chap. 1. par. 9. and to a Question, What becomes of the Right of Fatherhood, in the Crown of Spain for want of an Heir; he thus replies, which pray read, It is but the Negligence or Ignorance of the People to lack the knowledge of the true Heir: For an Heir there always is; if Adam himself were still living, and were ready to die, it is certain, there is one Man, and but one in the World, who is next Heir, although the knowledge who should be that one Man be quite lost. The which he likewise repeats to the same, in his Treatise of the Anarchy of a limited or mixed Monarchy. Pray see the place, and read these Words: It is a truth undeniable, that there cannot be a Mulit- Mischief. p. tude of Mon whafsor, either great or small, though gathered together from the several Corners, and remotest Regions in the World; but that in the same Multitude confused by itself, there is one Man amongst them, that in Nature hath a Right to be the King of all the rest, as being the next Heir to Adam, and the other subjefts want him; every Man by Nature is a King, or a Subject. So that I think no Kings in the World being able to declare their Pedigree from Adam (of whom there can be but one right Heir) they all (or at least all but one) are only Kings de Feite, and not de Jure, and Usurpers upon this Heir of Adam. So that if God would but be pleased to reveal who this next Heir is, all the Kings of the Earth were bound in Confidence to lay their Crowns at his Feet; though he were but a Cobler or a Linkboy. How ridiculous a Notion this is, I leave it to any indifferent Man to judge.

M. I hope this Opinion is like to have no very ill effect, unless any Prince, by virtue of this Title of Adam's right Heir, should pretend a Right to an universal Monarchy; and then I think it were but reasonable, he should be put to make out his Title; but seeing no body doth fo, to the best of my knowledge, it is but reasonable that all Princes should in the mean time enjoy what they are in lawful Possession of, till this Heir of Adam hath made out his Title, and then they may consider farther of it.

F. And it is very well, that this right Heir is not to be found; for if he were, all Princes would be Usurpers, who did not immediately resign to him. But this Doctrine is no more fatal consequence than you imagine; for it does not, with all the present Princes in respect of Adam's right Heir only, but also of any other right Heirs to Princes, who have lost their Right to a Crown never so many Ages ago: For look into his Directions for Obedience in doubtful times, and read this Passage: By Human pofitive Laws, a Possession time out of mind taken away, or bar a former Right, to avoid.
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avoid a general Mischief of bringing all Right into a Diholution not delectable by Proof, and consequently, to the overthrow of all Civil Government, in Grants, Gifts, and Contract between Man and Man; but in Grants and Gifts: that there the Sovereign in God or Nature, (as the Power of a Father hath) so in the Power of Man can limit, nor make any Law of Prescription against them. Upon this which he build the Nullum tempus occurrit Regni, no time bars a King. And a title before, he gives us this reason of it: For tho' by humane Laws a long Prescription take away Right; yet a divine Right never dies, nor can be lost or taken away. By which Principle, he renders the Titles of most (if not all) of the Princes of Europe at this day very weak and disputable, whenever any other Person shall set up a Title against them. But Sir R. F. hath found a very good Explication for this; for he tells us, 'in the first cited Diffour, that the Paternal Power cannot be lost, the full of either he transferred or usurped; and in his Anarchy of a limited Monarchy, he thus more at large exprests it. Many times, by the 2d either of a Usurper himself, or of steps that set him up, the true Heir of a Crown is dispossessed, God using the Mischief of the Wickedness Man for the removing and setting up of Kings: in such cases, the Subject's Obedience to the Fatherly Power must go along, and cease upon God's Presence, whose only hath Right to give and take away Kingdoms, and thereby to adopt Subjects into the Obedience of another Fatherly Power. And in like his Diffour of Obedience, &c. he likewise exprests it. This Point, in answer to an Objection there made; that such Kings now in the World, have no other Titles to their Crowns but Conquest or Usurpation! He replies, That 'tho' all Kings were Usurpers, yet still the first Usurper had the first Title, being Polemist in the Person of God; and whereas an Usurper hath continued so long, that the knowledge of the right Heir is lost by the Subjects; in such case the Usurper in Polemist is to be taken and reputed by such Subjects for the true Heir, and is to be obeyd by them as their Father. And I think you your self will not deny, but that Kingdoms may be transferred from one Prince to another by Conquest, or a long Usurpation; and that when there is no other better Title extant, the King in Polemist, or his Heirs, may have a good Title by a long Polemist, tho' it began by Usurpation as first.

F. I have not now time to answer all that your Author hath as fallly, as ineffectually layd concerning this Subject of Usurpation! and I should be glad to hear you, or any Man elle that will undertake to defend him, make him himself, not only with reason, but with himself, in this Diffour you quote, concerning Obedience to Government in doubtful times. For to pass by his unintelligible Notion, of supposing two supreme Paternal Powers subsisting at once, and each of them laying claim to the Obedience and Submission of the Subjects, the former of that the Usurper, Who being in Polemist of the Crown by the personal Will of God, who hath thought it fit to adopt the Subject's into a Fatherly Power; and the latter, that Paternal Right which he supposes still to remain in the expelled Prince, and his Heirs for ever. By which means the Allegiance of the Subjects is divided and perplex'd, that they can never be able to tell, when the Allegiance to the right Heir is to take place before that of the Usurper. M. But if you had been pleased better to observe this Diffour, you would find that Sir R. F. hath very well obviated this Objection, as appears by those Words. The Right of Fatherly Government was ordained by God for the preservation of Mankind; if it be usurped, the Usurper may be so far obeyed, as may tend to the preservation of the Subjects, who may thereby be enabled to perform their Duty to the true and right Sovereign, whom time shall force; in such cases to obey an Usurper, is properly to obey the first and right Governor, who must be preferred to defy the safety of his Subject. The Command of an Usurper is not to be obeyed in any thing tending to the Deposition of the Governor, whose being in the first place is to be looked after.

F. This is, I confess, a very pretty Diffireration, to make the Usurper, which governs whether the right Heir will or no, yet to do it by his Consent, and that the Subjects, when they act thus, do but still obey their rightful Governor, which Supposition would be contradictory to what your Author hath already laid down of the Subjects being adopted into the Obedience of another Fatherly Power, the Usurper; for if it be as he now makes it, they still remain under the Righck Power of the former Prince, and the Usurper governs only as his Deputy, which is a very choice refined Notion, by which all Men had been obliged in Consequence to yield as full Obedience to Crown and the Rump, in all things that did his Head to
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the Delegation of the last King's Prerog, as to him himself; which I suppose you high
Roynals will not mean admit of.
But this is not the main Matter that I have to except against; for if the Principals I have read out of that Tretatle be true, That the Right of a lawfull Monarch and his right Heir, is a divine Right; and that no length of time or progress can bar it; because a divine Right never dies, can be lift, or taken away, till the knowledge of the right Heir be left by all the Subjectts; and till which time Ufispers and their Heirs can never acquire an absolute and indefferable Right in the Kingdoms they pooffes; it will certainly follow that the Title that most Princes of Christendom have to their Crowns, will be hereby rendered disputable and uncertain; For since this Princes acknowledges, that the Titles of most Kings at this Day begun by unjuft Conquests or Ufriptions at first; the right Heirs of many of which expulst or deposed Princes are fill, or were lately in being; they might upon this pretence make War upon the Prince in Possession and his Heirs, to the World's end; And tho' I grant, be says, that an Ufiper is to be fully obeyed, when the knowledge of the right Heir is lost by all the Subjectts, it is extremely uncertain and doghtful what he means by it; for if he means a personal Knowledge, few ordinary Subjectts, but those that have personally known all the Royal Family, can thus know who was the right Heir; and so consequentially, as soon as ever his Father or Ancestor that held the Throne is turned out, or dead, few private Subjectts can have any personal Knowledge of this Heir. But if he means a Moral or Traditional Knowledge, such as is conveyed down to Polterty by Historie, Authentick Records, or Genealogies; I know not how such a Knowledge can ever be said to be lost, as long as such Histories or Memorials remain in being: And that this is so, is apparent, many Princes in Europe having upon this ground better Right to the Crowns of some Neighbouring Kingdoms, than those that were, and are, by us known; and that by virtue of such an old Title from Charles the Great, the King of France looks upon himself to have a good Title to Allemagne, Flanders, and all the Low Countries, and as much of Germany as he can get; So that I will leave it to your selves to judge, whether these Principles do not only render the Titles of most Princes doubtful and uncertain, but the Subjectts Allegiance too.

M. I cannot deny, but Sir R. F. may have carried this point of Obedience and Submission to Ufipers, and of a concurrent Right in the lawful Monarch and his Heirs, a little too far. For I think it was much better to suppose with Grono and other Writers, that after the third Generation, or Succession of the Crown in the Family of the Ufiper, they may have a good and perfect Title to their Crowns, against the right Heirs of the lawful Monarch; and this I take to be highly reasonable for the Peace and Welfare of Mankind than that they should be always divided in their Allegiance between two opposite Princes; but till then, I suppose the Subjectts are bound to obey, and stand for the lawful Heir and his Polterty, as far as is possible, without their own apparent Defraudation.

F. I confess this Supplication is much more reasonable than the former; but I should be glad to know how the Law of God or Nature, the peaceable possesst of a Crown, by an Ufiper and his Heirs, just for three Generations or Successions, should give a Prince a better Title than three or four Years Possession; for God may have declared his Will as sufficienly in that time, as in three or four hundred. And if your Reason be good, that it is for the Peace and Safety of Mankind, that the Title of the right Heir should be lost and extint after such a time; I cannot see why it should not be more for the good of Mankind, that their Allegiance should be fet and ascertained in a far less space, that is, as soon as the Conquest or Ufiper is quiedy fetted in the Throne, and hath received the Confes or Submission of all the Subjectts. But I do not define at present to enter any farther into this knotty Dispute about Conquest or Ufriptions, but I rather de-
have no reason in the World (even by your own Principles) to except against
this Author’s Hypothesis of transferring the Subjects Allegiance by a Conquest or
Ulterpation.
F. I do not deny what you say, but then the Conquest must be in a just or
lawful War; or else, if the Great Turk, or French King, should, without any Pro-
vocation given, make War upon, and conquer this Kingdom, and use the People
with the highest Tyranny and Cruelty, they must be all bound in Conscience,
not only to become, but continue absolute Subjects, nay Slaves to such a Con-
queror, without any Resistance. But let the Power of Ufispers or Conquerors be
what it will, I am sure it cannot be that of Paternal Authority, for the reasons al-
ready given; Nor can it be the Ufiposition or Acquisition of the Power of a Master of a
Family; for then the Subjects not being the Children of the Conqueror,
Ufispers, must be all Slaves instead of Subjects: So that I must, again tell you,
that it is from your want of distinguishing between Paternal, Masters, and Regal
Authority, which hath led you into all these Mistakes in this Matter; for the Re-
lations of a Father, a Master and a King, are all really different, and different, fa-
lorations of the Father, a Master and a King, are all really different, and different,
fations of the Father, a Master and a King, are all really different, and different,
that one of them is not the other, as any Man may easily perceive, that does but
bear the three Names pronounced to him, and consider their Signification: And
therefore quitting this subject for the present, if you have any better Arguments to
prove your Divine Injunction of Monarchy, pray produce them, for it grows late.

M. I shall readily obey your Commands; but pray Sir, in the mean time re-
member that we assume this Question the next time we meet. But to come to
the Matter in hand, I think there are yet some material Arguments behind, to
prove Monarchical Government of Divine Institution: For in the first place, you may
please to remember, that you your self have acknowledged that all Civil Govern-
ment proceeds from God. Secondly, You have like wise admitted, that the Govern-
ment of Fathers, or Heads of Families, was the first and most ancient Government of any
in the World after the Fall: when some Government became necessary for the
Punishment of Offences, and the restraining of the inordinate Appetites and Passions
of Mankind. And lastly, That this Government having absolute Power of Life
and Death, in some Cases, over the Wife, Children, and Servants of the Fa-

cily; and that if this Power is confer’d upon them by God (which you like-
wise admit, and do not depend upon the content or compact of the Wife,
Children and Servants; if these things were so, I leave it to your self to confide
from the Premises, whether this Power in Heads, or Fathers of Families (call
them which you please) is a Monarchical Power, or the Government of one
Man, and that ordained by God; and that this was the only Government ever
in the World, before the Injunctions of Conveniance, you your self cannot
deny.

F. I shall shew you plainly, that you would impose a Pallacy, either upon your
self or me in this Argument, and such a one which I have likewise already
answered at our late meeting: For I then told you, that the Government of such
Heads or Fathers of Families was only an Oecumenical, and not a Civil Power;
and this I proved by divers Arguments against what you then argued to the con-
trary; and therefore I think I may yet more affably, that Kings or Monarchical
Power cannot be proved to be of divine Institution by this Argument; and I have

* a greater Man than Sir R. F. viz. the Judicious Mr. Hooker on my side, who
makes a plain distinction between such a Head, or Master of a Family, and a
King, as appears by their words in his Ecclesiastical Policy, which I define you
Moster's Exe. would read with me: It is no improbable Opinion therefore, which the
Arch-bishops
Poc. 1. 4. was of. That the chief Princes in every Household was always, as it were, a King; as when
numbers of Houseolds joined themselves in Civil Societies together; which is also, as it forms, the reason why the Name of Fathers
continued still in them, who of Fathers the male Rulers; as also the ancient Custom of
Governors to do as Melchisedek, as being Kings to exercise the Office of Priets (which
Fathers did at the first) grew perhaps by the same occasion. Hence it is that only
kind of Regiments that have been received in the Worlds, the successors of one kind have
cursed family users to be desisted. So that in a word, all Civil Regiment, of what kind
forever, seems evidently to have risen from the deliberate Advice, Consultations, and Compri-
sion between Men judging it convenient and helpful, there being no impossibility to that
consider'd by itself, but that Mon might here lived without any Publick Regiment. So

that
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that you may see, that tho' he places the Original of all Governments in the Heads or Fathers of Families, (which Opinion I shall not oppose) yet it is plain that he shews no more in his Difficulties between Domesticated Government, and that Polity or Civil Power, which arises from Compact between Men, So that this will not serve the purpose you bring it for. You may now proceed to what other Arguments, and Insubances, you please; but pray do not make us any more of the Examples of the Patriarchs either before or after the Flood, since they are either altogether uncertain, or as to those after the Flood, I have proved them to have been not Kings, but only Masters of their immediate Families. And you may likewise omit Myles, Typhan, and the Judges, as Insubances of Monarchical Power by Divine Inflation; since I have formerly proved their Authority not to have been at all Absolute.

M. I shall not any longer insist upon them, since you will not admit of those Insubances, tho' I think there may be a great deal of weight in them: But thus much I suppose you cannot deny, as well from the Testimony of Facted as from prophane History, that Monarchy is the first and most ancient Government in the World, as appears by those Remains we have left concerning the Egyptian and Assyrian Monarchy. And as for the Government of God's own People the Jews, he was pleased to be King over them himself, tho' to govern by his Viceroys, till such time as he was pleased to make Saul and David Kings over them. Now what shall I say of that which is more ancient and perfect than this for the Divine Inflation of Monarchical Government?

M. I suppose you will not urge the Antiquity of a Government to be a Mark of Divine Inflation: It may indeed be an Argument to prove that Monarchy was the most natural Government, because the most simple and easy for Men to light on; and so, no doubt, it was in the first Ages of the World, before Ambition, Avarice and Luxury had debauched the Minds of Monarchs, the best fort of Government. And on the other side, there is this to be objected against it, that the setting up of so many Commonwealths upon the Ruins of Monarchies, shewed that Men found great Mischiefs and Inconveniences in that fort of Government, when once it grew Tyrannical, or else they had never departed from it; and this made them, as Brunt said at the beginning of the Roman Commonwealth, to invent other sorts of Government, which might partake of all the Benefits without the Inconveniences of absolute Monarchy.

But as for your Insubance of God's being himself King over the People of Israel, this touches not the Question in hand, since that being a Theoretical, and not a Civil Conclusion, could concern no other Nation but themselves: And as for your Insubance of God's making Saul King, I hope you will not bring that for an Argument of his Approbation, which it appears he was so angry with the Judges for defying; and tho' it is true, he did at their Request make them a King, yet it is apparent God would have been much better pleased had they still continued without one: So that I think there can no conclusive Argument be drawn from any Examples in the Old Testament, to prove Monarchical Government to be of Divine Inflation.

M. Well, however slight you make of my Authorities out of the Old Testament, yet I hope I shall be able to shew more cogent ones out of the New, to prove this to be the only Power instituted, or to which such notice of, by our Savioir Christ and his Apostles. And therefore when he would command the Priests to yield Obedience to the Supreme Power then in being, he bids them, upon their praying him a Piece of Money, to render to Cesar the things that are Cesar's. Matt. 22. 21. far is; not taking any notice of the Senate or People, whose Authority these Caeasars had usurped. And if St. Paul, in his Epistle to the Romans, had only said, Let every Soul be subject to the Higher Powers, and said no more; then Men might indeed have disputed, whether St. Paul by Higher Power had not meant as well other Governments as Kings, or other Forms of Government as Monarchy. But the good luck is, St. Paul hath been his own Interpreter; for, all the general Doctrine of Obedience to be given by all Men to the Higher Powers, he proceeds next to declare it home upon each particular Man's Conscience, under pain of Damnation, saying, What think ye be afraid of the Power? which Power he expounds in the Singular Number, restraining it to one Person: He is the Minister of God to thee, &c. It is not, They are the Ministers. And then again, He beareth the Sword in vain. And a third time, in the same Verse, let us should forget it, he says, For he is
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the Minisier of God, &c. So St. Peter also doth the like; for the self-same Word that St. Paul useth for Higher, in St. Peter is translated Superior, so that the in our English Bible the Words differ, yet in the Original they both name, and St. Paul might have been Englisht, let every Soule be subject to the Supreme Power; or St. Paul might have been also translated, Whether to the King as to the Higher. Yet there is this difference, that whereas St. Paul useth the Word in the Plural Number, St. Peter hath it in the Singular, and with Application to the King only, without taking any notice of any Governors but Kings, and those sent by them. And it is further to be noted, that St. Peter and St. Paul wrote their Epistles at a time when the Roman Senate had some share in the Government; and that it was (in appearance at least) a Commonwealth: So that some Authors suppose, that notwithstanding the Emperors by strong hand had usurped a Military Power, yet a great share of the Government was for a long time, nay even then, in the Senate and People. But for all this, neither of the two Apostles take any notice of any such Popular Government; no, nor our Saviour himself, who divideth all between God and Cæsar, and allows nothing, that we can find, for the People or Commonwealth.

I think your Quotations out of the New Testament will prove of no more weight than those from the Old, and that they will not make our Monarchy to be of Divine Institution, any more than the former: For our Saviour's Answer to the Jews signifies no more, than that Tribes, and all lawful States, were to be paid to Cæsar, as the Supreme Power then in being; to answer these Jews, who doubted whether any Obedience were to be given to a foreign Prince of another Religion than their own. The like Answer may be given to what St. Paul says in the Romans, Let every Soule be subject to the highest Power; which was chiefly directed to the newly converted Jews, who might doubt, as well as their Countrymen in Judea, whether they were bound in conscience to be subject to Heathen Magistrates; as also against the Sech of the Gypsies (then newly sprung up) who, tho' they called themselves Christian, yet looked upon themselves to be thereby discharged from all Subjection or Obedience to Civil Powers; being those whom St. Jude expressly speaks against, Who despise Dominion, and speak evil of Dignities. And therefore when St. Paul speaks of such Higher Powers, it is not in the Plural, but Singular Number, terming him, the Minister of God; because that at that time there was no such thing as a Commonwealth (as he knew of in the World) the two greatest Empires, the Roman and the Parthian being then governed by Monarchs, The like I may say to that other Text you have quoted out of St. Peter, which may very well be reconciled with that Place of St. Paul; tho' the one called the Higher Powers, the Powers ordained of God; and the other calls them, an Roman Ordinance, or Creature (as it is in the Original) since they certainly derive their Authority from God, tho' by the Mediation or Consent of Men.

And I believe you will prove mistaken in affirming, that the Senate or People had any Power when St. Peter and St. Paul wrote these Epistles: For it plainly appears, that whether these Epistles were written in the Reigns of Claudius or Nero, the Government was then wholly in the Roman Emperors: For tho' I grant, that during the Time of Augustus the Senate had some shadow of Power, and that several Provinces were under their Government; yet by that time Tiberius had reigned but a few Years, he quite took away all Power from the Senate, and made them no more than what the Parliament of Paris are to the French King, mere Ministers of his Tyranny, and oblig'd to verify all his Edicts; and the Compliance and Flattery of those Senators was so servile, that they pafted whatsoever Decrees he fent them, without the least Hesitation; till it became so fullsome even to himself, that it made him cry out, O gentes in servitutem nata! So that all you have said on this Subject signifies no more, than that our Saviour and his Apostles did not come into the World to dissolve or alter the Civil Governments, or the Policies of Kings, but to command Obedience to them, as they found them settled in the World, as the moderate Melethius very well observes, Christus non venit mutate Politicam.

And I doubt not, but if our Blessed Saviour had thought fit to come into the World about half an Age sooner, and to have been born and preached the Gospel in the time of the Roman Commonwealth, but he would have commanded the Jews to have paid Tribute to the Senate and People of Rome, as well as he did to Cæsar; And St. Peter would have enjoined all Subjection and Obedience to be given them; and
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and might have said with greater Reason of them, than of those subordinate Majesties they sent to govern their Provinces, that they were the Ministers of God. And if your Arguments for the Divine Right of Kings be true, it would be no Rebellion at this day for Subjects to rise up and destroy the Supreme Powers in all Commonwealths, because they are not Monarchical; and consequently though, in relation to whom God hath left us no Rules of Obedience. Which Doctrine if any Man should offer to preach in the Territories of Venice or Holland, I think, in the former the Preacher might very deferentially be sent to the Gallies, and in the latter they would at least send him a Pair of Shoes. But if you have any thing farther to urge for the True Divinity of Monarchy, pray will you let me hear it, for I am weary with answering such Trifles.

M. I confess I have not much to object against what you have now replied, and therefore I shall intitl no farther upon it; only thus much I am satisfied of, that God, by his own Example, as well as Institution among the Jews, seems more particularly to have approved of Kingly Government (and that absolute too) than any other. Nor that I will condemn all Commonwealths as unlawful, but that as being Sovereign Powers, they may be also ordained of God.

But I have another Objection to make against your Hypothesis, and that is, you have in your former Conversation suppos'd a natural Property in things, precedent to Civil Government, which can scarce be understood. For by what Right can any Man lay claim to any Property, but by the Laws of the Government in which he lives? and how can there be any such Laws before there was some Supreme S. P. P. Legislator to make them? So that the only way (I know of) to dissolve this Difficulty, is to suppose, that the sole Dominion of things in the World, that is, the absolute Possession of them, after the Flood; and that whatsoever Property in any thing his Potestas poetæ's in several, they enjoyed it by his Grant and Allotment, and in virtue thereof transmitted the same to their Potestas, without waiting for the Election or Consent of the People, or entering into any Articles of Capitulation with them whom they were to govern, as you suppose was necessary for the first Institution of Civil Government, and the Texts in the tenth of Genesis seem to import as much: By these were the Ver. 5. 32. Jethro the Gersite divided in their Lands, every one after his Tongue, after their Families in their Nations. The twelve Families of the Sons of Noah, after their Generations in Ver. 32. their Nations; and by these were the Nations divided in the Earth after the Flood. That is, not only the Nations themselves, but the Jethro of Countries of the Earth were divided by those Patriarchs, amongst their Potestas, into particular Shares and Territories.

And so likewise in all the Absolute Monarchies in the World, all the Property that Men enjoy, either in Goods or Lands, is either actually in the Prince, or else was at first derived from him; tho' I do not deny but when such a distinct Property in Goods or Lands is once instituted by the Monarch in any Kingdom, that he cannot again alter it or take it away, without manifest Violence and Injustice. And hence it is that our common Lawyers maintain, that all the Lands in England are held of the King, either mediately or immediately: For upon the Conquest by William the Conqueror, all Mens Estates were thereby vested in him. So that there is no way so natural and easy to solve all those Difficulties that do arise concerning the Original of Civil Government and Property, than to make them begin together in the Permons of Adam and Noah, and thence deriv'd to all their Potestas: So that whatsoever absolute Dominion Princes or States have claimed in those Countries and Places, which they have either feid upon themselves, as the first Occupants, or else have conquer'd from others, they enjoy'd them merely as they represent; Adam or Noah, the first Monarchs of the World. Nor can we other way avoid these several other intolerable Inconveniences and Aburdities, that will follow from supposing an original Community of things, or that every Man at first might take what Quantity of Land he pleas'd, without the Authority or Allignment of any Supreme Power.

F. As to what you say concerning God's approving Monarchy above all other Governments, by his instituting it among the Jews, that way of arguing is very uncertain and fallacious: since one may by the same reason argue, that the Ceremonial Part of the Mosaic Law was the best that God could have contrived, because he was pleas'd to preferre it to the Jews, during the time they should be under the Government of it. No doubt God prescrip't them such a Government.
ment both in Church and State, as he thought fit for their present Occasion and Inclinations; but whether that were the bell, or of perpetual Institution, is no where said.

But as for the other part of your Argument, I thought you had been very well satisfied by what I said at our first Meeting, that neither Adam nor Noah had, by Grant or Donation from God, a sole right to the Earth and all things therein. But since you are not yet satisfied with what I there said, I shall answer this Objection more particularly; and I doubt not but I shall make it plain to you, that you your self shall confess, that there is no such great Mystery or Difficulty in the tracing of Property, as also Civil Government, to their first Originals, without supposing any such absolute Dominion or Property in Adam and Noah, or in any other Supreme Power, as their Successors. I shall therefore fell of all remove the main Obstacle you have laid in the way, and shew you, that the Places of Scripture you have cited to this purpose do not prove the thing you intend them for. I did before shew you, that there was no manner of ground for Sir R. F.'s Opinion, that none of Adam's Sons could have a Property in anything, without Adam's Assignment; nor that any of Noah's Sons, when separated from their Father's Family, could have any Property in any thing but by their Father's Donation; Scripture and ancient History being altogether silent in these Matters. And therefore you are fain to lay hold of the first Place of Scripture that you think might serve your turn, which will not do the business neither.

For supposing I should grant you, that in the Dispersion or Division that was made of Mankind after the Flood over a great part of the World, the People that then followed their Ancestors or Leaders after this Dispersion (tho' the Text doth not mention any such thing) followed them as Princes or Monarchs; yet this will not prove what you would have, that these Fathers of Nations made this Division of the Earth in right of that Division which God conferred at first on Adam and Noah; since (as I have already proved) if this Division had been made in right of the Division that depended upon Noah, it ought to have been performed by the Authority of only one Man, and him the eldest Descendant of the eldest Son of Noah: And I have also sufficiently shewed you the Absurdity of such a Divine Right. And besides, it plainly contradicts it self; for either this Division you talk of was made in the Days of Noah, or it was not: If the latter, then it is apparent, that from the time of Noah to that of Heber there was a Community of Things and Properties; tho' you have affected the contrary: If the former, and that the Earth was divided before, then to what purpose was this Division in the Days of Peleg? And tho' I grant, that about that time every Language or Nation might, under the Conduct of their Prince or Leader, seize upon some Territory or Island sufficient for them to inhabit in; yet doth not the Text tell us, whether the Country they lived in was by them divided into particular Shares, or whether they made use of it in common, as the Indians of America do at this day, where the Quantity of Land doth far exceed that of the Inhabitants that live in it.

Nor lastly, supposing that a Division was made of these Countries they then inhabited, doth it tell us, whether it was done by the sole Authority of their Prince or Leader, claiming as his own the whole Dominion of it, so that no Man could have Right to a Foot of Ground in it but himself; or whether this Division was made by the joint Consent and Agreement of all the rest of the Heads of Families, and other Freemen that went along with him. The Scripture is silent in them.

Circumstances, that only telling us, that the Great Grand-sons of Noah, mentioned Gen. 10. The Isles of the Gentiles were divided in their Lands, every one after his Tongue, after their Families in their Nations; and that this Division was in the Days of Peleg: But no where declares, whether every particular Region or Country was then divided into different Shares or not.

And as for what you say, that all Princes, and Conquerors of Territories and Countries, have the like absolute Dominion and Property in them, as Adam and Noah had over the whole World; if it were no more than that, I doubt it would be very little; since I have already proved, and I think you must grant, that no Monarch at this day can claim his Crown as the right Heir of Adam or Noah, or as their Representatives; and it will, I think, be much harder to prove, that the sole Property of an acquired Country or Kingdom must be in them by virtue of any such Right. But as for your Instance of William the Conqueror's having a Right to all the Lands in England by Conquest, since it requires somewhat a longer Answer.
Dialogue the Second.

ever than the Time will now afford, I shall refer speaking farther of it till another Opportunity: But pray, Sir, as you have made me for a little plainer what those Inconveniences and Abundancies are that will follow from my Hypothesis, that God at first gave the World and all Creatures therein to Mankind, to be used and enjoyed in common, if they thought fit. M. I shall then say some farther Abundancies that will follow from it than I have done already: For the Grace and Graces indeed maintain, that a Community of things was by the Law of Nature, of which God is the Author, and yet that such a Community should not be able to continue; seems to derogate from the Providence of God, to ordain a Community of things which could not continue. And it seemed also an Act of high Prefumption in the Descendants of Noah, to arrogate the Natural Law of Community by introducing that of a Propriety in things.

F. I pray give me leave to interpose you, that you may not run on in a Mistake: For let us consider what they pleased, I was not tied to submit to it; and therefore when I say, that God gave the World, and all the Creatures therein, to Men, to be used in common, if they please; I thereby understand, that God hath by the Laws of Nature commanded nothing in this matter, but hath left all Creatures and all things therein to be used in common, or in several, as may be fit with the Convenience, Necessity, or Custom and Laws of each particular Nation or Commonwealth, who God designeth there to be peaceably together, and make the whole use of the Country where they inhabit; and the things therein contained, for their own proper Maintenance and Safety, according to the Expulsion of the Royal Priest. But the Earth hath God given to the Children of Men, i.e. all the Descendants of Adam.

M. Well, suppose it were so: the prime Rules of the Second Table are chiefly conversations about the Right of Propriety; but if this Propriety were introduced by Civil Laws or Agreements, as Graces and you were left to suppose, then both the Moral and Divine Law would depend upon the Will of Men; so that there could be no Law of Nature against Adultery or Theft, if Women and all things else had been in common.

F. This Opinion wholly proceeds from your not having any distinct or true Notions of the Nature and true Original of Propriety; and therefore if you please to hear my Account of it, I hope you will grant (when I have done) that your Opinion against the Community of things will be to no purpose. I do therefore in the first place distinguish between a Natural and a Civil Propriety: By the former Men might be guilty of Theft before Civil Propriety was instituted; but as for Adultery, that was always unlawful both by the Laws of God and Nature, which abhors Community of Women and promiscuous Copulations; and God hath particularly declared, that the Man and his Wife should be on Earth; And no Man, that maintains a natural Community of things, ever supposed that Women were amongst those things that were to be in common, or that a Man had the same kind of Propriety in his Wife, as in his Horse; so that the Command against Adultery might very well conflict with the Community of things.

M. Suppose I grant this: I do not understand how there can be a natural Propriety, and yet a Community in things, as you suppose.

F. I wonder you should not be able to apprehend this, and have been so often at an Ordinary and a Play-house: At the former, you know, tho' a Man hath a Right to his Dinner, yet all the Meat at the Table being in common, he cannot call any part of it his own, till he hath cut it or divided it from the rest; and at the latter a Man hath a Right to a Place either in the Box or in the Pit, and yet he cannot tell where it is, till he hath placed himself in it, or sent some body to keep it for him.

M. I do apprehend what you mean; but pray explain to me the Manner of this Natural Propriety a little more at large.

F. It would readily do it (since that were well done, I grant it would be a great step to the clearing of the Original and Nature of all Civil Power) were it not now too late to enter upon so long a Subject; and therefore I think we may both be sufficiently tired with Talk, so as to put it off until another Opportunity, when I shall give you my Thoughts of the true Original of Civil Government, in what sense it proceeds from God, and yet how far the Consent of the People is necessary to make it obligatory on the Subjects; which when it is
once well settled, I hope there will be little need of disputing farther, whether this great Alteration hath been brought about by lawful Means or not.

M. I thank you for the pains you have taken to inform my Understanding in this matter: And therefore since 'tis now very late, I desire we may adjourn our Conversation to another time; and then I desire that you would prepare your self to discourse with me of the second important Question we agreed on, viz. the Irresistibility of all Supreme Powers by their Subjects; not only because Resistance in any cause whatsoever is inconsistent with Supreme Power, and detru Operating to the Peace of Civil Society, but chiefly as they derive their Authority immediately from God, and are only to render an Account to him of their Actions.

E. I will not deny but what you have said is true in some sense, That all Sovereign Power is derived from God, and is also as such irrevocible by Subjects; but to affirm generally and absolutely (as most of your Opinion do) that all Commands and Acts of Men endued with this Supreme Authority, whether good or bad, lawful or unlawful, are part of that Authority derived from God, and therefore irrevocible in any case, or upon any necessity whatsoever, is to dangerous a Proposition, that I know none that hath contributed more to the Encouragement of the King, and the Popish Faction he favoured, to make those Breaches upon our Laws, Religion, and Liberties, which we have suffered since the Beginning of his Reign.

M. I am so well pleased with the Freemen and Ingenuity of your Conversation, that I desire nothing more than to discourse this important Question with you at our next Meeting: But I beg your pardon, if being taken up by some Business the morrow, I adjourn our next Meeting to the Day after, when, if you please to come at the same Hour as you did to night, you shall here find me ready to wait on you. In the mean time I must bid you good night.

E. Your Servant, Sir, I wish you heartily good night; I will not fail to meet you at the Time appointed.
Bibliotheca Politica.

DIALOGUE III

Whether Resistance of the Supreme Power by a whole Nation or People, in cases of the last Extremity, can be justified by the Law of Nature, or Rules of the Gospel.

F. O U are welcome, Sir; I see you are a punctual Man to your Word. Will you be pleased to sit down by the Fire, and drink a Dish of Tea?

M. I thank you, Sir; I assure you, I love to be punctual in small things, as well as in great ones, when I am not hinder'd or prevented by Business.

F. Before we come to the Question we the last time referred to make the Subject of our present Entertainment, it will, I think, be convenient for me to look back, and see what I have already proved at our two former Conferences, viz.

1. That Adam had not, either by natural Right of Fatherhood, or by Jealous Donation from God, any such Authority over his Children, or Dominion over the World, as you pretended.

2. That if he had, yet his Sons or Heirs had no Right to it.

3. That if his Heirs had, there being no Law of Nature, nor positive Law of God, that determines who 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 without the Judgment of the rest of the Children or Descendants of Adam.

4. That the Knowledge of the right Heir of Adam (supposing all there was one) being now long since lost, no Prince or Monarch in the World can grant any Title upon this Paternal Dominion of Adam or Noah.

5. That all Authority of inflicting Punishments of Life and Death, or other Civil Penalties, for the Breach of the Laws of Nature or the Transgression of the Civil Laws of the Commonwealth, is originally derived from God, as being that Power with which God, in the State of Nature, hath intrusted all Males or Heads of separate Families, and this not as Fathers, but as Masters.

6. That since all Kingdoms and Commonwealths at this day do owe their Original either to the Election of the People, or to Effusions or Campaign; God doth not now by the extraordinary Command of his Providence confer this Divine Authority on any Persons whatsoever, so as to give them a Right to the People's Allegiance, without the People's Consent thereto, or else an owning of their Titles by a subsequent voluntary Submission to them.

M. I
M. I grant indeed, that you have with great Labour, and some appearance of Reality too, endeavoured to prove these Principles you have here laid down; yet I think, and therefore, the few few of them should be true, rather, a great deal more to assert against the Left, if you please to hear me. For I think I can show you a great many evil Consequences that will follow from this Principle, of making the Commonبريغ on the one Side, and the other of the Divine Authority which you grant to be derived from God Almighty, in all Monarchs and Supreme Magistrates in Commonwealths.

E. I pray give me leave a little to interrupt you. I know very well what this evil Consequence is, of supposing the Conventions of the People as a Means at all necessity for the conveyance of Divine Authority; that is in plain English, because it will destroy your dating the doctrine of Passive Obedience: No resistance; therefore if it be so, pray let us rather fall presently to the Question it fell, than argue by Consequences; which if we should go that way to work, I have my Consequences likewise to urge, some of which I have given you already. Therefore, if you please, let us begin a fairer way, and hear me propose the Heads, in which I doubt not but we do both agree, and then I will bring it to the main body of the Question, in which, perhaps, we differ.

M. I confess I had somewhat more to say, which would have tended to prove the Doctrine of Not-resistance; but since you are pleased to separate for the time, the doctrine of God, which you better approve of, I am ready to comply with you in that.

E. So do in what way you think fit.

M. I shall then be to the first place lay it down for a Principle (which I suppose you will not deny) that the power being from God, it was originally invested by him for the Peace, Happiness, and Safety of Mankind, that is, of all the Subjects who are to live together in a Commonwealth as Civil-Society.

2. That all Kings or Supreme Magistrates are likewise secured, by God's Authority, in those due Rights and Pretensions, which are necessary for their well distributing this great Trust or Duty which God requires of them, and in such investments of the People at first felt or solemnly transferred to them.

If therefore you grant, as I suppose you will, these two reasonable Propositions, the Question will amount to no more than this: whether, if the Supreme Power, in any Kingdom or Commonwealth, so far abuses this Trust, which God has committed to them, and instead of preserving and defending the Lives, Liberties, and Estates of their Subjects, they maliciously and unjustly go about to destroy or grievously to oppress them, by making them, instead of Subjects, mere Slaves and Vassals; the Question, I say, then is, whether, if such general Violence or Oppressions be committed upon the whole People, or so considerable a part of it, as that the Safety and Well-being of the Commonwealth cannot in any likelihood subsist without it; the People, or the most considerable part of them, may not in case their Lives, Liberties, and Persons are unjustly assailed and oppressed by the Officers or Standing Armies of the Prince, or other Supreme Powers, for their own defence take arm to defend their Lives, Liberties, and Estates, against such an armed Force and Violence. Where, by the way, I define you to take notice, that I do here absolutely disclaim all Resistance, or any Self-defence against Civil Authority, or the Officers commissioned by it, by any private Hand Person, whether such Power be exerted according to Law or not, or else abused in some cases to the hurt or Hindrance of such a private Person only. So that I suppose this Resistance to be lawful only in case of a general Deception, or any considerable Oppression, of the whole People, or at least a very considerable Part of them, and those that are in the chiefest Places of the Administration.

M. I confess, the Doctrine of Resistance, as you have part, forms a first Fund, what plausible, and to tend to the common Good and Preservation of the People or Civil Society. But let me tell you, I am of opinion, that whenever it comes to be put in practice, it proves (like the other Specifications of Commonwealths) more hurtful than beneficial to the common Safety and Preservation of the People; and consequently more defensive to the main Ends of Government; and so destructive to the Good and Happiness of Mankind; and last of all, that such Rebellions cannot but be maintained or executed without the Deposing or Abolishing of that Prince, or other Supreme Magistrates; whatever may be pretended to the contrary. And indeed it is almost impossible to suppose, that any Monarch or Supreme Magistrate should ever (unless they were dark mad) purposely go about
Dialogue the Third.

about to kill or destroy their Subjects, in the Multiplicity and Safety of whom consi-

rift his chief Strength and Riches. And you may as well tell me, that a Shep-

herd, whist he is in his right Wits, should go about to kill or destroy his Flock, as

that a Monarch should wilfully intend to kill or destroy his People.

To conclude, since the People must be, in all Cases of Tyranny or Oppression,

their own Judges, and Executioners too; there is no Rebellion so rank and wicked,

that this Pretence of a Self-defence of Men’s Lives, Eftates, and Liberties, may

not justify; whereas indeed it is contrary to all natural and Civil Justice, for the

injured Party to be his own Judge and Executioner too: For then the other Side

may pretend to the like Right, and the Trial must be referred to Force and Arms,

in which Contention if the People are overcome, they are certainly reduced to a

worse Condition they were before; but if the Prince or Supreme Magistrates have

the worst on’t, the Civil Power then in being is absolutely ruined: So that whe-

ther the People or Magistrates overcome, the State of both of them is very deplor-

able; besides divers other evil Consequences of this Doctrine, which I shall

deeper, till I hear what you can say to what I have now urged against your

Opinion.

F. You have made a very plausible Speech, in setting forth the dreadful Con-

sequence of this Doctrine of Reliance in any case whatsoever; and I confess, if

what you have done be true, etc. that such Reliance always brings along with

it greater Miseries upon a People than what the utmost Violence and Oppression

of Princes can produce, then your Consequence would be also true, that such Re-

liance is never to be praefited upon any account whatsoever. So, on the other

side, if that be not true, neither will your Consequence signify any thing.

I suppose you will not deny, but that there may be such a thing as a Tyrant,

and that that part of Mankind who live under him may be fitliable of his Tyranny;

or else the Definition which R. James gives us of a Tyrant, in a Speech which he

made to the Parliament in 1603, would be altogether in vain. But the Words

are so fit for this purpose, that I will read them to you out of his Works. 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 the 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 Prosperity of his People. And so likewise, in another Speech he made to the Parliament, he hath this memorable Passage: That a King governing in a settled Kingdom leaves to be a King, and degenerates into a Tyrant, so soon as he conveys to rule according to the Law. So that from it is plain, that the People may judge when they have a Tyrant instead of a King to rule over them, and that under such a Tyrant the Condition of the People may be very deplorable; the Question still remains, what is best for them to do in this case? Whether it be better for them, or they are obliged by the Laws of Reason and Nature, patiently to submit to it? or else, if they can, either by their own Force, or the Affiance of a foreign Prince, to cast off the Yoke? And I think I may still maintain, that they may do it, notwithstanding what you have yet urged to the contrary.

In the first place therefore, tho’ you count it an almost impossible thing to sup-
pose, that a Prince or Monarch would ever go about to murder or destroy his Subjects; yet as incredible as it is, I can give you several Examples out of History, both antient and modern, that some Tyrants have been so brutish, as not only to endeavour it, but actually to put it in practice. Of the first kind is that of Caligula, whom Suetonius mentions to have willed, that all the People of Rome had but one Neck, that he might cut it off at once. The other is of Nero (in the fame Author, as alio in Tacitus) who set the City of Rome on Fire, and consequently would have burnt all the People in it to please his Humour, and that he might sing his Rival of the Destruction of Troy the more naturally while it burnt. A third Example I find related in Mauquet’s Travels into the East Indies, of a certain King of Pegu, about an hundred Years ago, who, by the persuasion of some Quots’ Treat-

of his Diabolical Priests or Magicians, took such an Aversion to his Subjects, that he was resolved to destroy them, and therefore forbade them to sow their Lands for two or three Years, by which means a great part of them died of Famine, or were forced to devour each other. And in such cases as these, I suppose, the Laws of Nature and Reason will justify Self-defence in the People; and here I had
been lawful for the People of Rome to have refiged Caligula's Guards, if he had gone about to put his wicked Withe into execution; or likewise to have refiged or put to death those Incendiaries they found firing the City, tho' they might have had the Emperor Nero's Commiffion for it: So likewise sure it would have been as lawful for the People of Pegu to have refiged those whom the Emperor might have sent to hinder them from ploughing and fowing their Lands. And that I am not the only Man of this Opinion, I desire you to confult what Barclay hath, in his Treatefe contra Monarchomachos, which he writ against Buchanan, de Jure regni apud Scotos, and the Author of Vindiciae contra Tyrannos; where, tho' he be a molt zealous Afeccer of the unlimited and irrefigible Power of Princes, yet in his third Book, Chap. 8. he spokes to this effect; the Sense of whose Words, as near as I can, I will give you in English.

"Now if any one should say, But must the People always yield their Throats to the Fury and Crueltie of Tyrants? Must they patiently permit their Cities to be destroyed by Hunger, Fire or Sword, and their Wives and Children to be expos'd to the Luft of a Tyrant, and also themselves to be brought into the utmost Dangers and Miseries of Life? Must that be denied to them, which is the Right of all Animals by Nature; that is, that they may repel Force with Force, and defend themselves from Injury? To this it may easily be answered, that Self-Defence, which is of natural Right, ought not to be denied to the People: And therefore if the King doth not only exert his Hatred against some single Persons, but also shall go about to destroy the Body of the Commonwealth, of which he is Head; that is, shall exert his Hatred against the whole People, or some considerable Part of them, by an horrid and intolerable Cruelty or Tyranny, there is a Power in the People, in this case only, of defending itself, but not of subduing the Prince, or of revenging the Injury given; neither of destruing from their due Reverence, because of the Injury receiv'd: In short, it hath Right only of repelling a present Force, but not of revenging a past Injury; for one of them indeed is from Nature, that we should defend our Lives and Persons from Injury; and therefore the People may be able to prevent an Evil before it is done, but cannot revenge it upon the King after it is done. Therefore fore the People hath this Right more than a private Man, that he hath no other Remedy left him but Patience; whereas the People, if the Tyranny be intolerable, may still reft, tho' with Respect.

In all which this Author hath there laid we may easily understand his Meaning, unless it be in this of refiging Force with Respect and Reverence: For I cannot understand how a Man may fight against his Prince with Reverence, or give his Guards a Knock over the Pate, or a Cut in the Face, with Respect to the Prince's Authority. But the Reafon is plain why the People may act thus, because when a Prince once goeth about to destroy and make War upon his People, he doth not act then as a Monarch, but like a Cae-far, and Enemy to the Commonwealth: And no Man can imagine a Will to destroy and to protect the People can act once of them in the same Perfon.

M. But pray give me leave to interrupt you a little. I grant indeed, that by the Political Laws of any Government, which are made to secure the Rights of the Subjects in their Lives and Fortunes, no Prince can or ought to take away his Subjects Lives or Estates contrary to Law; yet by the Imperial Laws in every Government, and by the Law of the Gospel, which (as I shall hereafter shew) establih those Laws in all perfect Governments (and particularly in the English) all these Rights legally belong to the Civil Sovereign, especially to be accountable to none but God, to have the sole Power and Difpoal of the Sword, and to be free from all coercive and vindicative Power, and from all Restraint by Force. It is by thefe Common Laws of Sovereignty, that the Gospel requires Paffive Obedience, which is but another Name for Non-reftinance: These Laws are in eternal force against the Subjects in defence of the Sovereign, be he good or evil, juft or unjust, Christian or Pagan; be he what he will, no Subject or Number of Subjects whatsoever can lift up his or their Hands against the Sovereign, and be guiltles of these Laws. Therefore for the Subjects to bear the Sword against their Sovereign, or to defend themselves by force against him or his Forces, is against the Common Law of Sovereignty; and by confequence Paffive Obedience, even unto Death, becomes a Duty in Sovereign Governments, by virtue of these Laws, and we are not to refist them upon any pretence whatsoever; but therefore all Subjects are bound
bound to suffer Death wrongfully, rather than to resist them upon any pretence or account whatsoever. So that let Papish Writers (chُ never to moderate) say what they please concerning the Lawfulness of Resistance in some cases, yet we of the Church of England have learned better things from the Scripture and the Examples of the Primitive Christians, which we think our selves obliged most strictly to follow. And therefore in relation to our own Government, and the present State of Affairs, I shall reduce all that I have to say against Resistance of the Kings, or those commissioned by him, into this Syllogism: Not to be resisted by the Subjects is an inseparable Right of all Sovereign Power: But the King is here the only Sovereign Power. Ergo, the King is upon no pretence whatsoever to be resisted by his Subjects. So that, not to quarrel any longer about Words, Nonresistance is the same thing with Passive Obedience and Submission, and by consequence there are required by the Imperial Laws of the Government. Therefore whatsoever the Imperial Laws of the Government require of its Subjects, if it be not contrary to God's Laws, they are bound to perform it. But Passive Obedience, or patient suffering of Injuries from the Sovereign, is not forbid by God's Laws: And therefore Subjects are bound to perform it, where it is required by the Imperial Laws.

F. I shall forbear to say any thing, as yet, concerning what Doctrines the Scriptures teach, or the Primitive Christians practiced concerning this matter, because I desire to discourse that Quotation apart from this of the Laws of Nature or Reason, which we are now upon: Therefore I must tell you, that cho' this new Term of Imperial Law of Nonresistance may found very prettily to their Ears who mind Words more than Sense; yet I must freely confess, that I am altogether adverse to this Notion of Imperial Law, as also of the Distinction you make between the Imperial and Political Laws of this Kingdom: And if by Imperial Law you mean those of the Roman Empire, I never knew that those Laws had any thing to do in England before, but always suppos'd the Political Law of our Country to be the only Measure of the King's Prerogative, as also of the Subjects Obedience and Subjection. Nor do you own Civil Laws, by as much as I know of them, make any difference between the Imperial and Political Law of the Empire; for by the one, as well as the other, the Civilians understand such Laws or Edicts of the Emperors, which, with the Approbation of the Senate, were made for the Peace and Well-government of the Commonwealth; but I never yet heard of any Imperial Laws, whereby the Emperor declared, that he had a Right to plunder or murder all the Citizens of Rome, or that they believed they were obliged to suffer by your Imperial Laws without any Resistance. I am sure the Senate and People did not believe, that the Emperor had any such Authority, when they declared Nero and Maximi, for their intolerable Cruelty, not only Enemies of the Commonwealth, but of Mankind: But if by the Imperial Laws of Nonresistance you mean no more than what you laid down in your Syllogism, that it is an inseparable Right or Prerogative of Sovereign Powers, not to be resisted by their Subjects, when you have proved this Proposition by the Laws of Nature and Reason, I shall then believe it. But as for your Conclusion, it being founded upon these Premises, it needs no Contrafactum; for if the Imperial Law of Government do not require your Passive Obedience, then Subjects are not bound to perform it. And to shew you the Palefines and Absurdity of this Affertion, that whatsoever the Imperial Laws of any Government require of its Subjects, if it be not contrary to God's Laws, they are bound to perform it. Instead of Passive Obedience, or patient suffering of Injuries, let us infer, To give up to the Sovereign all our Civil Properties and Effects, if demanded by him, is not forbid by God's Laws; and therefore Subjects are bound to perform it, whenever it is required by the Imperial Laws: For certainly the absolute Disposal of the Estates of the Subjects is as inseparable a Prerogative of Sovereign Power as Inseparability it self; as I think I am able to prove, if you think fit to dispute that Question.

But as a precedent I shall only confine my self to confute the Major in your Syllogism. In the first place, therefore, though I do grant what you lay down for a Ground, to be true, that it belongs to Sovereign Powers to be accountable to, or punishable by, none but God; yet, I suppose, Resistance of their Violence and Tyranny may very well be performed by the People, without calling them to a Judicial Account, or erecting a Tribunal for that purpose: Calling to an Account, and Punishment, are Acts of Authority of Superiors over Inferiors: but Resistance for Self-defence,
is a Right of Nature, and which no Man, by entering into Civil Government, ever parted withal, but out of Consideration of a greater Good to be obtained thereby, (viz.) his own greater Security, together with the common Good of that civil Society, whereof he is a Member; which, when by the Prince's Violence, it is once like to be wholly loft, his natural Right of Self-defence, for the preservation of himself and Family, again takes place: Nor doth he then refit the Supreme Powers as such, but as Murderers and Cut-throats, who by going about to destroy the People have already loft all that Right they formerly had. And of this Opinion is that moderate Roman Author, Barbary, before cited, who in the 16th Chap. of the Book last quoted, hath this remarkable Flage.

"What then? Can there no Cares happen in which it may be lawful for the People, by their own Authoritie, to rise up, and refit a King governing Tyrannically? His Answer to this Question is, there are certainly none as long as he continues King: for the Scriptures forbid it, which say, Honour the King, and he who refiseth the Power, refiseth the Ordinance of God. Therefore the People can have no Power against him, unless he commiteth something, by which he may cause to be King; for then he himself doth abdicate his Kingdom, and becomes a private Man; and by this means the People being made free, that Right returns to them, which they had before the King was made: But there are but few Facts of that Nature, which can produce such Effects. And I cannot, when I think of it, find more than two Cares, in which a King doth insai make himself no King, and thereby depriveth himself of all Honour, Regal Dignity and Power; (which also Winne does take notice of)" One of these is, if he destroy his Kingdom, and then give us the Examples of Nero and Caligula, as I have already done; and next proceeds to this purpose, that when any King designs, and doth feriously endeavour "to put this in practice, he calls all of all care and duty of governing; and therefore thereby loses his Empire over his Subjects, as a Lord of a Servant loses his Dominion over him, by giving up all Care, and Government of him." And of this Opinion likewise are *Grotius and Pufendorf* *, the two best, and most learned Writers on this Subject. Who do not think it "inconsistent with the Rules of the Gospel, for Subjects to refit the King, if with a humble Mind he seeks the Destruction of his People; for, says the former, the Will of commanding and destroying cannot conflit together: And therefore he who professes himself an Enemy of the whole People does thereby abdicate the Kingdom; but that can scarce seem to happen in a King in his right Wits, and who commands only one Kingdom. But if he commands more Kingdoms, it may so happen, that he would destroy the People of one Nation to gratifie the other, that he may there make Colonies of them." And this, I suppose, Grotius spoke in relation to the King of Spain, who (they say) had declared, that if he overcame the Dutch, then in Arms against him, he would fell the People for Slaves into America, and people the Country with Spaniards.

M. You very much mislike me, if you think, by Imperial, I meant the Roman Laws, but only the common Laws of Sovereignty, which, though they destroy no Man's natural, or civil Rights, yet both grant, and confirm unto the legal Sovereign, in every Government, the Essential Rights of Sovereignty, of which I take Non-resistance, not only for Wrath, but Conscience fake, to be one of the chief. And therefore it were much better to venture the utmost that a Tyrant can do towards his People by destroying them, than to give the least hint to Rebellion, by supposing the People may in any case whatsoever refit their Prince. For granting the world that may happen, that a Prince once in a thousand Years should be so wicked and malicious, as to go about to destroy his People, yet he could scarce find Means and Hands enough to bring it about: And admit he should destroy, by his mercenary Powers, thirty or forty thousand of them, it were better all these should perish, than that the Nation should be involved in Civil War, and the Prince's Person and Government destroyed by Resistance. And therefore in all Governments whatsoever, whether Monarchies or Commonwealths, there must be an absolute Trust placed by the People in one, or more Perfons, which Trust they can neither recall when they will, nor yet refit upon the Non-performance of it. And therefore it is a Mistake, when you affirm with those Authors you have quoted, that a King, or other Supreme Powers, can ever lose their Right, by going about to destroy the People, much less when they only think their Liberties in danger; and I have several Reasons to give you for my Assertion.
Dialogue the Third.

As first, from the common Notion of a Trust; for what is more generally undeterred by trusting another, than that we lodge our Concerns with him, and put them out of our Disposal? When I trust a Man with my Life, or Fortune, all Men agree, that I put it in his Power to deprive me of both: For to deliver any Property to another, with a Power of Revocation, is to trust him (as we say) no farther than we can see him. He that can recover a Sum of Money he hath deposited, when he pleases, to speak properly, hath it still in his Custody, and trusts his Friend no more than he doth his own Coffers; and therefore, if we consult our own Thoughts; we shall find, that a Trust naturally implies an entire Reliance upon the Condfid[?] and Integrity of another, which makes us resign up our Liberty or Eflate to his Management, imagining them safer in his Hands, than in our own. In short, a Trust, where there is no third Person to judge of the Performance, (as in these Facts between Subjects, and Sovereign, there is not) I say, each such a Trust includes a Transf[?]tion of a Right, and in respect of the Irrevocable[ness of it, is in the Nature of a Gift. So that there seems only to be this difference between them, that a Gift ought to respect the Benefits of the Receiver, whereas a Trust is generally made for the Advantage of him who conveyed it.

And in every civil Society, or Government, under Heaven, that doth not depend upon another, there must be an absolute and irreconcilable Power fixed somewhere, which may irreversibly dispose of the Lives, Estates, and Persons of the Subjects within that civil Society, or Government. For if every Man be left at Liberty to dispose of his own Estate and Person, as he pleases himself, then can he promise himself no Protection, but what his own natural Force will afford him; and that will certainly be overpowered at some time or other by others. And out this Trust there can be no Justice, administered within the civil Society; for if every particular Man may be Judge in his own Case, the Right will certainly be affected on both sides, tho' it really can be but in one: No Malefactor will ever condemn himself, nor submit to Justice, if he can, and may resist; and if a War happen, every Man will be for having his own Goods from the Expanse, as his own Person from the Danger of it; and the Consequence must be, that that Civil Society must perish either by internal Disorders, or external Force.

Therefore this Power is, and must be in one Person, or Body of Men in every Civil Society, and is also indisputable: For supposing that it should be divided in the same Civil Society into two, or more Parts; as between two Men, and two Senates, or Councils, without any dependence upon each other; or any third Power, the Consequence must needs be, that they differing, and opposing one another, and having no lawful Power fixed in either of them to oblige the other to submit, must have recourse to Force and Arms: So that this Civil Society can never rest till this Supreme Sovereign Power be reduced again into one. And if you suppose this Power of judging, and refilling in the People, or Multitude, the matter is ten times worse; that being a blind, and heady Monst[?]r, easily provoked upon slight Occasions, common and judicious falling even in its own Concerns, and as implaceable in its Rage, as unstateable in its Revenge.

To conclude: Whether this Supreme Power be in a single Person, or in a few, or in all, where ever it is lodged, none must oppose, none must resist it; nor can any Man assure himself of more Justice, or better Ufage from a Senate, or a Multitude, than from a Prince, or single Person. So that this Inconvenience of being liable to have our Lives sometimes taken away, our Persons injured, and our Estates oppressed by the evil Management of our Governors, is one of those humane M[?]l[?]ries, that, by the Corruption of Men's Nature from the Fall, took Possession of the World, and can never be purged out of it till the final Conflagration. And therefore the Advice of Cato in Tacitus is always to be remembered, That "Tyants and evil Princes are to be born with, as immoderate Rains, and unkind Seasons, and amends may be made by a better Successor:" Since Resistance will not cure, but only inflame, the Dilemma.

F. You have made a long Speech, wherein I see you have heaped together all that Wis or Interest can produce on the behalf of Tyranny; though I must confess, I did not expect to find you, of any Man, so zealous an Advocate for it. But I forgive it, as long as I really believe, that only a mild and civil Government, and not any private Interest, prompts you to it. But that I may take your Speech to Pieces in order to answer it: In the first place, as to what you say concerning a Trust, I think you are; under a very great Mistake. For no Man, either in a Civil State,
State, or in that of Nature, ever yet so trusted another, as that, if he abused his Trust, he had not referred to himself a Right of Appeal. Under all Civil Governments this is notorious, since it is one of the main Business of Supreme Courts of Justice upon Complaints, or Appeals, of Breaches of Trust, to call the Trustee an Accusatory, and force them to make Restitution for the Wrongs they have done. And whereas you say, that in the State of Nature, where there is no third Person to judge of the Performance, such a Trust includes a Translution of Right (as in these Facts between Subjects and Sovereigns) This is likewise a Mistake, though it be true, that in that State, if I trust a Man with my Life and Fortune, I put it in his Power to deprive me of both; and that this Trust naturally implies a Reliance upon the Conduct and Integrity of another, which makes me resign my Liberty, or EuseState, to his Management; yet doth it not therefore follow, but that upon the abuse of this Trust, I may have a Remedy against him, who thus breaks this Trust I have so reposed in him. And when there is no third Person to judge between me and my Trustee, I may call the sole Judge of the Wrong he doth me; and may not only turn him out of his Trust, if I find he abuses it, but may also force him to make me Satisfaction for the Wrong he hath done: So that, if in the State of Nature I trust a Man with a Bag of Silver to keep for me; if he either steals, or runs away with it, I may certainly force him to make me Restitution, or else enter into a State of War with him till he do: And where there is no instant Power over us to whom we can Appeal, this Difference can no way be decided but by the Sword. And therefore no Trust (as in these mutual Facts between Subjeects and Sovereigns) can be Subjecket to a Power, or include a perfect Translution of a Right; and no Trust can ever be supposed to be given but with this tacit Condition, that the Trustee doth not abuse it. You yourself have made a sufficient Difference between a Trust, and an absolute Gift; but granting that a Gift respects the benefit of the Receiver, whereas a Trust is for the Advantage of him who conveys it. From whence it must necessariy follow, that if this Trust be for his Advantage, he hath still an Interest in the thing trusted; and consequently may call the Trustee to an Account in the State of Nature, and upon Satisfaction denied, appeal to God himself by Buttel, or Combat. So that if the Supreme Powers are but Trustees of the People, they may be rejsfeited, when by going about to destroy them they break their Trust.

But as for the other part of your Argument, that in all Civil Governments under Heaven, there must be an absolute and uncontrollable Power fixed somewhere, that may irresitibly dispose of the Lives, Persons, &c. of the Subjects. This, tho' it seems a better Argument than the former, yet is all one in effect; for the Question is still, Whether the People ever reposed such an absolute Power in their Supreme Magistrates, or not? I grant indeed, that as far as they act as the Nature of Civil Power requires, they are not by any means to be rejsfeited. But the Question still is, Whether, when a Prince makes War upon the People, or goeth about to destroy them, there is then any Civil Power in being; and whether the Government be not already dissolved, since the main Ends of Government, viz. the Good and Preservation of the Subjects, are quite destroyed. And now pray tell me which is most suitable to that prime Law of Nature, the Endeavour of the Good and Happiness of Mankind, that a whole Nation should be enslaved, or destroyed by the boundless Will of a Tyrant, or that Rulers should be sometimes rejsfeited when they grow indesirably Tyrannical, and abuse their Power, to the true Disposition of the Lives and Properties of their Subjects. So then, if such an absolute Arbitrary Power in Princes, or States, can never consist with the main Ends of Civil Society, the Peace and Happiness of the Subjects, it is plain, that whenever they are reduced to such a State, they will look upon themselves as again in the State of Nature; Not would they have ever quitted their natural Freedom, and tied themselves up from providing for the Security of their Lives and Properties, by such means as they might before have judiciously exercised, had it not been to obtain these Ends with much greater Certainty by entering into Civil Society, and by fixed Rules of Right and Wrong, to secure their Lives and Properties with their future Peace and Quiet, by newer means, than they could have hoped for in the mere State of Nature.

For it cannot be supposed that the People would ever confer such an arbitrary unlimited Power on one Man, or many, over their Lives and Estates, that they might
might take them away without any just cause; for this were to put themselves into a worse Condition than the mere State of Nature, wherein they had a Liberty to defend their just 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 a Combination: Whereas by supposing they have thus given up themselves to the absolute Arbitrary Power and Will of a single Person, they have wholly disarmed themselves, and only armed him to make a Prey of them whenever he pleases; he being in a much worse Condition that is exposed to the Arbitrary Power of one Man who hath the Command of 10000 Men, than he that is exposed to the Arbitrary Power of 10000 single Men, no Body being secure that his Will who hath such Command, is better than that of other Men, tho' his Force be 10000 times stronger.

To conclude, granting a Supreme Power to be plac'd somewhere, either in a single Person, or in many, yet it can by no means be absolutely Arbitrary and inviolable over the Lives and Fortunes of the People; for their Arbitrary being (as I have already proved in the former Conference) no more than that Power which God hath granted to every particular Head of a Family, and other Freemen at their own disposal, for the security of their own Persons, and the common Good of those whom God hath intrusted to their Charge, they cannot confer upon the Supreme Magistrate any more Power than what God hath conferred upon them before, and so can be no more than those Persons had in the State of Nature, before they enter'd into Society, and before they gave up their Power to these Supreme Magistrates, viz. that only which God had before intrusted them withal. Now (according to your own Principles) no Man is trusted by God in the State of Nature with ill. t. 355.

an absolute Power over his own Life, much less to defrey or take away the Life or Property of another, and therefore cannot convey any such Power to those he would entrust with it. So then if a Man cannot subject himself to the Arbitrary Power of another, neither hath he in the State of Nature such an Arbitrary Power over the Life, Liberty or Possessions of another, but only as much as the Law of Nature gave him for the preservation of himself, and the common Good of Mankind; this is all he hath, or can give up to the Commonwealth, so that if it can have no more than this, its Power, in the utmost bounds of it, is still limited to the publick Good of the Civil Society.

All which, if duly considered, the rest of your weaker Arguments are easily answer'd: For supposing but one Prince in 1000 Years so wicked as to go about to defrey his People, it will then, whenever it happens, be as much their Right to defend themselves, as if it were to happen every Year. And tho' you affert he could scarce find Means or Hands to bring it about; yet that makes nothing to the purpose; for if he hath no Right to defrey 30 or 40000 of the Subjects (as you suppose he may by his Mercenary Forces) then that 30 or 40000 may defend themselves if they can: For when once a Prince hath thus enter'd into a State of War with his People, who can tell when or where it will end, or can affure himself that he shall not be the next Man that shall be defrey'd? And it is very pleafant that you allow the Prince this Power of Murdering to avoid Civil War; as if there could be no War begun unleas there be Fighting on both sides; whereas Mr. Hobbs himself acknowledges, the very affaulting or setting upon any Man, to be entering into a State of War with him: And sure, I think, to fall upon the People without Caufe, and killing 30 or 40000 of them, is entering into a State of War, or else nothing is: And therefore you mustake the Question, when you argue from the Irreversibility of the Supreme Power that it must not be reftituted; for the Question is not here, whether it be divisible or not, but whether it be not absolutely disjionced by thus entering into a State of War with the People, whom all Civil Magistrates are suppos'd to proteft when they assume the Government.

Nor doth this give any countenance to Malefactors or other single Persons, to rise in Arms and defend themselves against the Supreme Powers, when they have offended against the Laws, or that they think themselves injured by the undue execution of them; for such Abuses of Power cannot rise only, or upon every flight occasion, disturb the Government. And in the case of Malefactors, the Supreme Power is still fure to have all the rest of the People on its side, for their own Security: And in case of some Murders or Oppriffions committed by such Supreme Magistrates on the Lives or Estates of some private Persons, tho' I fuppofe that even such private Men have a Right in the State of Nature to defend their Lives, and to recover
recover by Force, what by unjust Force is taken from them; yet this Right must still give place to the publick Peace and Safety of the Commonwealthe, whereof they are Members, which must not be disturbed for the sake of a few: And of this the People themselves are so sensible, that it is almost as impossible for 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 Mad-man or boasty Malefactor to overturn a well settled State; the People being as little apt to follow the one as the other. So on the other side, whenever the People are once convinced that their Governors, instead of protecting, go about to destroy them, it is as impossible for any Man to persuade them not to take up Arms and defend themselves against them, if they are able to make sufficient Resistance. And therefore tho' I so far agree with you, that some Oppressions and Violences may be praeticed in all Civil Governments; whatsoever, since such Abuses will continue as long as Men are Men; yet doth it not therefore follow that the Supreme Powers must always be born withal and never resisted, no not when they go about to destroy the whole Body of the People.

M. But pray tell me, it is not a very michievous and unjust thing, that Subjects should be both Judges and Parties too in their own Cause; since they may pretend that the King goeth about to destroy or enslave them, when really he does not design any such thing; and would not this bring all things into Anarchy and Confusion? I shewed you the fatal Consequences of this at the beginning, but you have not yet thought fit to answer them.

F. I beg your Pardon, Sir, I have been so taken up with anwering the main Arguments that you have propo'd against this Right of Resistance, that I have not had time to consider this Objection, which is but a Consequence thereof: And therefore in the first place give me leave to ask you this Question; Suppofe you were Mafter of a separate Family in the Indies, and a Neighbouring Prince or Cacik of the Indians would come to kill you, or to drive you out of your Plantation, might you not defend your self, because you are both Judge and Party too in your own Cause? Or suppo'e you should so far abuse this Power of Self-defence, as to pretend this Neighbouring Prince was coming to asault you, when he really was not, and shou'd therefore (to prevent it) set upon him first, and murder him and his Followers; must your Abuse of this Right, which you have by the Law of Nature, be a sufficient Argument, that neither you, nor any Man else in the State of Nature, should ever for the future exercise this Right? So neither will the Abuse of these Rights be a sufficient Argument against the Right of Self-defence against the Supreme Powers.

M. I grant indeed they are not in the State of Nature, but it is much otherwise after People are entered into a Civil Society, or Commonwealth, and that upon your own Principles; for then they have given up all that Equality, which you suppose between Men in the State of Nature: For supposing what you affirm should be true, That Civil Government at first began from the whole Body, or major part of the People's making over all their Right of Governing themselves to one Person, or more, upon Conditions of being protected in their Lives and Estates; they must likewise make over all their Right of Judging for themselves what means are necess'ry for their common Good and Preservation; after which transferring of their Power, they can never have any Right to meet again in a Body, either by themselves or their Representatives, to judge of their Breaches, or the Transgressions of those Conditions which they at first propo'd and agreed upon with such Princes or Governors. And when the People come once to multiply into a Nation, it is absolutely impossible for them ever to meet altogether again, and give their Judgment of the good or evil Consequence of the Monarchs Actions, or to come to any Resolution upon them; so that their Opinion can never afterwards be known, otherwise than by the Mourns of particular Persons, which none can certainly know neither, unless they could speak with every individual Person of that Kingdom, which is impossible. But if you will say, this Oppression needs not be known by Words or Votes, but Actions, etc. by the People's actual taking up Arms, this must either be by the whole People all together at once, or at least, the major part of them, or else of some particular Bodies of Men, much less than the whole, or major part: Now the whole, or major part of a People of a Nation to rise and take up Arms all at once, as one Man, is morally impossible: And if any part less than this whole or major part, (as suppose a whole Province or City) every such Party or Body of Men so ris ing, must be guilty of Rebellion, and disturbing the publick Peace of the Common-
Dialogue the Third.

Commonwealth, as being but private single Person[s], which you your self granted and condemn'd as unlawful. And therefore I desire to know, who shall judge when this Body or major Part of the People are thus assaulted, so that they may justly defend themselves? But indeed this Licence of taking up Arms is not only unpracticable, but unreasonable too; for it supposeth, that after the People have given up all the Power they had of judging what was bad or good for the Publick, they have this Power still left in them, which would make them at once both Subjects and Sovereigns, which is a Contradiction.

F. Had you been pleased but better to have observed what I said the last time I spoke, a great part of this Objection had been saved. For I there expressly averred, that the Security of Men's Lives, Liberties and Estates, being the main End for which Men entered at first into Civil Society, and likewise defined to continue in it, as being the only means why Civil Government is to be preferred before the State of Nature, the People neither did or can give up their Right of Judging, when these are invaded or taken from them: And therefore you are very much mistaken, to believe that at the In-stitution of Civil Society, Men must have given up their common Sense and Reason too of judging when they are like to be Murdered, or made Slaves of, or their Fortunes unjustly taken from them, by those whom they have ordained to be their Governors: And I suppose you will not say, that they thereby acquire a Power of altering the Nature of things, or of making War, Slavery or Beggary the means of procuring the Welfare and Happiness of the People, any more than they can waste that Hunger or Distresses should conduce to the preserving of any Man's Life: And therefore as the Judgment of these things was obvious and natural to every Man's Sense and Understanding in the State of Nature, so it is as plain, they never intended wholly to give up all their Right of Judging concerning their own Preveneration and Happiness, and all means necessarily tending thereunto, but only in such Cases, and concerning such Matters as are beyond the Power, or above the Knowledge of every ordinary private Subject. Thus in a Dilemma, theo I give up my self to the Skill and Judgment of a Physician, yet I do not so absolutely, but that I still referre to my self a Right of judging, whether he gives me Poffon instead of a Purge. And if Princes or Publick Magistrates were thus absolutely invested with an Arbitrary Power of doing whatsoever they pleased with the Lives, Liberties and Estates of the People, they would then be in a much worse Condition under Civil Government, than they were in the State of Nature, as I have already proved; and therefore there is no need of any such general Meetings or Assemblies of the whole Body, or Representatives of the People, to judge when these Fundamental Conditions of all Government are notoriously violated and broken: Since it will be apparent to every Man's Sense and Reason that is thus assaulted or injured.

And as for the other part of your Objection, how the People can know when the whole Body or major Part of them is thus assaulted or oppress'd; and being so assaulted or oppress'd, what Member are necessary to justify this Rejeftance? To this important Question I thus answer, that if such a War or Assault be made upon such a considerable part of the People, as may justify this Rejeftance to be much better for the good of the Commonwealth, than that so many People should be deprived; this Rejeftance is certainly then lawful: And the reason why every particular Person, when unjustly assaulted by his Prince's Order, or his Estate taken away by his of Assailor Edicts or Decrees, ought not to make any publick Disturbance, only to save the one, or recover the other, I have given you before, viz., because the publick Peace is to be preferred before that of any private Person; Yet even then, such a private Person may very well defend himself, if unjustly assaulted by Assailor; whom the Prince, or other Supreme Magistrates, shall tend to take away his Life without any just Cause or legal Tryal: tho I grant he may not solicit others to rise with him, and take his Part, or help him to defend his Life or Estate; yet (as a Reverend Dignitary of our Church very well observed) No Man can want Authority to defend his Life against him who hath no Authority to take it away, But much more, when this Assault or Oppression is either made upon the whole People in general, or upon so considerable a Part or Member thereof, as the Commonwealth could not well subjeft without if it were deftroyed: In all such Cases, I suppose the People thus assaulted or oppress'd, have a sufficient Right to defend their Lives, and free themselves from that Slavery and Oppression they lie under: And thus the People of Rome might very well have justified their Rejeftance of Nero's Incendiaries, when
when he sent to burn the City, tho' they had been his own Guards. We read likewise in the Hist. Auguf. that the Emperor Corinæus, the People happening to laugh at him (for his Folly) in playing the Gladiators in his Circus Maximus, sent his Guards to kill them: So likewise in Herod. that upon another fuppofted Affront, he sent his Prefenm Bands to murder molt of the Inhabitants of Alex-
andria, who came out to meet him with a solemn Procession. And I fuppofe no ra-
tional Man will deny, but that if the Citizens of Rome or Alexandria had had Arms in their Hands, they might have ftrongly defended their Lives againft their Murdering Guards; for I think it was much better that those, fho should be defroyed 
were the Aggresfors, than that fo many Body of innocent People fhould be made 
Sacrifices to the unreasonable Paffion or Revenge of a Cruel Tyrant. So that 
when the Oppreffion or Violence to Men's Liberties and Properties is general and 
mobifol, and affect the whole Body of the People; I do then fuppofe, that any Part 
of them that are fufficient to defend themselves, may do it till they can find Af-
fifance, either from the reft of the People, or elfe from some Foreign Prince or 
State, who will vindicate their Cause and come in to their Affifiance. And thus 


Vi. Muterni we read the Town of Britt in Zealand, under the Conduct of the Count of Mork, 
fit revolted from the Tyranny of the Duke of Alca; which Example was after-
wards (tho' not immediately) followed by most of the Cities of Holland and 
Zeeland; and the Courage and Refolution of this Count, as also of the Citizens of 
this Town, is highly commended by the Hilifrians of that Time, for fo nobly 
laying their Lives and Fortunes to redeem their Country; or them that their Expos 
it then lay under, till at laft they were relieved and afifted by Queen Elizabeth, 
to whom the United Provinces owe that Freedom they now enjoy.

M. I thall not now dispute with you, what Right the States of the United Pro-
vinces might have to rifft the Tyranny of the Duke of Alca, then Governor for the 
King of Spain; since Grotius, and molt Writers which are not of the Spanifh Poli-
fession, fuppofe that King to have had a Conditional Right of governing thofe Provinces, 
according to their own Laws and Privileges, from the very firft Inftitution of the 
Government; and therefore not being an absolute Monarch over them, he might well 
be rifft upon the Breach of thofe Conditions. But this is not the Cafe now in 
hand, fince we are now difcourfing of absolute Monarchies or Commonwealths, 
who being invefted with the Supreme Power by the Confent of the People (as you 
fuppofe) and therefore may have by their Concents (whether forced or voluntary, 
it matters not) according to your own Principles, a supreme unaccountable Power 
over them: And in the firft place, I can fiew you how a Man may make over all 
the Power he hath in his own Perfon irrecoverably to another; as when a Man fells 
or grants himfelf for a Slave to another by his own Confent; who when he hath 
obtain pur himfelf into this Condition, his Malter hath an absolute Power in his 
Perfon, and an indefeafible Right for ever to his Service; fo that notwithstanding all 
The cruel, harsh and unreasonable Ufage he may meet with from his Malter, he 
can never regain his Freedom without the Confent of his Lord: And this I take to 
be an uncontroverted Truth, agreed on by the Laws of Nations, and efablitned by the 
Laws of God. Thus St. Peter chargeth tho'f who are in this State of Servitude, to 
be fubjeft to their Malters with all Fear, not only to the God and Gentle, but alfo to the 
Fiend. So likewife St. Paul, in both his Epifles to the Ephesians and Coloffians, 
commands Servants to be obedient to them that are their Malters according to the 
Rules, &c. And that this particularly refpefts Slaves, appears by the 8th Verfe of the 6th 
Chapter of the former of thofe Epifles.

So that if a Man may thus make himfelf a Slave or perpetual Servant to another 
by his own Confent, I cannot fee any Reafon why a whole Nation may not do the 
same, and deliver themselves up to one Man or more, to be governed and treated 
both for their Lives, Liberties, and Fortunes at his or their Discretion; so that 
the he may perhaps abufe this Power to the fweft Tyranny or Oppreflion; yet 
have they no Right to shake off this Yoke, or to rifft him, fince their Lives and 
Fortunes are wholly at his Disposal by their own Act and Confent. And that 
whole Nations may juftly furrender themselves for Slaves or absolute Subjects, I can 
give you two Examples approved of by God in the Scriptures: The firft is that 
of the Egyptians, who, when they had fold all their Goods, and Lands, to Pharoh 
for Bread to keep themselves alive in the seven Years of Famine we read of in 
Genes, you'll find they were afterwards such absolute Servants or Slaves to Pharoh; 


2. v. 18.

Ep. 6. 6. 5.
Col. 3. 21.

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That
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That as for the People, he removed them to Cities, from one end of the Borders of Egypt, *Gen. 47 : 23,* even to the other end thereof; only the Land of the Priest bought he not, &c. The other *25.* is that of the Gibeonites, of whom we read that they accepted of their Lives from *Joshua* and the Elders of Israel; tho’ on the condition of the great and Slavery, rather than they would venture to be destroyed: So that if absolute Monarchy were not lawful, but contrary to God’s Will and Institution, most of the great and Kingdoms in the World would be governed contrary to the Laws of God and Nature; and the Subjects of all the Kingdoms from France to China (not reckoning those of Africa) might immediately, if they were able, rebel against their Monarchs, and set up what sort of Government they thought fit, since none of the Subjects in those Kingdoms hold their Lives, Liberties or Eatables by any other Tenure, than the good Will or Pleasure of the Monarch, who may take away all, or any of them, as often as he pleases to do it, and that without any right of Resistance in all or any of their Subjects, let them use them never so severely.

F. I cannot deny, but what you say is so far true, that one Man, or many together, may grant or sell themselves for Slaves by their own Consent; and that the Perils which thus make, over themselves, have afterwards no Right or Property in any thing more than a bare Subsistence; yet that Servitude is not by the Law of Nature, but only brought in by Customs, or the Law of Nations, as all Writers agree, and is so far lawful, because it tends to the good and preservation of Man-kind, that Prisoners taken in War should rather be kept as Slaves than immediately slain or that Men compel’d by extreme necessity should sell themselves, or their Children, rather than both perish; and therefore it is no wonder that the Apostle, who were not sent to alter the State of things in the World, or to correct upon any Man’s Civil Rights, should command Servants not to be subject to their Masters, the *Unbelievers: Yet doth it not, therefore follow, that when Men are forced to give themselves thus up to the Power of another, they likewise give him an absolute Right over their Lives, so as that their Masters may take them away whenever they please; for that was more, than they ever had over themselves; nor doth God confer any such Power upon Masters: And therefore if the Master hath no such absolute Right or Property in the Perfons of his Slaves, as he hath in his Sheep or Cattle; I see no reason why,even Slaves, if their Masters go about to take away their Lives for no other Cause, but to satisfy their own Honour or Passion, may not (if they cannot otherwise escape) rob their Masters, and fave their Lives if they can: For all Writers agree, that if a Master doth so inhumanely abuse his Slave, that he can no longer endure it without danger of his Life, he may in that Case lawfully run away and escape from him; and why he may not as well rob him to save his Life, when his Master goeth about thus unjustly and without any cause to take it away, I can see no reason to the contrary; since it was only for the saving his Life, that such a Man could ever be supposed to yield himself a Slave to another, and which Condition being broken on the Master’s part, the Service is again, in the State of Nature, and the Relation of Master and Servant so far ceases, as is at least suspendend during that: Violence.

- This being the State of particular Men, I cannot think that God hath put whole Nations in a worse Condition; nor can I imagine that any whole Nation, unless urged by some extreme necessity, would ever give up themselves to absolutely for Slaves, as not to have any Right to defend their own Lives, or a Property in anything they can enjoy; and if ever they would be supposed to have done so, I think I may be at liberty to such a Nation are not Subjects, but Slaves, and the Prince not a Monarch or Civil Governor, but only a Lord of a great Family, or Master of a publick Work-house. 

- Bond: I take the difference between Subject or Slave, and Princes and Masters of Emptors, to consist in this, that the Power of a Prince is chiefly ordained for the good and preservation of his Subjects, the grantees and may likewise be included in an Encouragement and Reward for his Labour; yea nor as the principal End of his Inheritance; whereas a Family of Slaves, they are chiefly ordained for his own Use, that such a Man maintains himself, but their Happiness and Preservation is only accidental, and as it may conduce to that. The main End also of Civil Government is multitude, and maintain a distinct Property in Men’s Eatables, and whiehe. the Prince or Commonwealth can have no Right to take away. And therefore shall I grant that in those of Monarchies you mention, the Monarchs do Q. 2. exercise
exercite an absolute Arbitrary Power over the Lives, Liberties and Estates of their Subjects; yet that this is by Divine Right or Institution utterly deny, or that it was always so in all of them from the beginning; for most of those Empires you mention can on otherwise bebuilt, than by a constant maintaining vast Standing Armies or Guards to keep their Subjects in Obedience.

Not can any Governments be of Divine Institution, which are exercised with a sole Ruffell to the personal Power and Grandeur of the Prince, rather than the good and preservation of the People: So that if you will but survey the Accounts that Travellers give us of those Eastern parts of the World, you will find that there are no known settled Laws or Properties in those Countries, except at the Arbitrary Will of the Monarch or his Viceroyes: And thus all those rich and fruitful Countries of Egypt and Asia, which formerly flourished in all Arts, Knowledge and Civility, and abounded in Multitudes of People, are now, in most places, reduced to mere Deserts, and do not breed a tenth part of that Number of People as they did in former Ages; which proceeds from no other Cause but the Cruelty and Injustice of the Government, quite different from what it was in the time of the Roman Emperors, who, tho' I confess they were in some sense absolute too, yet governed by, and were obliged to observe known Laws; and the People had a settled Property in their Estates, which the Prince had no Right to take away: I shall not enquire how all these Monarchies came to be so Arbitrary at first, and thus to abuse their Power; but the Generality or Antiquity of this Abuse can be no more a Plea for its Right, than that because Pharaoh was generally practiced throughout the World within three or four hundred Years after the Flood, till three or above four hundred Years after Christ, therefore Pharaoh was not an ancient Religion of the World.

Now, tho' I will not condemn this sort of Government, where the Subjects enjoy no settled Property in Lands or Goods, it's absolutely unlawful, and directly contrary to the Laws of God or Nature: Yet in those Kingdoms and Commonwealths, where Civil or Hereditary Property is once introduced, I think it is not lawful, nor indeed in the power of the Prince or Commonwealth to destroy or take it away: And therefore if the Roman Emperors should have endeavoured, by any Laws or Edicts of their own making, to have destroyed all Civil or Hereditary Property in Lands and Goods, and to have reduced all the Estates of their Subjects into their own Possessions; I think they might have been lawfully disobeyed and resisted by the People, since they went about to destroy one great End of Civil Government, viz. the instituting and maintaining of Civil Property.

To conclude, I freely grant that in all Countries which are governed either by absolute Monarchies or Commonwealths, the Sovereignty is to fully in one Person or Body of Men, that it hath in other Bounds or Estates under God one good Will or Commonwealth, provided they do not apparently tend to the absolute Ruin and Destruction of the People, for they being inconsistent with the Divine or Good of governing them, they are, and ever will be Judges of it: And therefore ever among whatsoever Turk and Tartar themselves, if they should once find their Prince go about un lawfully to destroy them, or fell them for Slaves; you would soon find (notwithstanding this False Subjection) that they would quickly be rid of them, as the Spaniards have served their Emperors of late Years for far less Faults.

M. I cannot deny but you have spoken reasonably enough on this Subject; but perhaps if you had refrained this Power of Repressing only to such States, where the Prince or Monarch makes his Laws upon his People, or doth otherwise interfere about to destroy them, it might have been a tolerable Doctrine that they may lawfully resist the Forces he shall send against them; but this is a Case that to seldom happens (if ever at all) that it can never be suppos'd, and no Prince, unless he were Mad, can be guilty of it; and therefore whenever he acts thus, I think he may not only be lawfully resisted, but tied up for a Madman: But this is seldom or never the Case between Monarchs and their People, for most of the Rebellions and Insurrections that I have ever heard of, or observed in the World, have not proceeded from any meanness that the People had in the least in regard to their Supreme Master, because their Lives or Estates were assaulted; but in danger to be taken away; but for the most part they arose either from the great Cruelty or Security of the Supreme Power towards some particular private Man, who by themselves, and their Friends and Relations, have gone about to revenge those Injuries that they supposed had been done them: And of this all Histories are so full, that I need
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I must give no particular Instances of them; all which authors may be reduced to these Heads; First, When a Prince doth commonly himself violate the Ceremonies of the Wives or Daughters of the Subjects, which tho' it hath been the Ruin ofdiverse Princes, yet is able to do this only to some few particular Persons: And tho' if he should permit his Soldiers or Officers generally to do this without any Punishment, yet even this can hardly, if ever, extend to all the Wives, Daughters or Women in a whole Country: And therefore both these Cures are to be born withal, according to your own Principles, since it doth not tend to the Slavery or Destruction of the People, I mean, as to their whole complex Body. A Second is, when an absolute Prince or Monarch goeth about to alter the established Religion of his Country, and to introduce a different one by his own sole Authority, whilst the major part of the People continue of another Opinion. In this Case I suppose you will not affirm that the Subjects have a Right to refit their Prince for so doing: For then the Romans might justly have rebelled against Confusianism, when he shut up the Ten Ten Temples, and forbid all publick Sacrifices to their Gods, and thereby made the Christian Religion the established Profission of the Empire.

But pray Sir give me leave to interrupt you a little; might not Confusianism have a Right to do this, because the Christian Religion is the only true one; and that the Idolatry the Romans then practiced, was against the Law of Nature?

M. Whatever weight there may be in this Answer, yet you have no reason to put this Question now, since you have already, sir, at our first Conference, admitted that an Extremist Confusian puts Men under an Obligation to follow it, during the time they are under this ignorance of the Truth: And therefore if the Roman Emperor had a Right to do this by their own Authority, without any Resistance; the Subjects, whilst they believed the Worship of their God to be thereby destroyed, might, any ought to have resisted the Emperor, rather than to have suffered him to have altered the ancient Religion of the Empire, and to have brought in another, which they look'd upon as an Sophism; and it is very natural for Men to do so, since nothing ought to be more dear to them than the Worship and Honours of God.

I do not define at present, to embark any self in this tedious and troublesome Dispute about the Authority of the Supreme Power in Matters of Religion; and therefore I shall say no more to it at present. But if your Assertion be true, that an absolute Monarch may set up what Religion he please, without being resisted by the Subjects, whom I suppose to be of another Persuasion, it will then follow, that if the French King or Emperor of Morocco should turn Mahometan, and should set up that Supremacy by Force, for the Publick and National Religion of the Country, tho' with the Destruction of all that should oppose it, none of their Subjects might resist them in doing so; and if so, I desire you to consider what you have gained to Religion, by thus altering such an unalterable Prescriptive to all Monarchs. But laying aside this Dispute till another time, I pray go on to the rest of those Cures in which the People do take upon themselves to repel the Supreme Powers.

M. I shall comply with your desires; and therefore a third Pretense of Subjects to rebel, is when the Supreme Powers shall think it necessary to levy upon their People more heavy and grievous Taxes and Impositions than the People are willing, or it may be, able to bear. Now if your Principle be true, that they may rise in Arms and resist the Supreme Powers, whenever they think themselves thus unaccountably oppressed; and if they should be sole Judges of this Oppression, then all the Rebellions that ever were made in England or elsewhere, by reason of such excessive Taxes or other Impositions, would be lawful; which would be a perpetual ground of Anarchy and Confusion; for practical Subjects not being admitted into the Privy Councils of Princes or States, can never be displeased to understand whether the necessities of the Commonwealth may require them or not: And indeed the People do so often repine and murmur as the Governors, when the publick Necessity require to impose greater Taxes of Goods than they think they can well bear; that the Necessity of any great City or Province, for example, who think themselves thus oppressed beyond what they are able or perhaps willing to bear, may in Rebellion, and throw off all Government to Council Authority; and they may have a very good Pretence for it, according to your Principle; because they may look upon themselves as a very considerable, nay necessary, part of the Commonwealth. And thus the common People of Kent might have justified their Rebellion in Richard II's Time under Wat Tyler and Jack Straw; and the People of Devonshire and Somersetshire might like-
wife have justified their Insurrection in Henry VII's Reign under Flammack the Blacksmith: And I could mention others of the like nature; but I forbear, because you may say they were upon account of Religion. And Lastly, This Principle might very well justify the Insurrection of the common People of Naples, under Magistrato, which, besides the vast spoil it made upon the Goods and Palaces of the Nobility, ended at last (whatever they pretended at first to the contrary) in delivering up themselves to the King of France, who refusing to protect them, they were soon reduced to their former Obedience to the King of Spain.

In short, if the People should take upon them to resist or rebel whenever they thought themselves intolerably injured and oppressed in their Estates by immoderate Taxes, there would be no end of such Rebellions, especially considering the advantage which Wicked, Crafty and Ambitious Men would thereby take to excite the People to rise and depose their lawful Governors, and set up themselves in their room, upon pretence of better Government and greater Liberty; and how prone the common People have been to receive such Impretions, he is but meanly skilled in ancient and modern History, who is not convinced of it.

F. To answer this Objection before you proceed farther, my Opinion is, that the Taxes may often prove a Universal Damage, and a great Impoverishment to the Subjects; yet if they are such as may be born with less trouble than is suffered from a Civil War, or the Change of the Government, there is no just or sufficient cause of Restraint of the Sovereign Magistrates' Commands or Edicts concerning them. As for example, such great Taxes as the Subjects pay, and perhaps may bear it well enough in Holland and other Countries, since there may be a necessity for such Taxes; and of this I grant the Supreme Authority of the Nation can be the only Judges; and how far this may extend I cannot positively determine; for suppose you should ask me, if the Supreme Powers should borrow all the ready Money the Subjects had, for the necessary uses of the State, so that they would give them Leather or Brass Money instead of it, to go at the same Value, for the necessary uses of Commerce; yet if they did not take away their Property in their Lands, Corn, or Living Stock, which are the necessary means of their Subsistence; I do not think it would be a sufficient Cause to take up Arms against their Governors for so doing; because the Subjects cannot tell but that the necessities of the State (for their necessary defence against a Potent Foreign Enemy) may require it. And sure it is a much greater Evil to fall into a Civil War, or so be subdued by Strangers, than to part with their Money; since by such a War or Conquest, they might not only lose that Money, but also their Liberties and Estates.

Yet on the other side, I would not be understood to give the Supreme Magistrates a Power to invade the Properties and Estates of their Subjects to what degree they thought fit; for then they might tax them to that Extremity as might force them to sell themselves and their Wives and Children for Slaves, or else being unable to pay, must be forced to run away and leave their Habitations (as the Peasants often do in France) whereby whole Villages, nay Towns, may become depopulated, as they are in divers parts of Italy and Turkey, by such extraordinary Severities; and therefore in absolute Monarchies, where there is no Nobility, Gentry nor Yeomen, who can claim any Property in their Estates, which with us make up the best and most considerable part of the People; and where the Government being wholly Military, is exercised over the People only by force of Arms; I doubt not but such a People, reduced to this Extremity, may not only quit the Country where they are thus intolerably oppressed, but that if they are not of themselves strong enough to make Restraint and call off this intolerable State by Force, they may (if an occasion be offered) join with any Neighbouring Prince or State that will undertake their Quarrel; and upon this Account, I think we may very well justify the Revolt of the Greek Christians from the Ottoman Empire, and putting themselves under the Protection of the Venetians, both in the Morea and other Places; and also upon the same Principles, I conceive the common People of France, who are reduced to the like Extremities, might also with a safe Confidence revolt from the present King, and put themselves under the Protection of the Prince of Orange, our present Sovereign, or the States of Holland, if ever they should be successful enough to make any considerable Insurrection upon that Kingdom.
And therefore I must confess, that there can be no certain and stated Rule set down, to what Proportion absolute Princes or Commonwealths may tax their Subjects; since in some Countries the People can better part with a Shilling than in others they can pay a Penny. And as I grant it must be left to the Mercy and Discretion of the Governors what Taxes to impose without thus ruining and destroying their People, as it is left to the Judgment of the Owner of the Beast, how much Bland it is able to bear: So if he, by laying too great a Weight, breaks the Back of his Beast or Beast, he not only hath the Loafs, but makes himself the Laughing-Stock of all his Neighbours. So that tho’ I confess the People ought to have patience, and rather to suffer many Oppressions and Hardships, than to put themselves in this miserable State of War; yet there is a Mischief in all things, and the People may be so cruelly oppressed by Taxes, and other Impositions, as it is impossible for them longer to submit, or provide Necessaries for themselves and their Families: And since you have already granted, that the People may judge when their Prince makes War upon them, and goeth actually about to destroy them by the Sword, I cannot see why they may not have the same Right of judging when they are like to be destroyed by Famine too. And who can be the Judge of this, but those who feel it?

But indeed it is morally impossible for the People to be mistaken in so plain a Case: For the this many-headed Beast (as you commonly call them) the People, cannot argue very sufficiently of the future Consequences of things, yet they have a very nice and tender Sense of Feeling, and can very well tell, when they are so injured, and oppressed, that they can bear it no longer: For then sure they may be allowed to have as much Care and Sense of their own Preservation, as Camels and Donkeys, which (as Travellers relate) tho’ they are taught by their Masters to kneel down, and to receive their Loads, which they will patiently endure as long as they are able to bear them; yet when once their Masters do over exceed that Weight, neither fair means nor foul can prevail upon them to rise, or they will throw off those Loads, if tien, that they feel will otherwise break their Backs.

But I have discoursed long enough on this Head, and therefore if you have nothing more material to except against it, I pray proceed to the rest of the Causes that Subjects may, as you think, pretend to have to take up Arms against the Supreme Powers.

I have somewhat more to urge towards proving that this Liberty, which you allow the Subjects, wholly tends to Anarchy and Confusion: but I shall preserve it to the last, when I shall sum up all that I have farther to urge upon this Subject; and therefore I shall proceed to the other Pretences that Subjects in absolute Monarchies may make to rebel; and the next may be, that the Monarch looking upon his Subjects as his Slaves, may either use them so himself, or sell them to other Nations for that purpose, as Monsieur Chartin tells us, the King of Modena often doth divide of his People to raise Money. And tho’ I will not be so ridiculous as to suppose that such a Monarch can fell away all his People at once, for then he should be left alone without any Subjects, and consequently become to something, yet in such Monarchies as divide of the Eastern and African are at this Day, where (as you yourself own) the People have no Settled or Hereditary Property in their Estates, the Monarch may dispose of their particular Persons as he thinks fit; I cannot see any reason why the Monarch may not as well in these Countries, without any blame, exert his Prerogative if he pleases, and take as many of his Subjects or their Children to serve him as Slaves, as he thinks necessary for his Service.

And therefore whatsoever People or Nation have thus subjected themselves to the absolute Power or Dominion of one Man, they have no more right to regain their Natural Liberty, than I should have of taking away any thing by Force which I had before given or granted to another; for this sort of Civil Servitude is not so egoegnant to Nature as some imagine; or that because Subjects were forced to consent to it for the avoiding of some greater Evil, they can afterwards have any right to shake it off again whenever they will: For tho’ I grant that God hath not instituted any such Servitude; yet when once it is introduced in any Country, Men are not at Liberty to call off the Yoke whenever they please, but to observe St. Paul’s Rule, If thou art a Servant, care not for it; but if these are Free, choose it: For the latter is to be preferred before the former, and is to be preferred before Servitude or Subjects. But where Providence hath made Men absolute Servants or Subjects, they are bound
bound to continue in that State, unless the Supreme Powers they are under think fit to release them from it; and therefore this can be no good Pretence under absolute Monarchies for Subjects to take up Arms against their Prince, for such a State of Liberty which they never enjoyed.

F. I shall not trouble my self to dispute what Right an absolute Monarch may have over the Persons of his People, in a Country where they have no Property, nor written Laws, and where they look upon themselves as no better than Slaves to their Prince, and perhaps may take a Pride in it (as I have read the Ruffians do.) And therefore if they have so wholly submitted themselves, I grant what you affect is true, and that they have no Right to Rest, according to the old Saying, Violati non fit Injuriae. And yet even in these Deseipst Monarchies, the Prince may pick out here and there some of his Subjects to fell for Slaves, or else to use them as such himself; yet I do much question, if he should go about to make any considerable Number (as suppose to take 10 or 30,000 all at once for Slaves), I say, I do much question whether the People would be so convinced of your Principles of Paffive Obedience and Non-rebellion, as to let their Monarch Guards drive them into Slavery, like Sheep to the Market, but would, if they were able, make a vigorous Rebellion, and knock their Drivers on the Head. Whether Faire vel Infaus, I shall not dispute.

But for all this, even in absolute Monarchies, where the People have a settled legal Property in their Lands and Estates; and consequently where their Persons are Free, I doubt not, if their Princes should go about to make all his Subjects Slaves, but that they might lawfully resist him, or else he employs in so doing. And th'o' it be true he could not make all his People Slaves at once; yet if he affected it as a part of his Royal Prerogative, and exercised it on particular Persons as often as he thought fit, or could, I doubt not but the People might make it a common Cause; since none can know where it may be next; for sure Liberty from Servitude is as necessary to Man's Happiness and Well-being, as life to his Existence; which would seem no great Benefit to those, who being Born Free, were reduced to Slavery; it being well said by the Poet, Non est uxor, sed uxoribus.

And th'o' the Roman Emperors did exercise an absolute Power over their Subjects, yet I never read that they durst presume to make Slaves of Free-born Romans; nor indeed of any of those Nations they subdued; for they had too great a fence and love of Liberty themselves, ever to impose such a Yoke upon the People they Conquered, which was so destructive to the common Happiness and Preservation of Mankind. And I suppose if the French Grand Siegneur, as Absolute as he is, or pretends to be, should about to fell his Subjects (especially the Nobility) for Slaves, all that the Jews (those Instruments of Slavery) could do, would not, I believe, be able to keep that People from rising against him. But if you have nothing farther to object against what I have now said, I pray proceed to the next Head, if you have any more Instances to make.

M. I am now come to the last Pretence that Subjects may make to Rebel, and that is, supposing the Monarch Should at once, or by degrees, turn the Subjects out of their legal Hereditary Properties in their Estates; and of this you your to grant there can be no Dispute in those Deseipst Monarchies, where there is no Hereditary Property allowed: And as for all other Governments, since you do own that all legal and civil Property in Lands did chiefly proceed, or at least is established by the civil Power, I cannot see why those Powers in any Kingdom (if they think it would conduces to the good of the Commonwealth) may not destroy this civil Property, and either make all Estates equal, or else ordain that they shall be enjoyed (as in all absolute Monarchies) at the Will of the Prince; since if the Supreme Powers are the Author of this Property, sure they may alter and abrogate it again as they think fit.

F. I shall not dispute with you concerning such Kingdoms where there is no civil Property yet instituted, or where the People do own themselves Slaves to the Prince; but if such a Monarch hath remitted any thing of this Right, and hath instituted a legal Hereditary Property in Estates; such a Law being once made, I do not think it is in the Prince's Power to revoke it, any more than it is for a Master to reduce his Slaves again to Servitude after he hath once set them free; since both Men's Liberties, or a settled or Hereditary Property in Estates, do equally conduct to the Happiness and Propagation of Mankind, and the Good of that People.
People or Nation wherein it is introduced: And I doubt not but Pharaoh, the
was Lord of all the Lands of Egypt, by the Grant of the Egyptians, yet might
law fully have been resisted by them, if he had gone to take away those four fift
Parts of the Profits of the Lands which he had left them Free by his own Con-

So that even in such absolute Emperors, the Monarchs have Power to dispose of
the Estates of the People, only as far as the Compact or Constitution so made by
them or their Predecessors do allow. And it is also not much otherwise, where the
Subjects do not acknowledge their Estates as the Gift or Benefit of the
Supreme Powers: And that may happen chiefly too ways, either, First, When any
Free People, under the Conduct of a Captain or Leader, created by themselves,
have Conquered any new Territory and Habitation; or else, Secondly, When di-
vers Families or Musters of a Family, who had Estates of their own before, have
agreed for their mutual Security, and the quiet enjoyment of what they were al-
ready possess'd of, to join together into one Commonwealth, under the Command
of one or more Men; or else of others that will bring their Estates, and join
themselves to form a Government already Constituted, and will subject themselves
to this Supreme Power, according to the Conditions already agreed on amongst
them. A Third Case may be, when an Hereditary Property in Land was establish'd
before the Monarchy began, as in the Roman Commonwealth, this Property was
establish'd before the Government was changed from a republic to a Monarchy;
so that the People did not owe their Property to the Emperors Grant or Do-
nation.

In the former Case, if such a Free People conquer a Country under the Conduct
of a Captain or Leader; tho' I grant such a Country may be aformed by him to
Fellow Adventurers or Soldiers (tho' it may seem that the Property of particular
Men may have proceeded not from their own Right or Possession, but from the
Alligement of their chief Captain or Leader) yet are not the Estates which such a
Prince; since most of them who followed him in this Expedition, did it not as
Subjects, but as Volunteers, and without whole assent he could never have
Commanded at all; so that they thereby acquive it themselves a certain Freedom;
Or State in the Land so conquered; tho' for avoiding Differences and Quarrels
amongst them, it was left to the disposal of this new Prince, as a publick Trust;
when Masters or Masters of Families before Free and possessor of Hereditary
Estates, do submit themselves to the Command of one Man. Voluntarily or by Election,
those Estates do much depend upon the Will or Favour of that Prince. And
therefore, if such a Prince should, without their Consent, go about to take away
their Property in their Estates, he might very justly be indicted by them, since a
quiet enjoyment of the peace and Safety, was one of the chief reasons that
made them chuse him for their Prince, and was certainly one of the Original
Compacts of the Government.

And that in absolute Monarchies, where the Subjects were not Slaves, they look'd
upon themselves to have such a settled Property in their Persons and Estates
Compact, that States boldly pronounced, Errata, proco coffinae tate est i.e. the Regent,
who with a Regal Tyranny; Securos Securitate sua pacifica est. And Mr. Hobbes
himself, as much a Friend as he was to the Arbitrary Power of Monarchs, and an
Enemy to the Natural Rights of Subjects, yet is forced in his Leviathan to confess,
that the Rulers, Powers and Monarch of a Monarch, arise only from the Riches, Strength P. 96.
Subjects are either poor or contemptible. Tho' how this Riches and Strength of Subjects
can contribute that absolute Power which he gives his Sovereign over the Per-
sons and Estates of his Subjects, I cannot understand; since he will not allow of
may very well conflict with the Power of the Prince, Source flows us; Jus Civili
fugax Dominus dextra fort, & unqueque vera habeat p flashes fuisse. Leaque dare
Rex non in Peitha omnium poenis, ad fugandos Ponorum. And the Earl of Clarendon,
in his Survey of the Leviathan, makes this excellent Remark upon this Passage of
Source:
Sermes: And that Prince who thinks his Power so great, that his Subjects have nothing to give him, will be very unhappy, if he hath over need of their Hands or their Hearts. So that notwithstanding this universal Power, or supreme Dominon of the Emperor over all things, which Sermes there supposes; yet if he should have gone about to have invaded all Mens Properties, and reduced all Mens Estates into the publick Treasury, I doubt not but he would soon have had not only his own Legions, but the whole Empire about his Ears. And tho' I have heard that the French King doth by his exorbitant Taxes and Gabels raise more Money out of the Kingdom of France, and the Territories annexed to it, than the Ottoman Emperor doth out of that vast Empire (of which he hath the sole Propriety of the Lands in himself) yet if the French King should endeavour, by the Power of his Standing Army, to take away all Mens Hereditary Properties in their Estates, and make them all to be holden at Will, I doubt not but he would not only be opposed by his Subjects, and perhaps ruined in the Attempt; but also, if he should succeed in it, would be so far from being the richer, or more powerful, that he would become the poorer and weaker, when he had done: Since no Man would take the pains to build, till, or improve their Estates, any more than they do in Turkey, when they were not sure how soon they might be turned out of them, or at least could hold them no longer than their Lives, or a few Years. So prevails, a riging in this empty Shadow and bare Name of Property that is now left in France (being often charged with Taxes to above half the Value of the Estates) to encourage the People to beautify, cultivate, and improve a Country abounding with all those Riches that Nature or Art can produce.

And to let you see I am not at all partial, I think I may safely affirm the fame of the Legislative Power in this Kingdom; so that, if it should happen (which tho' highly improbable, yet it is not impossible) that the Lords and Commons assembled in Parliament should so far abuse the Trust reposed in them, as to give up all their Civil Properties in their Estates into the King's hands, to be disposed of as he should think fit, and that the King should thereupon go about to turn all the People out of their Estates, I doubt not but they might, in that case, remove the King, if he went to do it by force, notwithstanding this Act of Parliament: And my Reason is, that a vested Hereditary Property in Estates being as antient, if not more, than Parliaments themselves in this Nation, must consequently be a fundamental Law of the Government, and so cannot be altered by its Representatives. For tho' it be true, the People have given them a Power to dispose of what Part of their Estates they should think fit, yet did they not make it absolute, to extend either to their Liberties (I mean in respect of Slavery) or their whole Properties in their Estates. And if the King may be forced, if he inveige them by his own sole Authority, the Reason would be the same why he might be also removed, tho' back'd by an Act of Parliament; since the taking away of Civil Property would prove as delusive to the People's Liberties and Happines in the one case, as in the other, and as great an Abuse of the Trust reposed in them that were design'd to protect it.

IV. I cannot except against your Diffinition between those Governments, where a Property in Estates did precede the Infrution of the Government it self; for there, I grant, that such a Property may be a fundamental Law of the Government; but in those Monarchies that have begun by Conquest, under the Command of a King or absolute Prince over an Army of his own Subjects; in that case, upon the Conquest of a Kingdom or foreign Nation, not only the Prey or Goods of the Vanquished, but also their Estates, were forfeited to the Conqueror, who had a Right either to retain them for himself, or else to distribute them as Rewards amongst his Officers and Soldiers. And that this is the Right of all Conquerors, whether Commonwealths or Monarchies, by the Law of Nations, and was exercis'd amongst the ancient Greeks and Romans, as well as other Nations, I refer you to your own Authors, Gratius and Puffendorf. And therefore, since it appears from History, that most of the Kingdoms now in Europe, and particularly this of England, began from Conquest, under the Conduc't of their first Seven Kings; if then whatsoever was so conquered was acquired for them, and they alone had a Property in it, it will necessarily follow, that all Estates which the Subjects of all fortes now enjoy, must have proceeded from their Grants or Concessions: And hence it is, that not only in England, but also in Scotland and France, they are all held either mediate or immediately of the King, as being at first all derived from him. And
we read in the antient Laws of Scotland, that the King had the whole Property of the Country till the Reign of Malcolm Canmore, who, as we read in the antient Histories of that Country, granted all the Lands in Scotland to his Nobility and Gentry, according to that old Maxim in their Law, Rex distribuit toas terram Scotia hominibus suis. And therefore if Hereditary Property in Eftates were only from the Gift and Bounty of our Kings, without any fundamental Contract between them and their Subjects, as you suppose, I cannot see any reason (granting the word that can happen, which is highly improbable) if the Kings of this, or of our neighbouring Nations, should go about by force to destroy and take away this Hereditary Property they now enjoy, that the People should have any Right to refil them; but that it would be not only Ingratitude, but Rebellion too. For tho' I own that Kings were guilty of Perjury in the fight of God, if they did it; yet that being an Offence only against God, the Subjects could have no more Right to refil, than Sons in the State of Nature had to refil their Father, if he should go about to take away those Eftates, which he had before befolowed upon them.

And as for what you say concerning the Roman Commonwealth, I grant indeed, that the Government of the People did there precede that of the Emperor; yet if you please to remember, Monarchy was the first and most antient Government of that People: And I doubt not but all the Property the Romans had in their Eftates, tho' they proceeded from Conquest of their Arms, yet it was wholly owing to the Grace and Bounty of their first Kings; and when, upon the Expulsion of Tarquin, the Supreme Power became divided between the Senate and People, the Property of all the Lands that were conquered, devoted upon them, who often divided them to particular private Men, as they thought fit; tho', I confess, the not dividing of these Lands amongst the Common People, was afterwards the Cauze of great Tumults and Contentions among them: Yet notwithstanding the Senate and Nobility still maintained their Power, and to the latter, so to make a Division of these Lands they had formerly conquered. So that the Roman Emperors succeeding in the Power of the Senate and People, they were likewise restored, as it were ex pellinis, to the Prerogatives of the first Kings, and consequently, as Senatus himself confesses in the place you have quoted, tho' the particular Property of Eftates was in private Men, yet you see he grants, the universal Pollisession or Domination of them was in the King or Emperor, from whom they were originally derived.

I would not be thought to speak thus, as if I were an Enemy to Mens Liberties and Properties, or that I either fear or desire any Change in them, from what we now enjoy; but since I think it a thing morally impossible to alter them, and that therefore no King will be so ill advised, as to go about to seize them into his own hands; but only by way of discourse, supposing the word that can happen, I think we are not only obliged in Conscience, but also that it were much better for the common Peace, that the King should take all we have, than that we should involve the Nation in Civil War and Confusion, and our Consciences under the Guilt of a mortal Sin, by such Rebellion and Rebellion.

F. I am very sorry to see, that by your Principles all the free Nations of Europe tie at the Mercy of any Prince, to be made as errant Slaves as any are in Turkey, whenever their Monarch pleases, or that they think that they can make more of their People by taking away their Eftates and Liberties, than by letting them enjoy them, which would render Civil Property in all Kingdoms like private Eftates, which every Man may let to his Tenants at Will, upon a Rack Rent, or for Years or Lives, as they shall think fit. But I think I may very well differ from you in both your Propositions: For, omitting any farther Discourse of those Eastern Monarchies, where I grant the People are little better than Slaves; yet I think I can easily prove, out of the antient Histories of those Kingdoms that are now in Europe, that tho' most of them began by Conquest, yet was it not under the Conduce of absolute Monarchies, but under such Princes or Leaders, whose Followers (as I said before at our last Meeting) were not properly Subjects nor Mercenaries, but Volunteers, under those that commanded them; and therefore would never have gone out of their own Countries, but to advantage themselves, and to enjoy those Privileges, which their Countrymen had at home; of which Liberty in their Persons, and Property in their Eftates, were the chief: And this is apparent in the Free Nation, who, whatever their Condition may be now, yet anciently called themselves Princes, in opposition to that Servitude, which they supposed their...
neighbouring Nations amongst the Germani were in to the Romani at that time. And tho' I grant, that these Nations of the Ghibi, Vandals, Franks and Saxons, from whom most of the Kingdoms in Europe are now derived, might vell or intrust the Lands of the Countries they had conquered in them whom they had made their Kings, yet still it was with this Truth, that retaining a sufficient Part to sustain the Royal Dignity, they should distribute the rest to all their Officers and Soldiers, according to each Man's Valour or Merit: And if they had refused to have done this, can any Man believe, that so free a People, as the ancient Histories relate them to have been, would ever have suffered it, without pulling down those Kings they had set up, which was then very common among them for much lighter Occasions? And to go no higher than William, (whom you call the Conqueror) can any Man believe, that if he had retained all the Lands of England to himself, not only his own Norman Lords and Soldiers, but those of other foreign Nations, who afflicted him in this Expedition, would ever have suffered him to have reigned in quiet over them, if instead of a limited King he had set himself up for an absolute Monarch, and have granted them no Estates but at his Will and Pleasure; which would have reduced the Conqueror and the Conquered to the same Condition?

But as for your Example of Malcolm Canmore, I cannot believe that the Kings of Scotland were ever possessed of the whole Hereditary Property of all the Lands in that Kingdom, so as that no Man had any settled Interest in them before that time; and therefore I must beg your pardon, if I think this Passage in their History, and I reflex what I have more to say on this Head for another time, wherein I doubt not but to be able to shew you, as evidently as can be done after so many Ages, that all the Kingdoms in Europe, which are descended from the Gibrick or German Nations, commenced at first from Compact with their first Kings, and have thereafter an unalterable Right in their Lives, Liberties and Estates; and if so, have likewise Right to defend them, if generally and universally invaded by their Princes.

But granting, for the present, what you have afferted to be true, that all this Property, which is now in Europe, proceeded wholly from the Grants and Concessions of Princes; yet will it not follow, that by the Law of Nature or Nations, if any King should go about generally or at once to invade the Liberties and Properties of their People, they might not lawfully be resisted: For, as I said before, even a Slave, when manumitted by his Patron, may lawfully defend his Liberty against him, if he goeth about to take it away, and reduce him again into Slavery. So likewise, in the same State of Nature, if a Prince freely grant his Subjects a settled and hereditary Property in their Estates, they have likewise a Right to defend them against him or any other, that would endeavour by force to take them away: For he that in this State grants any thing to another, grants him likewise a Right to keep it, whether the Donor will or not, or else it were indeed Jure legitimo: For he that in the State of Nature grants another Man any thing to be possessed or enjoyed only as long as he himself, or his Heirs, shall think fit, doth in effect grant him as good as nothing; since he may alter his Mind to morrow, and demand it again, and take it away the very next day. So that if you will grant, that Subjects have such a Right to their Estates, as that the Prince cannot without manifest Violence or Injustice take them away, you must likewise grant, that they have also a Right to defend them.

But suppose you will not deny that Right, that all Men have to their Civil Properties in all our European Kingdoms and Commonwealths, the' never so absolute: But your Objection against the Subjects defending it by force, if it be invaded, is, that it may cause Rebellion and Contention. I grant indeed, it may sometimes occasion Civil Wars or intolerable Commotions, if the People, finding their Liberties and Properties notoriously invaded, shall oppose the unjust Violence of those who, contrary to the Truth reported to them, do thus violently invade them: Therefore (forsooth) if this Doctrine beallowed, it may prove destructive to the Peace of Kingdoms and Commonwealths, and consequently to the Good and Happiness of Mankind: But methinks you might as well have argued, that honest Men might not reft Robbers or Pirates, because it may occasion Disorder and Bloodshed: If any Citizen come in such cases, sure it is not to be charged upon him who defends his own Right, but on him that invades another's. If the innocent honest
Dialogue the Third.

Man must quit all he hath, for quietness sake, to him who will lay violent hands upon it, I desire it may be considered, what a kind of Peace there will be in the World, which would consist only in Violence and Rape, and which would be maintained only for the benefit of publike Robbers and Oppredators.

M. But pray, do you make no difference between a Knot of Thieves and Robbers, and the Civil Government of a Monarch or Commonwealth, which I suppose may very well be maintain'd without any Hereditary Property in Lands, as you have granted? And it were much better, in my mind, to forego these outward things, than resile the Civil Government, which is the Ordinance of God, as you yourself acknowledge.

F. I think the bellway to end this Controversy, will be, to define you to give a Definition of Civil Government, that we may know what we mean by it; therefore will you give me an easy and plain Definition of it?

M. Well, Sir, I shall comply with your Desires: I then take Civil Government to be an Authority conferred by God on one or more Persons, to make Laws for the Benefit and Protection of the Subjects, and to inflict such Punishments for their Transgribion, as the said Persons do, and by the Subject's Obedience and Affirmance to prevent them against foreign Enemies, and also to appoint what Share of Civil Property each Person shall enjoy.

F. Sir, tho' your Definition be somewhat lame, yet I am pretty well contented with it, only I will shew you by and by wherein it is deficient. The first, and therefore chiefest Branch or Office of Civil Magistrates, is, to make Laws for the Benefit and Protection of the Subjects: Is it then a Branch of this Power, to send Soldiers or Dragoons to take away their Liberties, Lives or Estates? This is directly contrary to their Duty, and that Trust which God hath conferred upon them. Let us go on to the next Branch, the Injunction of Punishments for the Transgression of such Laws: Is this a Part of Civil Government, not only to send their Soldiers and Officers to take away their Subjects Lives and Estates, but also to let the most capital Offenders or Robbers pass unpunish'd, when they have done it? If you maintain thefe to be the Prerogatives of Civil Government, or that to be Civil Government where these things are commonly practised, you may, even with Mr. Hobbs, let the great Leviathan free from all Obligation to his Subjects, any further than he shall think fit for his own Interest, and make them always in a State of Nature, that is, (as he supposeth) of War with them; and then pray tell me, whether such a State can be the Ordinance of God, or not? But to come to the last Branch of your Definition (and in which alone I think it deficient) the appointing what Share of Property each Person in that Commonwealth shall enjoy: If I grant it may be the Prerogative of Civil Governments to appoint this at first, yet are they likewise obliged to maintain this Property, when it is once instituted; and the People have as much Right to it as any King can have to his Crown, or, the Civil Law of that Country, or Content of the whole Nation: And therefore if, according to King James the First's Rule, a King of a limited (or limited) Kingdom, will break all the Laws thereof, and degenerate into a Tyrant, unless such Tyrant be the Ordinance of God, he may certainly be so far oppofed: For what can Pirates or Robbers do more than his Officers and Guards by his Commission? The former can but murder Men, ravish their Wives, burn their Houses, and take away their Estates; and if the latter may do fo too, pray where is the difference? Or what Satisfaction is it to me, that I am ruined by one Man having the King's Commission, or by another that ruins me without it? Since I am sure God hath given the one, no more Authority to do it than the other. If then this unlimited Power be neither conferred by God nor Man upon the Civil Magistrates, I would fain know any Reason why Thieves and Pirates may be refulled, but their Instruments may not, that do the same things? And why, when Civil Authority exceeds its utmost bounds, the State of Nature or Self-defence may not take place; since the Civil Government is as much disfigured by such violent Actions, as if a foreign Enemy had broke in, and conquered the Country?

But to answer your Query, whether I think a Civil Government may not be where there is no settled Property in Estates, and whether the Eastern Monarchies are not Civil Governments? To this I answer, that I have Advosled on my side, who not without Reafon affirms, that the Government of one Man, where there is no Civil Property, and where all Men are Slaves, is not Civil Government,
but that of a Master of a great Family over his Slaves: And tho' I grant, that they may have some fiew of Civil Government among them, as in a Plantation, where one of the Slaves may complain to the Master against another, for any Injury or Wrong done him; yet is not this Property Civil Government, any more than that of the Master of a separate Family, who looks upon himself as absolute Lord over all his Slaves, allowed him by God, only for his Benefit and Grandeur, and not he infitted (as all Civil Powers are) for the Good and Preservation of the Subjects.

M. But methinks you seem herein to condemn the Government of God's own People the Jews, which no doubt was an Absolute Monarchy, and that refrained by no Laws, except what God had expressly prescribed them: And yet you fee, notwithstanding Samuel told them, that their Kings should take away their Fields and their Vineyards, and give them to his Servants, and take their Sons and Daughters to be his Servants or Slaves; yet God leaves them no Power to refit them for so doing; but all the Remedy left them is, that they should cry out in that Day, because of the King which they had chosen, and the Lord would not hear them; that is, there was no Remedy left them but Patience.

F. I have already given you my Sense of that Place, and I shall speak more particularly to it, when you shall come to the Texts of Scripture, that you may produce for Absolute Subjection and Non-reffistance: And therefore at present I shall only here shew you what the Earl of Clarendon, in the above mentioned Survey of the Levittan, cap. 19. hath very prudently as well as honestly said concerning this Text. "They who will deduce the Extent of the absolute and unlimited Power of Kings from that Declaration by Samuel, which indeed seems to have neither Property nor Liberty to the Subjects referred to it, and could be only intended by Samuel to terrify them from that mutinous and seditionous Clamour; as it hath no Foundation from any other Part of Scripture, nor was ever practised or exercised by any good King, who succeeded over them, and was blest and approved by God; so when those State Empiricks (of what Degree or Quality soever) will take upon them to prescribe a new Diet and Exercise to Sovereign Princes, and invite them to assume new Powers and Prerogatives over the People, by the Precepts, Warrants, and Prefcriptions of the Scriptures; they should not presume to make the Sacred Writ Subject to their own private Fancies. So likewise in a Leaf or two before he speaks much to the same purpose: "That what Samuel had said was rather to terrify them from pursing their foolish Demands, than to constitute such a Prerogative as the Kings should use, whom God would appoint to go in and out before them; which methinks is very manifiest, in that the worst Kings that ever reigned over them never challenged or assumed those Prerogatives: Nor did the People conceive themselves liable to those Impositions, as appears by the Application they made to Rehoboam, upon the Death of Solomon, that he would abate some of that Rigour his Father had exercised over all them; the Fierce Rejection of which Requint, contrary to the Advice of his wise Counsellors, cost him the greater Part of his Dominions: And when Rehoboam would by Arms have reduc'd them to Obedience, God would not suffer him, because he had been in the fault himself." From whence you may conclude, that this Great Man did not think all Reffistance unlawful, in cafe of general and intolerable Oppressions.

M. I shall give you my Opinion farther of what you have now said, when you have told me more plainly in what Cases you allow Reffistance of the Supreme Power, and in what not. For till you have been more clear in this matter, I cannot tell what Judgment to take of your Tenors.

F. I thank you for putting me upon to fair a Method: And therefore that you may not mistake me, and suppose that I would go about to allow Subjects to resist, and take up Arms against the Supreme Power, upon any just Occasion than an absolute Necessity, and apparent Danger of being destroyed, and ruined in their Lives, Liberties, and Estates: First therefore, considering that the Corruption of Humane Nature is such, that no fort of Government whatsoever can continue long, without some Inconveniences and Mischiefs to particular Men; nor that any Man, either Prince or Subject, was ever Master of such perfect Wisdom and Goodness, as always to perform his Duty so exactly, as never to offend: I do in the first place grant, that it would be both undutiful, as well as unjust, for Subjects to rebel against their Prince for his personal Failings or Vices: Undutiful, since the Prince...
Prince may be oftentimes an ill Man in his private Capacity, and yet a good Governor, in respect of the Publick; and also unjust, since neither do we ourselves exactly perform our Duties towards the Supreme Powers (or to one another) as we ought: And therefore it is highly reasonable for Subjects to endure, and pass by the personal Faults or Failings of Princes, in consideration of that Protection and Security in their Lives and Fortunes, which they do enjoy under them; since it hath been found by Experience with how great a Slaughter of People, and how great a Confusion, and Danger of the whole Commonwealth, evil Princes have been refit, or tum'd out of their Thrones. And therefore, I grant the private Injuries of Princes are to be pass'd over, in consideration of that great Change they undergo; and for those greater Benefits we receive from their Government; but chiefly for the publick Peace of the Commonwealth, or Civil Society. And therefore, I own it is very well said by that Mather in Politics, Tacitus, That the ill Humours, or Dispositions of Kings are to be borne withal, and that often Mutinies of Governments are of dangerous Consequence. And he wisely introduces Cevikas speaking to this purpose to the Rebellious Tremors: That they ought to bear with the Luxury and Avarice of Rulers, as they do with immoderate Showers, and other unnatural Evils; since there will be Vices wherewith there are Men, yet neither are those continual, but are often recompensed by the Intervention of better.

But I will now particularize those Cases wherein I do absolutely disallow, and disclaim all Resistance in Subjects against the Supreme Powers.

1. I deny all Resistance to Subjects against their Princes, or Supreme Magistrates, in all such Actions, or Prerogatives, which are absolutely necessary to the Exercise of their Supreme Power, &c. of protecting and defending their People; as also against those who are commissioned by them for the Execution of such Powers.

2. I condemn all Rebellions against Princes, or States, merely on the Score of Religion, or because they are not of the Religion of their People, or Subjects, if there be no positive Law extant, disabling or forbidding Princes, or other Magistrates of different Religions than that of their People, from being admitted to the Throne, or Government.

3. I look upon it as Rebellion in the People, tumultuously to rise up in Arms to alter, or reform the Religion of the Nation, or Kingdom, already established by Law, without the Consent of the Legislators.

4. I disclaim all Resistance, or Self-defence in Subjects, upon the account that the free, or publick Exercise of that Religion they profess, is not allowed them by the Legislative Power of the Kingdom, or Nation, provided that such Supreme Powers do not forbid, or hinder the People professing such a different Religion, to hold, or transport their Estates, and Persons into any other Country where they please.

5. I deny Resistance to Subjects against their Princes or Governors upon presence of any personal Vices; as because they are wicked, atheistical, cruel, luflful, or debauched, provided they generally protect their Subjects in their Lives, Liberties, and Properties.

6. I deny this Right of Resistance to any particular Person left than the whole Body, or major part of the People; or at least such a considerable Portion of a Nation, as are able, when assaulted or oppressed in their Lives, Liberties, or Estates, to constitute a distinct, and entire Kingdom or Commonwealth of themselves.

7. I look upon it as wicked, and rebellious for any private Subjects to affiance, murder or imprison their Monarch, or other Supreme Governor, since no private Person whatever ought to lay violent Hands upon his Prince, whose Person ought to be sacred, and in no wise to be violated, unless he put off the Character of a Prince, and actually make War upon his People. But if in this Case he happen to be refit, and perih in the Attempt, he falls not as a Prince, but as a common Enemy, by breaking the Original Compact with his People, and entering into a State of War against them: As a Father who unjustly makes War upon his Children, may be, (as I have already proved at our first Conference) refit by them in the State of Nature.
But as for all other Grievances, or Oppressions, if they are of that Nature as may ruin the whole Commonwealth, yet not suddenly, but after some time, and often repeated, I cannot allow such Grievances, or Oppressions, as a sufficient Cause of Resilience: For as on the one hand, there is no Inconvenience so small but in process of Time it may turn to the Ruin of the Commonwealth, if it be often repeated, and excessively multiplied; so on the other side, length of Time produces so great Changes, that the Nature of these Encroachments or Injuries are not sufficient to justify Resilience, and the Breach of that Peace and Unity in a Commonwealth, which must necessarily follow by entering into a State of War.

To conclude: I do not in any case whatever allow of Resilience, but only in these three necessary ones: When the Lives, Liberties, or Estates of the whole People, or the greatest part of them, are either actually invaded, or else taken away; and when they are reduced into to had a Condition, that a State of War is to be preferred before such a Peace; and lastly, when the end of Civil Government, being no longer to be obtained by it, the Commonwealth may be look'd upon as dissolved.

M. Though you have been pretty long in treating of this Matter, yet I did not think it tedious; since I confess you have given me honestly enough (and so far I agree with you) all those Cafes wherein you say it is unlawful for Subjects to take up Arms, or reifit the Supreme Powers: But I wonder you have not added one Cafe more, which divers Authors, that are high enough against Non-resistance in other things, do yet allow to be a sufficient Cause of taking up Arms, and resistit their Prince: And that is, when he actually hath, or goeth about to alienate, or make over his Dominion and Subjects to some foreign Prince or State.

F. I am not ignorant of what you say, but I thought it not worth speaking of; because in absolute Monarchies (which we are now treating of) if such Kingdoms are Patrimonial, and that the Monarch hath such an absolute Dominio over his Subjects, as neither to let them enjoy any Liberty in their Persons, nor Properties in their Estates, but at his Pleasure, I cannot see any Reason why such a Prince may not alienate his Dominion over such a Kingdom and People, as well as any private Man may his Property in his ESTATE: Not have the People any cause to be concerned at it, since they can then likewise be but Slaves, and enjoy nothing but at their Prince's Pleasure, as they did before; so that whether he, or a Stranger govern them, it is all one as to their Circumstances. But yet under such Governments as are not absolute, where the People enjoy their personal Liberties and Properties in their Estates, the Café may be much otherwise; since they may not be fine, that the foreign Prince, to whom their own Monarch, or other Supreme Powers, hath assigned them, will maintain their Liberties and Properties as the former did. And the more not being Slaves before, they cannot be alienated without their own Consent, and consequently they may take up Arms, and defend themselves if they are able; unleas the Prince or State, to whom they are so alienated, will give them the like Assistance to preserve their Lives, Liberties and Properties, as their former Governors did. And therefore I do conceive the People of the Islands of Cyprus and Candia might very well have refused to become Subjects to the Grand Seignior, in cafe the Venetians should have fold or alien'd their Dominion over them before he had actually conquer'd them. But in limited, or Hereditary Kingdoms, which are fo by their Fundamental Constitution, I suppose, the Prince cannot, upon any account whatsoever, make over his Dominions to a foreign Prince without the Consent of his People, and next Heir. And therefore (granting the Story to be true), I doubt not but the People of this Kingdom might very well have opposed King John, if he had gone about to have subject'd it to the Dominion of the Emperor of Morocco, upon Condition that he would affit him with an Army of Moors to subdue his Barons, and Nobility, then in Arms against him.

M. I confess it is not worth while to dispute about that which so seldom happens, and is indeed almost impossible to be put in practice: therefore I shall not much oppose you in what you have laid upon this Cafe; yet, that I may be as good as my Word, and give you my Judgment concerning what you have lately laid, I must freely tell you, that as it may happen, that a Prince or State may sometimes abuse their Power, so as to take away the Liberties and Estates of...
of all their Subjects, as you have set forth, (and which I confess is a very great Mischief) yet upon second Thoughts, I think it were much better that this Inconvenience should be suffered, rather than the worse Mischief of leaving Subjects to be the sole Judges, when their Liberties and Estates are invaded, or like to be taken away; nay, every private Subject would be first Judge of it, or else the whole People could never come to pass their Judgment upon it, which would leave too great a Latitude for turbulent and rebellious Spirits to make Disturbances in Kingdoms and Commonwealthish; especially, if there be any small Grievances on the Subjects; especially too, if they touch at those things they account their Hereditary Liberties and Properties. These, (though never so small) if the People are suffered to be their own Judges, (as you make them to be in their own Cafes) will soon be aggravated, and blown up into intolerable Op pretions of, and Invasions upon their Liberties and Properties, when indeed they are not. This is a pernicious Doctrine; for it will be a perpetual Cause of Quarrels, Civil Wars, and Rebellions, which would turn all Commonwealthish, tho' never so well constituted, into Anarchy and Confusion. So that as you have stated this Question, you have broached a Principle highly destructive to all Civil Government: For if all, or any of the People, may revolt or rebel (call it what you please) whenever they think themselves oppressed in their Liberties and Estates, L. 0. this is for them only to be obedient, when they think themselves well governed; but stubborn and rebellious, when they believe they are not; which would be to make all Government precarious and conditional, and the People not only Parties, but Judges, and Executioners too in their own Cafe, how far these Conditions are observed on the Governor's part; and then the Regularity or Irregularity of the Administration will no longer be the Question, but the Validity of the Power to command. And there wants no more to dissolve such a Government, than for Dick, or Tom, and every Rarefied of the Mobile to say, This or That is destructive to the People's Liberties and Properties, and therefore an insupportable Grievance and Oppression. And if you will once allow any number of the People, though never so many, to judge this, or that Law, or Order of the Government, not to be for their Good, and that they may likewise revolt and rise themselves by Arms, whenever they thus fancy, they will quickly come to say, that the Government itself is not for their Good neither. And upon this ground all the Rebellions, raised by an incensed, and mistaken Multitude against the Government in all Ages, may easily be justified; and War, Tyler, and ferry Fellow shall be so far from being Rebels, that they may pass in future Ages for Heroes, and noble Affectors of the People's Liberties. And I hope you will believe, I do not speak this out of any Liking or Approbation of Tyranny; or that I desire that Princes should stretch their Power to the utmost, to invade their Subjects' Liberties or Estates; but only to let you see, how far your Principles may leave the Pretences of wicked Men to set whole Kingdoms together by the Ears, whenever they find the People so far discontented with the Government, as to believe their malicious and wicked Insubordinations: Of all which those long and cruel Civil Wars, and Rebellions, which for several Years tormented, and almost ruined these three Kingdoms, are too late, and sad Examples.

F. I confess, Sir, you have made a very pathetick Speech, and exerted, I suppose, the utmost Strength of your Reason and Eloquence on this Subject; for you have made the Consequences of this Principle, etc. (That the People may judge when their Liberties are invaded) to seem very dreadful. But after all, it is no more than what you have urged in great part already: And the main Strength of your Argument lies here, that if the People should take upon them but once to judge when they were notoriously injured or oppressed, and thereupon take Arms to right themselves; they would soon make bold to put this Power into Use and Practice, when they had no occasion for it at all, or at least not sufficient to make any open Infrunt. But to shew you that there is no need of such an infallible Judge, as you suppose, to be necessary in a Commonwealth, any more than there is in a Court of Law; I pray tell me, Sir, would it not have been very convenient, if Chrift had appointed an infallible Judge (be it the Pope, or General Council,) or both together) to decide all Controversies in Religion, and to whose Judgment all People ought to submit?
BIBLIOTHECA POLITICA.

M. I cannot deny, but it would have been a very ready way to end all Disputes about Religion: but since God hath not thought fit to appoint any such Judge, it were very great Presumption in us to set up one to please our Humour, since such a one could have no Infallibility, unless it were given him from above.

F. You judge very well; and doth it not therefore follow, that since there is no such infallible Judge, all Men ought to judge for themselves of the Truth of their Religion: and also in the Christian Religion, what Doctrines are agreeable to the Word of God, and what not? And yet you see that from the ill use of this Liberty have sprung all the different Sects and Heresies in the World. Does it therefore follow, that Men must not make use of this Liberty, because they may abuse it? So likewise, must Subjects judge in no case whatsoever, when the Supreme Power tyrannizes over them beyond what they are able to bear? And must they never reft, or endeavour to cast off this oppressive Yoke, because they may happen one time or other to be wanting, and believe themselves oppressed when indeed they are not?

M. I grant your Parallel would have somewhat in it, were the Consequences of every Man’s judging for himself in Matters of Religion as fatal to the Peace and Happiness of Mankind, as your Doctrine of the Subjects judging when it is fit for them to do so, and their Mind to the Supreme Powers: For I do not at all deliar them from the Right of judging when they are oppressed, or ill used by them, for that may very well confift with the Publick Peace; but I utterly disallow all manner of Resistance by Force, because it tends, not only to diffuse all Civil Government, but to disturb the common Peace and Safety of Mankind.

F. Notwithstanding your Disjunction, the Parallel will hold in both Cases: for are not Differences in Religion as fatal to the Peace and Unity of the Church, as the Subjects judging when they are oppressed, and therefore taking up defensive Arms, can be to that of a Civil State? And do not more Wars, and Quarrels arise about Men’s Differences in Religion, than from any other Cause you can name? So that if the Peace of the Church were a sufficient Cause for supposing a certain, or infallible Judge in Religion, there would be the same Reason to suppose it in Civil Matters too. And therefore your Argument from the abuse of this Liberty of the Subjects judging when they may reftill, is of no more force in one Case than the other: For I grant it may so happen in a Civil State, as well as in an Ecclesiastical, that the Subjects may rise up, and reftill their Civil, as well as Spiritual Governors, without any just Cause; doth it therefore follow, that God hath wholly delivered up Mankind to the domineering Humours of Men in Power, let them abuse it never so falsely? And therefore we must not be wiser than God Almighty himself. And when he hath not appointed any certain, and infallible Judges, either in Civil or Spiritual Matters, without any Contradiction, or Resistance, we ought not to suppose a Necessity of such Judges, meerly because of some Inconveniences which may perhaps often happen from the abuse of that Christian Liberty he hath given us. For then, I doubt, you will find the Remedy would be much worse than the Disposal; as if, to avoid Herefies, we should set up the Pope for an infallible Judge. So would it be likewise, if, to avoid Civil Wars, and Rebellion, the Supreme Magistrate (as Mr. Hobbs hath done) for a certain and irrefistible Judge of whatsoever Means are necessary for the People’s Quiet and Preservation; since I have already proved, that an infupportable Tyranny is not Civil Government; and that the Supreme Powers can no more alter the Nature of Things, than their own Laws or Edicts, than they can ordain Poison to be used, instead of wholesome Food, by the People.

M. I confess what you have now said carries some weight with it; and my own carnal Reason doth very much incline me to your Opinion, were it not for two things: the one (as I said) is the horrid Rebellions that have, and may again arise in these Kingdoms from this Principle; which hath made God so strictly forbid all Resistance of the higher Powers, upon any account whatsoever: And therefore you are much mistaken when you affirm what Resistance, though for Self-defence, is one of the Liberties that God hath left us; since certainly he would never so severely have forbidden it, but that he not only knew how prone Men’s corrupt Natures were to Rebellion, but also forewove the fatal Consequence of it.
Dialogue the Third.

If God's Commands in Scripture be the greatest Argument you have against all Resistance whatever, I doubt not but to shew you (when we come to it) that you, as well as others, are mistaken in that strict Interpretation of those Places of Scripture. And as for the evil Consequences you suppose may follow from this Doctrine, I doubt not likewife but to convince you, that much worse will follow from the irreparable Tyranny of the Supreme Powers, than ever have happened from the dreadful Rebellion. And therefore, I desire you to take Notice, that what I have now said is not out of any design to justify so horrid a Crime as I grant Rebellion to be, or to incite Subjects to be guilty of it; but only to hinder Civil Government from being destroyed, and Mankind from being made miserable.

For I have first asserted, that no Resistence whatever is to be made in absolute Governments, but in those Caffes in which the main Ends of Civil Government are visibly destroyed, or so near it, that there is no other means left but Resistence to prevent it. And then, when things are once brought to this pass, it is not the People that make this War, but the Governors, who by their Tyranny have brought the Commonwealth into this Anarchy and Confusion you so much dread; so that it is not the People, but they that are the Aggressor.

And as for the ill use that may be made of this Doctrine, to stir up the People to Rebellion, when they have no juft, or sufficient Provocation to reflect: This will not prove of that dangerous Consequence you imagine, if you will but consider, that I do not allow this Resistence in any Caff, but when the Violence, or Oppreffion of the Governors is so evident, and insupportable to all the People that groan under it, that no indifferent Man in his Senses will be able to deny it; for as long as it remains disputable, whether or no the People are sufficiently oppressed in their Liberties or Eaffes, the Truth repeated in the Supreme Magistrates makes them the sole Judges of the Neceffity of such exorbitant Actions, as being intrusted by the People as Men supposed to be both wise and good, and themselves ignorant in divers Caffes of the true means of their own Preservation; and the Supreme Powers remain the sole Judges, I say, as long as the Caff is doubtful or uncertain.

But since you have already acknowledged, that the People might judge (if such a Caffe should happen) whether the Prince, or other Supreme Magistrate, makes actual War upon them, I would very fain know why the People cannot as plainly diftinguish when he fends his Guards, or Dragoons, to take away their Lives and Liberties, or to turn them out of their Eaffes: And 'till this be done, and the Tyranny fo evident, general, and insupportable, that it is past all Question, I grant that the People ought to have Patience, and rather suffer many Oppreffions and Hardships, than put themselves into a State of War. So that I think it is morally impossible, that the People can be mistaken in so evident a Caffe. Nor I believe can you fearch me one Example, either out of ancient or modern History, of any whole Nation or People, or the major part of them, that did ever rise in Arms to call off either a Foreign or Domestic Yoke, which prefied too hard upon them, but when they had the most unavoidable and juftifiable Causes fo to do. And I believe I can shew you ten Examples out of Histories, (if the Question were to be decided by them) for one you can shew me to the contrary. 'Tis true, some private Men may sometimes make Disturbances, or Rebellions, but 'tis commonly to their own till Ruin and Perdition: For 'till the Magiftres be grown general, and the Violence of the Rulers become evident, and their Attempts to destroy, or make Slaves of them, are most fensible to all, or the greatest part of the People, they are commonly more a great deal disposed to suffer, than to right themselves by Resistence, well knowing the Mifchiefs of War, and how destructive it will prove, not only to their Lives, but to the Welfare of their Families and Pofterities, as well as private Concerns. So that the Example of some particular Injustice, Oppreffion, may, absolute Ruin of here and there an unfortunate Perfon, moves them not. But if once they find their Lives, Liberties and Eaffes, universally affaile, and about to be taken away, who is to be blamed for it; the Magistrate, or the People? For the former might have avoided it, if they had pleased, either by not urging them to that Extremity at all, or at least redreffing those Grievances and Oppreffions before they became so general, and insupportable, as not to be any longer endured.
BIBLIOTECA POLITICA.

So that, though I grant, the Ambition, or Turbulency of private Men have sometimes caused great Disorders in Commonwealths, and Factions have been fatal to States and Kingdoms; yet whether this Mischief hath oftener begun from the People's Pride, and Desire to call off the lawful Authority of their Rulers; or from the Rulers Infolence, and Endeavour to get, and exercise a Tyrannical, Arbitrary Power over their People; that is, whether Oppression or Disobedience gave the first Rise to the Disorder, I leave it (as I said) to impartial Observers of History to determine.

But this I am sure of, whoever (either Ruler or Subject) goes about by force to invade the Rights of either Prince, or People, and lays a Foundation for overturning the Original Constitution and Frame of any Civil Government, he is guilty of the greatest Crime I think a Man is capable of, being to answer for all those Mischiefs, Bloodshed, Rapine, and Defocations which the breaking to pieces of Governments does bring on a Country. And he who doth it is justly to be esteemed an Enemy, and is to be treated accordingly.

But as for the Incensates you give of Wat. Tyler, and Mafaniello, I grant indeed it may so happen, that a great part of the common People, or Rabble, may sometimes upon sudden, or false Apprehensions, occasioned by some real Grievances or Oppressions, such as are great Taxes, or Gabels imposed by the State, take up Arms, and rebel against the Supreme Powers. Yet these Examples do not reach the Question in hand; these Insurrections or Rebellions you mention, being of a much lesser number than the whole People, or the major part of them; and in which I still include the Nobility and Gentry, and other Landholders, as the most considerable part. And so these Insurrections were in no wise justifiable, especially in such a Government as ours, where no Man can be taxed but by his own Consent, included in his Representatives; whereas all these Rebellions were chiefly (if not altogether) made by the meaner sort, or Scum of the People, of one, or a few Countries, whom I can never allow to make Disturbances; since they, having very little to lose, ought, in all Civil Governments whatsoever, to be directed and governed by those, in whom the Ballance of the Government in Lands, and other Riches, doth reside, and on whom they chiefly depend for their Protection and Subsistence; and consequently ought to make no Alterations in the State without their Consent and Approbation.

But as for your other Infince, of the Wars raised in these three Kingdoms against King Charles the First, upon the Pretense of our Religion, Liberties and Properties being invaded, it is not proper to be treated of in this place; since we are now discoursing of the Power of Princes, and the Right of Subjects under absolute, and not limited Monarchies: And I grant, that some Resistance may be Rebellion under absolute Monarchies, which would not be, so under limited ones; yet I do still suppose that it may be lawful under such limited Monarchy for the People to take up Arms, and make Resistance in defence of those just Liberties and Privileges which they lawfully enjoy, either by the Original Constitution of the Government, or by Acts of Grace, or Concessions of the Prince: But this requires a more large and accurate Discourse, which at another time I am ready to give you. Therefore, granting at present, that those Wars were downright Rebellion against the King; and also that they were made under Pretense of the Principle I now affirm, yet doth it not at all overthrow the Justice of that Cause which I now maintain; since (as I have already more than once intimated) the abuse that may be sometimes made of a natural Right by some wicked, factious or hypocritical Men, ought not in the least to prejudice the Exercise of that Right to all the rest of Mankind, who may lie under a real Necessity of making use of it.

To conclude: If the People may never be trusted to judge when their Liberties and Properties are actually invaded, because they may happen one time or other to be mistaken, and so enter into a State of War, without Cause, to the Destruction of Mankind, this Argument would serve as well against all Princes and Commonwealths; who, being in the State of Nature with each other, should never make War for any Caufe or Provocation, how great soever; because being Judges and Executioners too in their own Cafe, they may more easily happen to be mistaken. I suppose you yourself will grant, that one, or a few Men are more apt to be in an Error, than a Hundred thousand. And I have already
already proved, that where the People have never wholly given up their Liberties and Properties unto the absolute Will of the Supreme Powers, they are, as to that, still in a State of Nature, and do referre to themselves a Right of judging when they are violently and insupportably invaded; and consequently of vindicating themselves from that Oppression. And therefore, granting what you have laid to be true, that the People may sometimes happen to abuse this natural Right of judging, and refilling, by exercising it, when there is no real and absolute Necessity; So on the other side, if they are wholly debarred from it, because they may happen sometimes to abuse it, the free People in the World, vide. (our selves, for Example) may easily be reduced into a Condition of absolute Slavery and Beggary, and that without all Remedy by any humane Means that I can think of; and which is the worst Mischief of these two, I leave to your view, or any indifferent Man to judge.

M. If you will have my Opinion in this point, I must freely tell you, that it is a hard Matter to find out a Mischief so destructive to the People, and which they should exchange for this miserable State of War, which you suppose may prove so beneficial to them; and yet I doubt, if it be thoroughly looked into, not only the Doctrine itself, but also the lasting Wars and Miferies it may produce, would not sufficiently prove the contrary; since the cruell Tyranny, Slavery, and Loss of Estates, or any thing else almoit, may be better born with in Peace and Unity, than a Civil War with the greatest Liberty and Plenty; seeing all such Contentions would quickly be devoured, like Pharaoh's fat Kine, by such a cruel Monster feeding in their Bowels. And therefore, since Civil War is one of the greatest Calamities and Punishments that God ufed to send upon a Nation, it seems evident to me, that the Welfare of any State, or People requires them to be obedient unto the Supreme Powers, though they be never fo great Oppressors, or cruel Tyrants. For when once they enter into this dismal State of War, who can tell whether it will have an end, without almoit the total Destruction of the Nation, or at least bringing them into a far worfe Condition of Slavery and Suffering, than they were before; since the State of Princes, or other Supreme Powers, can never be so mean and inconceivable in the World, as not to find, when like to be oppressed by such Insurrections and Rebellions of their Subjects, sufficient Assistance from neighbouring Princes, or States; who, making the Cause of such a Prince their own, will be sure to afflict him to the utmost of their Power; it being found true by Experience, as Tully long ago observed, "That the afflicted State of Kings does easily draw the Help and Pity of many others, especially of thofe, who are either Kings themselves, or do live in a Kingdom, the Regal Name being by them esteemed to be great and sacred." And farther, how ready away it is to subvert the State of any such disfrachte Kingdom, and to bring it under the Subjection of Foreigners, we need not seek a plainer Proof, than by an Example no farther off than Ireland; where Dermot, King of Leinster, being forced by his rebellious Subjects to crave the Aid of King Henry the Second for his Restoration to his Kingdom, his Assistance to recover his Right produced that effect which we now fee, vide... That the Irish lost their Domination, and became subject to the Crown of England even to this Day.

And supposing, that the Subjects might likewise be affitt by some foreign Prince, who would undertake their Deliverance, they would not be in a much better Condition; since, if he were an absolute Monarch himself, he would be sure, for Example false, as well as for their own Security, to carry as strict a Hand over them, and use them more severely than their own Prince had done before; and, I doubt not, but if Lewis, Prince of France, had been crowned King of this Kingdom, as he was very near it, toward the latter end of King John's Reign, but that he would have been more cruel and tyrannical than ever King John had been before: So that they would have got nothing by the Bargain, but a Change of Masters, and a heavier Tax imposed upon them by a Foreigner.

And to much the Vicount Melun confented upon his Death-bed to many of the English Nobility, which was the Reason of their returning again to their Allegiance to Henry the Third. So that I think it had been much better for the Barons and Nobility of this Kingdom never to have stirred or rebelld at all against their lawful Prince.
F. You seem so in love with Slavery, and all the Consequences of it, that it is a hundred pities but that you should feel the smart of it a little while, provided no Body was so futile to suffer by it but your self and those of your Opinion. But could you see the miserable Condition those poor People are in who live under Arbitrary and Tyrannical Government, I doubt not but you would be of another Mind, and prefer a War now and then, tho' never so violent, before such a Peace; for when Men are once reduced to so deplorable a Condition, as neither to be secured of their Lives, Liberties or Eftates, they may have some hope to redress themselves by Refilence, but need not fear to be reduced to a worse Condition than they were before; and therefore I cannot understand how all the Comforts of a Civil Life would then be lost by a Civil War, when I have already put it as a chief part of the Cafe, that Subjects are never to make such a Refilence but when the Supreme Powers are just about to begin, or else have actually enter'd into a State of War against their Subjects: For what can any foreign Enemy do more if he conquers them, than take away their Lives, Liberties and Eftates? So that this is so far from being a State of Peace, that indeed the People are already exposed to all the Calamities of War; but a War, which you suppose may be made without any Refifance, whilst the Subjects (forsooth) are bound to keep the Peace; but much fuch another Peace as would be in a Houfe into which Thieves having broken, and the Indebted have got into some upper Rooms, the Guards being upon their Guard and make Refilance; whilst the Thieves having seiz'd upon all they have below, one of them should make such a Speech as this: I pray Sirs come down and submit your selves to us, for we assure you we intend not to kill you, but only to bind you and take away all you have; and is not Slavery and loss of Goods better with Peace and Safety, than by assaulting us to provoke us to fire the Houfe and kill you all? for if you once enter into a State of War with us, it is very likely to end with your total Destruction; for if you continue to refil us, or think to call in Company to your Affifiance, we can likewise call in many more of our Fary to come and help us; and then expect no Mercy. Now pray tell me, would not this be a very rational Argument to move these People to come down and surrender themselves to these Thieves, and partake of the Benefits of this excellent Peace they propos'd? and whether they would not tell them, that by shooting they would also call in the Neighbouring Town, who might be too strong for all their fellow Thieves? Now if you will but take the honest People of the next Town for such Neighbouring Princes or States, who may join in the Affifiance of fuch an oppreff'd People, this Simile will fully anfwer your Argument of thefe Neighbouring Princes that may take part with an oppreffing Tyrant: And as for the Consequence of fuch Affifiance, on the one fide or the other, that it may happen to bring them into a worse Condition than they were before, viz. a Subje&tion to Foreigners (as I have put the Cafe) it can be no caufe to deter the People from Refifing; for if they were (as I suppose) redu'd to a Condition of Slavery before, and had lost all their Liberties and Properties, how can we imagine them in a worse Cafe than they are already? And it is all one to fuch a People, whether their own or a strange Prince did tyrannize over and oppreff them: Nay, were I to take my Choice, I had much rather be tyranniz'd over and oppreff'd by a Foreigner than from my own natural Prince; since the former coming in by Force, and without any precedent Promiſe or Compafe, I lie wholly at his Mercy, who hath no Obligation upon him; and I had much rather, if I were to be a Slave, be fo to a Stranger than to my own Father, if I were allure that both the one and the other would use me with like Severity. And to anſwer your Inſance of your English King, I think that Nation hath been fo far from looting any thing by their Subje&tion to the English Government, that they have gain'd far greatier Privileges and Liberties both for their Persons and Eftates, than ever they enjoyed under their own Princes; so that they are rather the better than the worse by the Change. And besides, the Example is not to the Point we difcours'd of; the Quarrel being between two English Kings, where the stronger having injured the weaker, he called in the English to revenge his Quarrel; whereas the Question here is concerning the like Action done by the People against their Prince. And as for your other Example of Prince Lew, it is uncertain whether the Condition of the English Nation would have been either better or worse under a French King. But thus much I am sure of, that had King John proceeded in that Tyrannical Course against his Barons and the rest of his Subjects,
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Subjeets, they could scarce have been in a worse Condition under the French; nay the Moors themselves, had King John actually surrendered his Crown to the Saracen Emperor, as the Hillarians of those Times relate he offered to do.

Nor can I be of your Opinion, that it had been much better for the Barons and Nobility of this Kingdom never to have flirted or relit the King at all; since if they had not, they had never obtained the Great Charter of our Liberty from him; and if they had not so rigorously defended it when they had once got it, I doubt not but the People of England had been long before this time in the same Condition, as to their Liberties and Properties, as some of our Neighbouring Nations; all which is sufficient, I think, to prove that Restraint, in desperate and unavoidable Cases, is not attended with those Mischiefes and Inconveniences you fuppose.

$M$. I shall not say much more in answer to your last Discourse, since it would be to little purpose, but only take notice that Similes are not Arguments; and therefore your Comparison between Thieves and honest Men doth not hold as to Princes and Subjeets; since sure there is a great deal of difference between those that are to be Obeyed as the Ordinance of God, and those who are obliged in Conscience to be subject to them, and Thieves who act directly contrary to God's Will, and honest Men who have no obligation to them may justly reftath them; so that if that be false, the rest of the Comparison will signify nothing. And as for what you say concerning Magna Charta, I think it is not much for its credit to have been extorted by Force, and afterwards defended by Rebellion; tho' I will not go about to impeach the Validity of it, since so many of our succeeding Kings have so solemnly and voluntaery confirmed it, or pray take notice that it is wholly derived from the Grace and Bounty of our Monarches, and therefore we are not to reftath, tho' it may happen to be sometimes, and in some particular Cases, broken and infringed by the King, for some great Occasions and Necessities, of which we are not competent Judges.

But to come to the rest of those evil Consequences that may attend your Doctrine of Restraint; I think the Benefits would be much greater to the People by briefly adhering to those Describts of absolute Subjection and Non-restraint, than by propagating yours of Rebellion; for if the former were constantly taught and inculcated as most beneficial for them, and if they were once really persuaded of the Truth of it, and would both constantly profess and practise it, it would make all Princes much more gentle and mild to their Subjeets, than otherwise at some times they are; for now they are still fearful that they will take the first Opportunity, they can to take up Arms against them; and upon the least Grievance or Misgovernment, to relit their Authority; for then Princes not needing to keep any such constant Guards and Standing Armies, might afford to lay much eafier Taxes and Impositions upon them, for the maintenance and support of the Government, than now they do; and in short, would have much fewer Temptations to Tyranny and Oppression, could they be once assur'd of their Subjects' absolute Obedience and Subjection: Whereas when they are under those constant Fears and Suspicions of Injuries and Rebellion against them upon the least Occasion; it is no wonder if they are tempt'd sometimes to abuse this Power for their own Security. And therefore we read in our Histories; that William the Conqueror never thought himself secure from the English whom he had newly conquered, till such time as he had turned most of the Nobility and Gentry out of their Offices and Estates, lest they should have any Power left either in his Life-time, or after his Death, to turn him or his Poffeay out of the Throne, as they did the Heir of the Dying King Comet, who with his Death had before conquered England, as King William did afterwards with his Norman: So that upon the whole Matter it seems to me much more to conduct to the main design of Civil Government, viz. the Happines and Peace of Mankind in general, that Princes and other Supreme Magistrates should be suffered (I will not say authorized) by God, sometimes to abuse their Power to the general Oppression and enslaving of the People, without any Restraint on their Side, expecting their Deliverance wholly from him who can bring it about in his good time, and by such means as shall seem most meet to him, than that Subjects should take upon them to be both Judges and Executioners too in their own Case; and thereby introduce not only all the Mischiefes of Civil War, and all those cruel Revenges which the Wrath of an incensed Prince may justly inflict upon such Rebels in this Life, but also the Wrath of God, and those Punishments.
Punishments that he hath denounced in the Holy Scriptures in the Life to come against such Rebellious Subjects as dare resist the Supreme Powers ordained by God.

F. Before I answer the main part of your last Discourse, give me leave first to justify my Simile; for tho' I grant Similes are no Arguments, yet they often serve to expound the absurdity of several things, which either the false Colours of Eloquence, or the too great Authority of learned Men, might otherwise have hid from our Eyes: And therefore if the Supreme Powers have no Authority from the revealed Will of God, or the Laws of Nature, nor by the Municipal Laws of any Country, to invade their Subjects Lives, Liberties or Estates, they may be so far compared to Thieves and Robbers when they do; nor are such violent Actions of theirs to be submitted to as the Ordinance of God. And I suppose you will not deny, but that a Prince or State that does thus, acts as directly contrary to God's Will as Thieves themselves; and consequently, all honest Men or Subjects having so far no obligation to suffer or obey, may justly resist them; so that if this be true, all the rest of the Compartment curris quattuor pedeum.

But as for your Reflections upon Magna Charta, it is you your self, not I, that affected it to have been extorted by Force, and defended by Rebellion; for it is very well known to all those who are at all conversant in our English History and Laws, that there was nothing granted in that Charter which was not the Birthright of the Clergy, Nobility and People long before the Conquest, and were comprized under the Title of King Edward's Laws, and which were after confirmed by William I; as also more expressly by the Grants of his Son Henry I and King Stephen; as appears by their Charters still to be seen. And therefore these fundamental Rights and Privileges were not extorted by Force from King John, as you suppose: The War commencing between him and his Barons, was not because he would not grant them these Privileges which they had not before; but because he had not kept nor observed the fundamental Laws of the Land, and those Rights and Privileges which before belonged to the Clergy, Nobility and People, as well by the common Law of the Land, as the Grants of former Kings. And therefore if King John, by his apparent Breach of them, forced the Nobility and People to defend them, it was no Rebellion for so doing; nor was it ever declared to be so by any Law now extant.

But to come to the main Force of your Argument; I confess it was an admirable Expedient, not only against Rebellion, but also the Tyranny of Princes, to Plead that they should not oppress their People, nor yet that the People should rebel against them; but the preaching of these Doctors, or getting as many as you can to believe them, will no more make Princes leave keeping Standing Armies, or laying great Taxes upon their People, than confidant preaching against Robbery or Murder, will take away the necessary use of Gallows out of the Nation; since we know very well, that as long as the Corruption of humane Nature continues, so long multitudes of powerful Remedies against it. And therefore your Insistence of William the Conqueror will signify very little; for I believe, had all those learned Divines (who have of late so much written and preached for Puffing Obedience and Non-rebellion) been then alive, and had exerted the utmost of their Reason and Eloquence to prove them necessary; nay farther, I do not believe, tho' all the People of England should have given it under their Hands, that they would not have resisted or rebelled against King William, that yet he would have trusted them the more for all that, or have kept one Soldier the less for it; nor have remitted one Denier of those great Taxes he imposed; for he was too cunning and politick a Prince not to undertand humane Nature, which cannot willingly endure great and intolerable Slavery and Oppression without Refitance, if Men are able; and therefore he very well knew, that after the forcible taking away of so many of the English Nobilities Estates, there was no way but Force to keep them in Obedience: And as Princes can never be satisfied that their Subjects have been throughly paced in these difficult Doctors; so they can never be secure that they will not play the Jades, and kick and fling their Riders when they spur them too severely, and press too hard upon them. And therefore I doubt such Princes whose Government is fevere, will always find it necessary to ride this Beast (as you call it) the People, with strong Curbs and Cavillons. But besides this, there is likewise another Infirmity in the Nature of Mankind, and of which Princes may as well be guilty as other Men, that they are more apt to oppreess.
pres and influe over thoe, whose Principles or natural Tempers may be against all Resilience. And for this I appeal to your Example of the Primitive Christians, who were not one for the better used by the Roman Emperors, tho' they expressly determined all the Violence of those Emperors for Persecution in Matters of Religion: And tho' some Neighbouring Princes are thought to have their Subjects in more perfect Subjection, and that either, their Religion or Natural Tempers, make them less apt to refile the Violence and Oppression of their Monarchs, than, the English, or other Nations: yet I desire you to enquire, whether Taxes, and all other Oppressions, do not reign as much under those Governments, however sen-
ible the Princes may be of their Subjects Loyalty and Obedience.

Therefore to conclude, I shall freely leave it to your Judgment, or that of any in-
different Person, which is most agreeable to the main Ends of Civil Government, viz. The common Good of Mankind, and the Happiness and Safety, of each par-
ticular Kingdom or Commonwealth, that the Violence and Tyranny of Princes, should be sometimes refused; than that the People, under the pretence of this unresistible Power, should be liable to be made Beggars and Slaves whenever any Prince or State had a mind to it. And I appeal to your own Conscience, if the supposed Belief of the Passive Obedience of some of our Church, was not one of the greatest Encouragements, which the King and the Jesuitical Faction had to bring in the Popish Religion, under the colour of the Disenfailing Power, Ecclesiastical Com-
misgivings, and force of a Standing Army, from which they avowed the Multitudes nothing under God but this wonderful Revolution, could have rescued us: And therefore I think it becomes any honest Man to thank God for it, and join with his Highness the Prince of Orange, as the only means (now Miracles are ceased) which God hath been pleased to ordain by the course of his Providence for our Deliverance.

M. I must confess, I am somewhat staggered with these Reasons and Arguments you have now given me against these Principles, which as I have always, so must still think as I am, till I am convinced I am in an Error; and perhaps, if I were to consult my own carnal Reason and natural Inclinations, I should come over to your Opinion. But since it hath pleased God to lay much higher Restraints and stricter Rules of Obedience and Subjection on us, by his revealed Will in the Scripture, beyond what can be discovered by the Light of Nature; and that under the highest Penalty, viz. Damnation; I see no reason why God Almighty may not grant Eternal Life upon what Conditions he pleaseth, tho' never so hard and uneasy for Flesh and Blood to perform: So that if our Saviour Jesus Christ hath commanded us to take up his Cross and follow him, that is, to suffer all sorts of Injuries and Afflictions, may Death it self (as he himself did) rather than to refile the Supreme Power under which he lived; I cannot see any reason why he should not propose his own Example for our Imitation: And as he hath en-
joyed, and expects from us greater Degrees of Chastity, Charity and Humility, than ever he did from the Jews or Pagans; so I see no reason why he may not likewise exact from us a greater and more perfect Obedience and Submission, without any Resilience to all Sovereign Princes and States, than ever he did either by the Law of Moses, or that of Nature; but not that there are sufficient Proofs in the Old Testament, for the absolute Power of Princes against all Resistance or Re-
silience in Subjects: Tho' I confess this Doctrine is more plainly proved by the Example of our Saviour, and the Precepts of his Apostles in the New Testament, as also from the Example of the Primitive Christians in Obedience there-
unto.

F. I perceive you begin to distrust your Arguments drawn from the natural Reason and the Laws of Nature; and when you are pressed with the absurdity of this Doctrine of yours, you fly from God's Natural to his Revealed Will, and take Refuge under the Cover of the Holy Scripture, to impose an Opinion contrary to the common Sense and natural Notions of Mankind, not corrupted with the Prejudices of Education: And therefore give me leave at present to tell you, that I think I shall be able to prove, that the Passive Obedience (as you call it) of the Primitive Christians, and their Sufferings for the Name of Christ, will not at all contradict that natural Right, which I suppose all Freemen to have, as well un-
der Civil Government as in the State of Nature, for the defence of their Lives, Liber-
ties and Properties, unleas where the common Good and Peace of the whole or major Part of the People require the contrary: And therefore the same Reasons which
which oblige particular Persons to be quiet, and not to disturb the public peace of the whole Society, for their own private Safety and Advantage; unless when the whole Body of the People, or the major Part of them, is then violently attacked in their Lives, Liberties, and Estates; the same Confederations of the public peace of their Country (wherof every Man is a Member) doth then as strongly persuade, I may say, enjoy them to take up Arms and defend themselves for the preservation of the whole People or Community, whole natural and civil Rights being now attacked, can no otherwise be referred to the same States they were in before, but by that last Remedy that can be used in this Case, viz. That no one person or persons should be held for to be obnoxious to the public peace of the whole Nation, but that none should be punished for any political offence.

M. I must confess that all Commonwealths and States, yea, all mankind, is not so reasonable, being coherent with it, and also must likely be swayed likewise by the People, because it flatters our corrupt Nature, to which this Christian Doctrine of联合 obedience is so directly opposite; as also, because it gives them a full liberty, either to take it, not only the Representative Body, but the major part of them, to realises that Power which they pretend they never parted with; and so consequently all necessity of suffering or suffering except when they think the public danger is taken away, and the sufferings of the Primitive Christians will be rendered only a name and a nameless, and that St. Paul was very much overtaxed to enjoy this submission to the Romans, under the Government of one of the most cruel Tyrants that ever lived that could have been done. But we have not so learned Christ; and therefore I am firmly persuaded, that we ought to be strictly obedient, without any resistance to those civil governors that God hath been pleased to set over us, let them abuse their power no more tyrannically.

F. I am beholden to you for your plain dealing with me in this matter, and pleased to find that you have an inclination to my principles, were it not for some texts of Scripture and citations out of the Father and Church History which give you a prejudice against them, which I hope when they come to be closely examined will signify no more than the former.

But for the dispatching this important controversy, I pray give me leave to propose this easy method: first, that you would be pleased to lay down your authorities out of Scripture in order, and afterwards, to draw me that the methods of the Primitive Fathers and Church History always understood those Texts in the same sense that you do not. That no resistance of the supreme power is lawful to be used in any case whatsoever.

M. I approve of your proposal, and therefore I will first begin with those passages which are expressly against all rebellion or resistance in the Old Testament. The first government that God set over the children of Israel, when he brought them out of the Land of Egypt, was Moses; and I think I need not prove how fast and irretrievable his authority was. This is sufficiently evident in the rebellion of Num. 16. Korah, Dathan, and Abiram, against Moses and Aaron, when God caused the earth to open upon their mouths and destroy them up. And let this be thought an extraordinary case, Moses and Aaron being extraordinary Persons immediately appointed by God, and governed by his immediate direction; the Apostle St. Jude alleged this example against those in his days, who were turbulent and factious, who defied dominions, and spoke evil of dignitaries, that they should perish in the galing of fire; which he could not have done, had not this Example extended to all ordinary as well as extraordinary Cases; had it not been a calling of them to God's displeasure against all those who oppose themselves against sovereign power. But Moses was not always to rule over them, and therefore God expressly provides for a succession of sovereign powers, to which they must all submit: the ordinary sovereign power of the Jewish nation, after Moses's death, was devolved either on the high priest, or those extraordinary persons whom God pleased to raise up, such as Josiah and the several Judges; till in Samuel's days it was settled in the kings. For as for the Jewish monarchy, whose power is so much extolled by the Jewish writers (who are all of a late date, many years since the destruction of Jerusalem; and therefore to competent witnesses of what was done in many ages before) it does not appear from any testimony of Scripture, that there was such a court of judicature, till after their return from the Babylonish captivity.

But yet God took care to secure the peace and good government of the nation, by appointing such a power as should receive the last appeals, and whose sentence in all controversies should be final and uncontrollable, as you may see in

Bibliotheca Politica.
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Deuteronomy, chap. 17. There were indeed inferior Magistrates and Judges appointed in their several Tribes and Cities, which Moses did by the Advice of Jahvé, his Father-in-law, and by the Approbation of God. But as the Supreme Power was still reserved in the Hands of Moses while he lived; so it is here secured to the High Priest or Judges after his Death; for it is expressly appointed, that if those inferior Judges could not determine the Controversy, they should come unto the Priests, the Levites, that is the Priests of the Tribe of Levi (who by the 12th Verse appear only to be the High-Priest) and to the Judge that shall be in those Days; that is, if it shall be at such a time when there is an extraordinary Judge raised by God (for there were not always such Judges in Israel, as is evident to any one who reads the Book of Judges) they should enquire of them, and they shall shew them the Sentence of Judgment; and thou shalt do according to the Sentence, which they of that Place (which the Lord shall chuse) shall shew thee, and thou shalt observe to do according to all they shall inform thee: And what the Authority of the Chief-Priest, or of the Judge, when there was one, was in those Days, appears from ver. 12. And the Man that will do presumptuously, and will not hearken to the Priest (that standeth to Ministre there before the Lord thy God) or unto the Judge, even that Man shall die, and thou shalt put away the Evil from Israel: This is as absolute an Authority as the most absolute Monarch S.C.R. p. 10. in the World can challenge, that Disobedience to their law and final Determination, whatever the Caufe be, shall be punished with Death: And what place can there be for Refitance in such a Constitution of Government as this? It is said indeed in Deut. 12: 9. And according to the Sentence of the Lord which they shall shew thee, according to the Sentence that they shall tell thee, thou shalt do. And hence some conclude that they were not bound to abide by their Sentence, nor were punishable if they did not, but only in such Cases when they gave Sentence according to the Law of God: But these Men do not consider that the Matter in Controversy is supposed to be doubtful, and such as could not be determined by the inferior Courts, and therefore is submitted to the Decision of the Supreme Judge; and as he determineth, so they must do; and no Man, under the Penalty of Death, must presume to do otherwise; which takes away all liberty of Judging from private Persons, that this Supreme Judge might possibly mistake in his Judgment, as all humane Judicators are liable to Mistakes: but it seems God Almighty thought it necessary that there should be some final Judgment, from whence there should be no Appeal, notwithstanding the possibility of a Mistake in it.

So likewise when God had appointed Joshua to succeed Moses, and had conferred upon him all that Power that Moses had before; and that he came to give his Orders to the two Tribes and an half before their Passage over Jordan, you'll find that they not only promised him perfect Obedience, as they had before payed to Moses; but farther also allured him, That whosoever be he that doth rebel against thy Commandments, and will not hearken unto the Words in all that thou commandest him, be shall be put to Death: So that there was a Supreme Sovereignty, that is, an unaccountable and irresistible Power in the Jewish Nation appointed by God himself; for indeed it is not possible that the publick Peace and Security of any Nation should be preferred without it.

F: You have, Sir, methinks taken a great deal of Pains to prove that which I do not at all deny, but rather joyn with you to affert, that Stubbornness and Disobedience to God's Commandments is a very great Sin, and the Rebellion thereunto is likened to the Sin of Witchcraft; as Samuel floweth to no less a Man than King Saul himself, when he had rebelled against (that is, disobeyed) God in not destroying the King of the Amalekites; and therefore it is no wonder, that in a Government where God himself was the Head, and had appointed Moses and Aaron as his Lieutenants or Substitutes under him, the one in Civil, and the other in Ecclesiastical Matters; that God should punish their Murmuring and Rebellion against them as done to himself; not that I deny but that St. Jude does likewise denounce this Judgment of perishing in the quagmire of Cor, against those wicked Hereicks the Gnostics, who thought themselves let loose from all Civil Subjection, and therefore despised Dominions, and spoke evil of Dignities; that is, not the Men invested with them, but Civil Magistracy it self; which they look'd upon as inconfident with their Christian Liberty.

But yet for all this, and that I grant God denounced no less than the Sentence of Death against any Man that refused to hearken to the Priest, or unto the Judge, in those Matters that should be brought before them by way of Appeal; and also, that
that whoever would not obey Jofua, but should rebel against his Commandments, should be put to Death; yet can I not think that there was any Irresistible Power, plac’d by God, in the Persons of Moses, Jofua, or the Judges, or that it was not possible for the publick Peace or Security of the Nation to be prefer’d without that: But indeed all these Persons above nam’d, being to be obeyed as God’s Substitutes or Lieutenants, as he was King of the Children of Israel, so likewise their Commands or Dictates were only so far to be observed as they perform’d this Commission; and if they had swerved from it, I doubt not but they might not only have been disobeyed, but also reftit by them; And therefore pray tell me, supposing this Rebellion of Core had happened because Moses, making himself a distinct Party amongst the mix’d multitude of Strangers that came up with them out of the Land of Egypt, and others of his own Tribe, or whom he could bring over to his Faction, under colour of this Sovereign Power (which God had given him) had, instead of leading and governing the People committed to his Charge, taken upon him to have robb’d them of all those Goods and Riches which they had brought with them out of the Land of Egypt, and had sold the People or their Children for Slaves to the Neighbouring Nations, to enrich himself and his Family; do you believe that the Children of Israel had been obliged to have obey’d such a Leader, and not have reftit him and his Party if there had been occasion? So likewise, if Jofua, instead of leading God’s People into the Holy Land, had taken upon him, notwithstanding God’s Commands to the contrary, to have carried them against Egypt; can you think they had been bound to obey him, and might not lawfully have reftit him, if he had gone about, by the assistance of his Accomplices, to force them to it? For I doubt not but if these Substitutes had acted contrary to that Commission God had given them, they would no longer be to look’d upon as God’s Vicegerents, no more than the now Lieutenant of Ireland, the Lord Tyrconnell, ought to be obeyed, and not reftit, if he should go about, by virtue of that Commission which the King hath conferred upon him, and by the help of the Rebellion Irish in that Kingdom, to murder all the Protetants and fer up for himself. So likewise all the first Obedience and Submission that was to be paid to the Sentence of the High-Priest or Judge, was only in relation to God himself, whose Sentence it was, and who always revealed his Will, either to the Judge by particular Inspiration, or to the High-Priest by the Ephod or Urim and Thummim: and therefore we read in Judges, that Deborah, the’ Woman, yet being a Prophetess inspired by God, judged Israel. Now supposing that this Judge or High-Priest, neglecting (like Balaam) the divine Inspiration; and the Dictates of that sacred Oracle, had, instead of a righteous Judgment, given a Sentence in a Cause that had come before them, whereby Idolatry, or Breach of some great Point of the Law of Moses, had been established; do you think that God ever intended that this Sentence should have been obeyed under pain of Death?

And therefore you may find in the second Book of Maccabees, that when Jofon and Menelaus had by Bribery obtained the High-Priesthood, tho’ it was then the chief Authority (under the Kings of Syria) both in Ecclesiastical and Civil Matters; yet when they went about to undermine the Jewish Religion, and seduce the People to Idolatry, they were not at all look’d upon as High-Priests, but are there called ungodly Wretches, doing nothing worthy of the High-Priesthood, but having the Part of a Cruel Tyrant and of a Savage Beast: and were so far from being at all obeyed by the Jews, that Jofon, Menelaus and Alcimus, who were successively High-Priests in the room of Onias, were, as far as the People were able, opposed by them; till at last Judas Maccabeus taking Arms against Alcimus the Simoniacal High-Priest, restored by force the true Worship of God: So that you see that the Obedience was not pay’d to the Person of the High-Priests, only as such, but by virtue of this Precept in Deuteronomy, but only as far as they observed the Law of Moses, and gave Sentence or Judgment in all Matters according to it. And therefore it is no good Argument of yours, because the People were bound to obey their Sentence in doubtful Cases, therefore they had an absolute irresistible Power to give what Judgments they pleased, and that the People were obliged to observe them under pain of Death, and being guilty of Rebellion; for that had been to have given the High-Priests and Judges a Power to have alter’d the true Worship of God whenever they pleased; and to have introduced Idolatry in the room of it. So that I think none of these Places will prove any more, but that God and his Lieutenants were
were to be obeyed; and that it was Rebellion to refit them under the Jewish Government, as long as they did not force the People to Idolatry, which I do not at all deny.

M. Thou labour to wave these Examples and Precepts which I have now cited, and will not take them for convincing; yet let me tell you, your Exceptions against them only tend to prove that Idolatrous Kings might be refit under the Jewish Law, which is directly contrary to the sacred History; as I shall prove very clearly to you by these following Testimonies I shall make use of; yet I think it is much more plain, that when the Jews would have a King, their Kings were to S. R. S. P. be invested with a Supreme and Irrifullible Power; for when they desired a King of Samuel, they did not desire a mere nominal and titular King, but a King to Judge them, and go in and out before them, and Fight their Battles, that is, a King who had the Supreme and Sovereign Authority, a King who should have all that Power of Government (excepting the peculiar Acts of the Priests) which either their High-Priest or their Judge had before.

And therefore when Samuel tells them what shall be the Manner of their King, 1 Sam. 8, 6, that what he says doth necessitate supposing the Translation of the Sovereign and Irrefullible Power to the Person of their King, yet it doth not suppose that their Petition was granted. King had any new Power given him, more than what was exercised formerly by the Priest and Judges; he doth not deter them from choosing a King, because a S. C. R. P. King should have greater Power, and be more uncontrollable and irrefullible than their other Rulers were; for Samuel himself had before as Sovereign and Irrefullible a Power over any King; being the Supreme Judge of Israel, whose Sentence no Man could disobey or contradict, but he incurred the Penalty of Death, according to the Mosaic Law: But the Reason why he dissuades them from choosing a King, was because the external Person and Magnificence of Kings was like to be very chargeable and oppressive to them; He will take your Sons and Appoint them for himself, for his Charities, and to be his Horse-men, and some shall run before his Chariots. And he will appoint him Captains over Thousands, and Captains over Fifties, and will set them to eat his Ground, and to reap his Harvest. And thus in several Particulars he shews them what Burdens and Exactions they will bring upon themselves by setting up a King, which they were then free from; and if any Prince should be execrable in such Exactions, yet they had no way to help themselves; they must not refit or rebel against him; nor expect that, whatever Inconvenience they might find in Kingly Government, God would relieve and deliver them from it when once they had chosen a King: Ye shall cry out in that Day, because of your King that you have chosen you; and the Lord will not hear you in that Day; that is, God will not alter the Government for you again, how much sooner you may complain of it.

This, I say, is a plain Proof, that their Kings were to be invested with that Sovereign Power which must not be refit, tho' they oppress their Subjects to maintain their own State, and the Grandeur and Magnificence of their Kingdoms. But I cannot think that these Words contain the Original Great and Charter of Regal Power, but only the Translation that was formerly in their High-Priests or Judges to Kings: Kings had no more Power than their other Governors had, for there can be no Power greater than that which is irrefullible: But this Power in the Hands of Kings was likely to be more burdensome and oppressive to them, than it was in the Hands of their Priests and Judges, by reason of their different way of Living; which is the only Argument Samuel makes use of to dissuade them from transferring the Supreme and Sovereign Power to a King; and therefore I rather chuse to translate Mosaic, as our Translators do, by the Manner of the King, than with some learned Men, by the Rights of the King, thereby underling the Original Charter of Kingly Power; for it is not the Regal Power which Samuel here blames, which was much like that which he himself had exercised while he was Supreme Judge of Israel, but their Pompous way of living, which would prove very oppressive and burdensome to them, and be apt to make them complain, who had not been used to such Exactions.

F. You have, I must confess, made a much fairer Exposition of this out of Samuel, than divers of our high-born Divines, who would render this Mosaic as it is in the Hebrew, i.e. the Manner of the King, by Right of the King, whereby they would render all Kings whatsoever to an absolute Right to all their Subjects Elaties, whenever they would take them away; not taking notice that this Word Mosaic
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Mishpat is sometimes used not only in a good, but a bad Sense, not for Right or Power, but for an evil Custum or Abuse; and therefore you may find, in the second Chapter of this Book of Samuel, that speaking of the Sons of Eli, who were Sons of Belial, they knew not the Lord, that the Priest (viz. their) Custum with the People was, that when any Man offered Sacrifice, the Priests Servants came, whilst the Fligh was in sitting, with a Fligh-book of three Teets in his Hand; and be broke it into the Pun, or Keats, or Calderon, or Pot; all that the Fligh-book brought up, the Priests took for himself; so they did in Shiloh, unto all the Israelites that came thither. Where I desire you to observe, that that which is render'd in our Translation the Priests Custum, is in the Hebrew Mishpat, which they render Rights; so that if this Word would do it, the wicked Priests had also a Right to take away as much of every Man's Sacrifice as they pleased for themselves; nay, to take it before God himself was served, and the Fat burnt (according to the Rites of Sacrificing.) And by the same Rule, Kings also by this Word Mishpat should have a Right to take what they please of the Subject's Eflates.

I do likewise far agree with you, that Samuel does not here describe a Tyrant, but one of those absolute Eastern Princes, who made use of a great part of their Subject's Eflates (as they do at this Day) to maintain their Standing Armies, and Royal Pomp and Magnificence. So that I grant, in short, Samuel meant no more when he thus spake to them, but, Since you will have a King, he must be maintained like a King, and very great Taxes will be laid upon you for this end; of which Burden if you should hereafter be weary, or would call it off again, you shall by no means do it: For since this King shall obtain the Crown, not only by God's Appointment, but by your own Choice or Election, it shall not be in your power again to depute him, since it is in your own Aff: And therefore the Law tells them, That when they should cry unto the Lord in that Day, because of the King which they had chosen, the Lord would not hear them. And as long as this King kept himself within these bounds, I grant he was not to be refit.

Yet nevertheless, this Place you have now cited, as it is very far from patronizing Tyranny, or all the Abuses of Regal Power; so neither do I think it was Samuel's meaning to make the Kings of Israel so absolute or irremovable, as that upon no account whatsoever the People might disobey or resist them; let them use this Power never to wickedly, nay, contrary to God's express Commands, and the Ends of all Civil Government: And therefore pray tell me; supposeth, instead of these necessary Burdens, which they should be subject to when they had a King, Samuel had spake thus to them: This King (whom you desire) shall prove an Idolater, and as cruel a Tyrant as Pharaoh, or any of the Kings of the Philistines, Canaanites, or any other Nations who so long tyrannized over you; and shall take away all your Eflates, and Lives too, at his good pleasure, without any Crime, or legal Trial; and in short, will not only himself use you for Slaves, but sell you and your Children for Bondmen to the Egyptians, and other Nations, and shall lay such grievous Tributes and Burthens upon you, that you shall be scarce able to live under them.

Now can any Man think, if the Israelites had been really persuaded, that their King must have such an absolute and arbitrary Power, as a necessary and inseparable Prerogative of his Crown, they would ever have been fond of such a Government, as to have cried out with one Consent; Nay, but we will have a King over us, that we may be like other Nations: But, sure, not to tyrannize over and enslave us, but that he may judge us, and go out before us, and fight our Battles. Or do you think, if they had had such a King as this, they would ever have long continued him? For that the Children of Israel did not conceive that their Kings had such an absolute and arbitrary Power over them, as to oppose them with Taxes, and to make their Yoke more grievous to them than they were able to bear, or to tyrannize over them at his good pleasure, appears plainly by the Story in the first of Kings, concerning the Children of Israel's assembling together at Shechem, to make Rehoboam King: And you'll find the Preliminary Conditions of his Government were these: All the Congregation of Israel came, and spake unto Rehoboam, saying, Thy Father made our Yoke grievous: Now therefore make thou the grievous Service of thy Father, and his heavy Yoke, which he put upon us, lighter, and we will serve thee. But see the Answer that Rehoboam made them, according to the Wisdom of his young Counsellors: My little Finger shall be thicker than my Father's Loins; and whereas my Father did lade you with a heavy Yoke, I will add to your Yoke: My Father has chastised you.
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ye with Thee, but I will chastise you with Scorpions. And mark what follows upon this Answer: So when all Israel firm, that the King hearkened not unto them, the People Ver. 16. answered the King, saying, What portion have we in David? neither have we Inheritance in the Son of Jesse: To your Tent, 6 Israel: New set to shine upon House, David, which shall come after their Takers. And it is further said, So Israel's Ver. 19. against the House of David unto this day. Nor is this Answer at all blamed or disapproved by the Scripture, or rebuked by any Prophet at that time; for tho' the Word is here translated, they rebelled; yet in the Hebrew it signifies no more than fell away from, or revolted. And it is said before, that the King hearkened not to the People: For the Cause (which may be also translated, Revolution) was to Kings 12, from the Lord, that he might perform his Saying, which he spake by Jahaziel the Shilohite; when, in the Chapter before, the Prophet promised him the Kingdom of the Ten Tribes, and that God would send them out of the hand of Solomon (i.e. his Father) and give them unto him, who thereupon had a right to them: And that, upon his being made King by the People, he had also a Right to their obedience, is as evident; since to continue in a State of Rebellion towards one King, and an Obligation to obey another, are absolutely inconsistent in the same Subject, as I have already proved at our second Conference. And therefore I cannot but here take notice of that rational Account which the Earl of Clarendon, in his Survey of the Levitians, which you before quoted, gives of this Revolution.

"Nor did the People (viz. of Israel) conceive themselves liable to those Impostures; as appears by the Application they made to Rehoboam upon the Death of Solomon, which he would divide some of that Kingdom his Father had preserved towards them, the rough Rejection of which, contrary to the Advice of his wisest Counsellors, cost him the greatest part of his Dominions: And when Rehoboam would by Arms have reduced them to Obedience, God would not suffer him, because he had been in the fault himself."

M. After this extravagant way of arguing, whenever the Subjects of any Nation shall think themselves too much oppressed with Taxes, or other Grievances, above what they are able to bear, if they are not eas'd by the King or Supreme Magnates upon the first Petition, they may presently call off that Power they were under, and set up another, that would govern them upon cheaper Terms: For if the People of Israel had this Right, why may not all other Nations claim the same? And this Doctrine, however comfortable it might be to the People, that sure it would be very mischievous to all the Monarchies and Commonwealths in the World; and it is likely that the Subjects of the French King, nay States of Holland, and other Princes, would quickly take the first Opportunity, either to make their Princes and States to tax them no more than they please themselves, or else they may presently cry with the Israels, To thy Tent, 0 Israel. Nor can I see how the King and Parliament in England would be in a much better Condition in relation to the People they represent, should they impose greater Taxes than they thought they could afford to pay. And this Privilege you give the Israels seems to be clean contrary to what you laid down at our last Conference, wherein you excepted great Taxes and Tributes to Princes or States, as no just Cause of Rebellance, or taking up Arms: And therefore I think I may very well maintain the old Doctrine about this matter, and that tho' God did rend the Kingdom from Rehoboam, and beflow it upon the Son of Nebat, whom also the People had made King they were obliged to obey, because it was God's Will, it should be to whom God gave the Kingdom, and who should govern it; yet doth not this at all justify the Rebellion of the Israels, or Rehoboam's usurpation of his Master's Kingdom; since God oftentimes makes use of this Rebellion of the People to execute his Judgment upon a sinful Prince and Nation: And therefore it is very remarkable, that after this Rebellion of the Israels from the House of David they never prospered; but, by their Kings still falling one after another into the same Idolatry, God at last was so highly provoked against them, that he scatter them to be carried away Captives into a strange Land, near two hundred Years before the Tribes of Judah and Benjamin underwent the same Fate, for the like Crime.

F. I hope you will not be in a passion, because I have brought this Instance of the Israels' Rebellion from Rehoboam, as an Example of the Right that Subjects may have, in those Cases I have put, to resist or call off those Supreme Powers that God had once set for them: For I do confess, Divines and other Authors are
are much divided about this Action of the Israelites, some maintaining it to be well done, and in pursuance to God's Will, and others holding it to be downright Rebellion. And therefore I shall not positively affirm either the one or the other, much less that Subjects may rebel whenever they conceive themselves overtax'd: But thus much I think I may safely affirm, that if the Israelites had no Right upon any Score whatsoever to revolt, I cannot see why Rebecca might not have made them, if he had pleased, as errant Slaves as ever their Ancestors were in Egypt; and what he else meant by saying, instead of Whips to Chaftile them with Scorpions (which were a fort of thorny Rods, with which the Jew corrected their Slaves and Malefactors) I cannot understand. And as for Taxes, tho' I confess there is no setting any exact Measure to them, since no Man can positively define what the Exigences of a State may require; and I think no good Subjects ought to deny to contribute as much as ever they are able to afford, to maintain the Government they live under, as long as they receive the Protection of it: So, on the other side, should the Supreme Power of any Nation (where the People are not mere Slaves) under the pretence of laying necessary Taxes for the Maintenance or Preservation of the Government, be constantly exacting from the People more than they are able to pay: As if, for example, they should out of every Man's Estate take Nineteen Pairs, and leave but the Twentieth for the Subsistance of those that own it; I do not think, in that case, the People were obliged in conscience to pay it, and might in such case lawfully reftit those Officers that should come to levy it by force.

M. I would have argued farther against what you have now said, concerning this Right of the People of Refusing, in case of extravagant or intolerable Taxes; but since it is not to the Subject in hand, I shall refer it to another time: And therefore, to return where I left off, I shall in the next place shew you, how fact and irresistible the Perfections and Authority of Kings were under the Jewish Government; and there cannot be a plainer Example of this than in the Case of David. He was himself anointed to be King after Saul's Death; but in the mean time he was grievously persecuted by Saul, who pursued him from one Place to another, with a design to take away his Life. How now doth David behave himself in this Extremity? What course doth he take to secure himself from Saul? Why he takes the only course that is left to a Subject; he flies for it, and hides himself from Saul in the Mountains and Caves of the Wilderness, and when he found he was discovered in one place, he removes to another: He kept Spies upon Saul to observe his Motions, not that he might meet him to give him battle, or to take him at an advantage, but that he might keep out of his way, and not fall unawares into his hands.

Well, but this was no thanks to David, you'll say, because he could not do otherwise: He was too weak for Saul, and not able to stand against him; and therefore had to other Remedy but Fugitive: But yet we may consider, that David was a Man of War, he flew Goliath, and fought the Battles of Israel with great Success: He was an admired and beloved Captain, which made Saul so jealous of him; the Eyes of Israel were upon him for their next King, and how easily might he have raised a potent and formidable Rebellion against Saul? But he was so far from this, that he invites no Man to his assistance; and when some came uninvited, he made no use of them in an offensive or defensive War against Saul: Nay, when God delivered Saul twice into David's hands, that he could as easily have killed him as have cut off the Shoulder of his Garment at Engedi, or as have taken that Spear away which stuck on the Ground as his Bolster, as he did in the Hill of Hachilah; yet he would neither touch Saul himself, nor suffer any of the People that were with him to do it; the' they were very importunate with him to let them kill Saul; nay, tho' they urged him with an Argument from Providence, that it was an Evidence, that it was the Will of God that he should kill him, because God had now delivered his Enemy into his hands, according to the Promise he had made to David. We know what the latter some Men have made of this Argument of Providence to justify all the Villanies they had a mind to do; but David, it seems, did not think, that an Opportunity of doing evil gave him Licence and Authority to do it. Opportunity, we say, makes a Thief, and it makes a Rebel and a Murderer too. No Man can do any Wickedness which he has no Opportunity of doing; and if the Providence of God, which puts such Opportunities into Men's hands, might justify the Wickedness they commit, no Man can be chargeable...
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able with any Guilt, whatever he does; and certainly Opportunity will as soon justify any other Sin, as Rebellion, and the Murder of Princes. We are to learn our Duty from the Law of God, not from his Providence; at least this must be a fettered Principle, that the Providence of God will never justify any Action, which his Law forbids.

And therefore, notwithstanding this Opportunity which God has put into his hands to destroy his Enemy, and to take the Crown for his Reward, David considers his Duty, remembers, that tho' Saul were his Enemy, and that very unjustly, yet he was still the Lord's Anointed. The Lord forbid, says he, that I should do this unto my Master, the Lord's Anointed, to stretch forth my Hand against him, seeing he is the Lord's Anointed. Nay, he was so far from taking away his Life, that his Heart smote him for cutting off the Skirts of his Garment. And we ought to observe the Reason David gives, why he durst not hurt Saul, because he was the Lord's Anointed; which is the very Reason the Apostle gives in the Roman, because the Rom. 13. 1. Powers that are, are ordained of God, and be that stretcheth the Power, stretcheth the Ordinance of God. For to be anointed of God signifies no more than that he was made King or ordained by God. For this external Unction was only a visible Sign of God's Delegation of them to such an Office; and it is certain they were as much God's Anointed without this visible Unction as with it. Cyril is called God's Anointed, I. 45. 1. who never was anointed by any Prophet, but only designed for his Kingdom by Prophecy; and we never read in Scripture, that any Kings had this external Unction, who succeeded in the Kingdom by Right of Inheritance, unless the Title and Succession were doubtless; and yet they were the Lord's Anointed too, those that sat on the Throne by him. So that this is an eternal Reason against defending Sovereign Princes, that they are set up by God, and invested with his Authority; and therefore their Persons and their Authority are sacred.

F. I am so far from differing with you in what you have said concerning this Example of David towards Saul, tho' his Enemy, that I think it ought to be a Pattern to every single private Man, tho' never so great, in a Kingdom or Commonwealth, how to comport himself towards the Supreme Powers, if he himself alone be unjustly perjured by them either in his Life or Estate, that is, to fly if he can, tho' with the Lots of all his Estate, rather than repel. Tho' there are some Circumstances in this Story of David, that make it evident that he did not think a defensive War against those Cut-throats that Saul might tend to kill him unlawful; and so much Dr. Pearson himself, in his first Discourse call'd Resolving of Sed. 2. Confidence, &c. against Restraint of the Higher Powers, acknowledges: For David, when he fled from Saul, made himself Captain of four hundred Men, which Num. 1 Sam. 22. 2. bore soon encraved to fix hundred, and [lit] every day grew more by Additions. Chron. 11. 1. Now why should he entertain those Men, but to defend himself against the Forces of Saul? that is, to make a defensive War, whenever he was assaulted by them.

M. I think I can give you a sufficient Answer to this, and therefore you must observe, that David invited none of these Men into him; but they came as Vo-S.C.R. p. 13. Lucteers after a beloved Captain and General: Which shews how formidable he could easily have made himself, when such Numbers reported to him of their own accord.

When he had them, he never used them for any hostile Acts against Saul, or any of his Forces: He never flood his ground when he heard Saul was coming, but always fled, and his Men with him; Men who never were us'd to fly, and were very ready to have served him against Saul himself, would he have permitted them. And I suppose you will not call it a defensive War, to fly before an Enemy, and to hide themselves in Caves and Mountains; and yet this was the only defensive War which David made with all his Men about him: Nay, all that he would make, and all that he could make, according to his professed Principles, that it was not lawful to stretch out his Hand against the Lord's Anointed. And when these Men are pursued, as David was, by an enraged and jealous Prince, I will not charge them of Rebellion, tho' they fly before him by thousands in a Company.

Yet there was sufficient Reason why David should entertain these Men, who voluntarily retired to him, tho' he never intended to use them against Saul: For some of them served for Spies, to watch Saul's Motions, that he might not be surprized by him, but have timely notice to make his Escape. And the very Presence of such a Number of Men about him, without any hostile Act, preferred him.
him from being feiz'd on by some officious Persons, who eitherwise might have delivered him into Saul's hands. And he being anointed by Samuel to be King after Saul's Death, this was the first Step to his Kingdom, to have such a Retinue of valiant Men about him; which made his Advancement to the Throne more easy, and discouraged any Oppositions, which might otherwise have been made against him; as we see it proved in the event, and have reason to believe that it was thus ordered by God for that very end. It is certain that God the Prophet, and Abiather the Priest, who was the only Man who escaped the Fury of Saul, when he destroyed the Priests of the Lord, were in David's Retinue; and that David enterprized nothing, without first asking Counsel of God: But he who had anointed him to be King now draws Forces after him, which after Saul's Death should facilitate his Advancement to the Kingdom.

F. I cannot think your Answer to this Objection satisfactory; for first, it is evident, that when David was at the Cave of Adullam, his Brethren and all his Father's House, as soon as they heard it, went down thither to him: And tho' it be not expressly said, that he sent for any to come to his Assistance, yet it is plain he refused none that came; and to what purpose should he make use of so many as 400 or 600 Men, unless it were to defend himself against those Men that Saul might send against him, since half a score or twenty Persons had been enough to have served for Spies? And if he had thought himself obliged only to run away, three or four Servants had been enough in confidence to have waited on him in any neighbouring Country: But that David thought it no Sin to defend himself from the Violence of those whom Saul should send to kill him, is plain from what he says to Abiather, upon his Flight unto him after the Death of his Father: Abide thou with me: fear not: for he that feedeth my Life, feedeth thy Life, but such as thou shalt be in safeguard. And if David had not meant by these Words to have defended Abiather's as well as his own Life, in asaulted, and without a possibility of escaping, it had been very cold comfort for David to have only assured him, that he should be in safeguard with him till the first Assault that should be made upon them, but that then he should shift for himself; for as for his own part, he would rather permit his Throat to be cut by the King's Officers or Soldiers than reft them.

And therefore, tho' I own that it was not lawful for him to stretch out his Hand against the Lord's Anointed; since I do not allow any private Subject to kill even Tyrants, unless in a State of actual War or Battel, wherein they are Aggressors, nor then neither, if it can possibly be avoided: Yet do I not find it at all unlawful for David, or any other private Man, to defend his own Life against such Affirmates as his Prince may fend against him; so it may be done without a Civil War, or endangering the Peace of the Commonwealth. And so much you your self, tho' coldly, seem to yield, when you say, that the very Presence of such a number of Men about David, without any hostile Act, preferred him from being feiz'd on by some officious Persons, who eitherwise might have delivered him into Saul's Hands: For I cannot think that David would have been at the trouble of keeping so many Men only for them, and a Terror to those officious Persons you mention, without reftifing of them, if there had been occasion.

And tho' you tell me, that his being anointed by Samuel to be King after Saul's Death, was the first step to the Kingdom, to have such a Retinue of valiant Men about him; which made his Advancement to the Throne so much the easier, and discouraged any Opposition which might have been made against him, and that we see it proved so in the Event; and therefore have reason to believe, that it was thus ordered by God to that very End, I must take the liberty so far to differ from you.

For first, I desire to know by what Authority David could lift 6 or 700 Men in Arms in Saul's Territories; and whether, according to your Doctrine, they were not Rebels for joining themselves with one who was declared a Traitor by the King? And tho' you say it was thus ordered by God, I grant indeed it was; yet doth it not appear that it was done by any Divine Revelation to Nathan or Abiather, but only by the ordinary Course of his Providence, like other things in the World; And therefore it is no fair way of arguing for you to affirm, that whatever David did in the matter of his own Defence, contrary to your Principles, he must needs do it by express Order from God, of which the Scripture is wholly silent: Much less doth it appear from the Story, that these Men whom
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David kept with him, were only to facilitate his attaining the Kingdom, as you affirm; since the Scripture mentions no such thing, only that after Saul's Death 2 Sam. 2. 4. he went up by God's Command to Hebron, with the Men that were with him; and this the Men of Judah came, and there they anointed David King over the House of Judah. But 'tis no where mention'd, that these Men were of any use to David for the obtaining of the Crown, since the Tribe of Judah would have made him King, tho' these Men had not been with him: For what could 600 or 1000 Men do against his all a Multitude as the whole Tribe of Judah? And therefore it is evident, that these Forces were for no other End than his own defence.

And thou make very light of this State of War in which David was, in relation to Saul; yet pray tell me, supposing that the Duke of Mammon had really been (as he pretended) the legitimate Son of King Charles II. but by some particular Difficult of his Father; or by the Intrigues of his Competitor, the Duke of York, had been forced to fly into Scotland, and there to have defended himself with 1000 or 1500 of his Tenants and Followers, tho' without fighting himself with the Forces that should have been sent against him, but flying into the Highlands, and had there mainstaid himself, as David did, by Free Quarters or Contribution of the Inhabitants, till his Father died; would not this have been cried out upon in all the Pulpits in England, as a moft Horrid Rebellion of a Son and a Subject against his King and Father, tho' he had never done any Act of Hostility against his Forces, but always fled from them? And yet he, being Heir apparent to the Crown, might have pleaded as well as David: that he kept his Soldiers about him, only to keep himself from being murdered by those officious Perfons, whom his Father or Uncle might send to apprehend him, and to have such a Retinue of valiant Men about him, as might render his Advancement to the Throne more easy, whenever his Father should die.

I shall not urge, as a farther Proof of the Lawfulness of David's Resilience of Saul, his Forces, his Intention to have flask in Keish, and to have fortified it against Saul, had not he been informed, that the Men of that City would have faced them—1 Sam. 33. 7—after by determining him up to Saul; since, I confess, it doth not certainly appear by the Text, whether David would have faced any longer there than till some had approach'd near that Place; whether the Keishites would have delivered him up, or not.

Much less I shall urge that other Example, which some Men make use of, of David's going to the last Battle against Saul with Achish, King of the Philistines: For tho' it be plain he march'd with them as far as Abyha in the Tribe of Simeon; yet I confess it is not certain, whether he really intended to have affilied them or not, in his War against his Country; since he might either have gone over to Saul at the Beginning of the Battle, or else have flied nearer; tho' neither of them would have been very honourable, or consonant with David's Character: Therefore I shall lay nothing of this, since the Lords of the Philistines, for fear he should prove an Adventurer to them in the Battle, made him retire again into the Land of 1 Sam. 19. the Philistines; tho' he seemed to be very much troubled to be so disfrusted, that he might not fight against the Enemies of that King, who had so good an Opinion of him, and Therefore I pray you will proceed to those other Examples you have to produce out of the Old Testament.

M. Well, since you are not satisfied with this Instance of David, (tho' I am glad you allow the Perfections, even of Tyrannical Princes, to be faced) therefore to proceed in the True History, Solomon, who succeeded David in his Kingdom, did all those things which God had expressly forbid, the King to do. He sent S.C.R. p.37, into Egypt for Horses: He multiplied Horses, and loved many strange Women to 35. gether with the Daughter of Pherah: Women of the Moabites, Ammonites, &c. He 1 Kings 11. multiplied Silver and Gold. And tho' God (who is the only Judge of Sovereigns 1. Principles) was very angry with him, and threatens to rend the Kingdom from him, 10-37. which was afterwards accomplish'd in the Days of Rehoboam; yet this did not give Authority to his Subjects to rebel. It to be under the Direction and Obligation of Laws makes a Limited Monarchy, it is certain the Kingdom of Israel was so. There were some things which the King was expressly forbid to do, as you have already heard; and the Law of Moses was to be the Rule of his Government, the 17. 18. standing Law of his Kingdom: And therefore he was commanded, when he came to the Throne, to write a Copy of the Laws with his own Hand, and to read in it all his Deut. 17. 18. Days, that he might learn to fear the Lord his God, and to keep all the Words of his Laws, 19, 20. and the Statutes, to do them. And yet being a Sovereign Prince, if he broke these Laws,
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Laws, God was his Judge and Avenger; but he was accountable to no earthly Tribunal. Nor do we find, tho' there were so many wicked and idolatrous Kings of Judah, who broke all the Laws of God given them by Moses, that ever any of the Priests or Prophets stirred up the People to rebel against them for it.

F.Neither of these Influences do reach the Cafe in hand; for I grant, that neither the Breach or Non-observance of the Pecuniary joined the Kings of Israel by God, nor yet their open Idolatry, were a sufficient Cause for their taking up Arms, or retaliating their Kings in doing so; since these were Offences only against God, and in which the People had nothing to do, those being no part of that exact or implicit Compact of Protection and Preservation, that goes along with all Kingdoms and Supreme Powers whatsoever. And I have already excepted out of the Canons of Refulgence, or taking up Arms, the Prince's being of a different Religion from that of his Subjects. And tho' I must own, that the Kings of Israel were under the Direction or Obligation of the Law of Moses, and so were limited Monarchs; yet this Limitation was not from the People, but from God, whose Business it was to revenge the Breach of it as often as they offended, and if they broke those Laws, God only was their Judge and Avenger (as you yourself very well observe) who never failed severely to punish this Breach of his Laws.

Yet were not the People of the Jews always so nice and temperate as you make them for: for, besides the Example of Rehoboam, which I have formerly made use of,

you will find in the second of Chronica concerning Amaziah, who when he turned away from following the Lord, they (con. the People) made a Conspiracy against him in Jerusalem, and he fled to Lachish; but they came to Lachish after him, and slew him there, and made his Son Uzziah King in his stead. Nor do we read that any were punish'd for killing him, as Amaziah put to Death the Servants of his Father King Jotham, for conspiring against him, as it is related in the tenth Chapter of the second

Book of Kings: And you'll find in the same Book, that the City of Libnah revolted (which sure is the highest degree of Refulgence) from that wicked King Jehoram, who had slain all his Brethren with the Sword, and walked in the way of the Kings of Israel, as did the House of Ahab, and sought that which was evil in the sight of the Lord, &c. And therefore it is laid expressly in the Text, that the City of Libnah revolted from his Hand, because he had forsoaked the God of his Fathers. I bring you these Influences to justify Rebellion, but to let you see that it was sometimes practised among the Jews, tho' you affirm the contrary.

But much more lawful was the Refulgence, which Amaziah, and the 8 Priests that were with him, made against King Uzziah, when he would have burnt Incense in the Temple. Pray turn with me to the Place, and read what is there said: And they (con. the Priests) withstood Uzziah the King, and said unto him, It appeareth to us, that we burn Incense upon the Altar, that are consecrated to burn Incense. Go out of the Sanctuary, for thou art a leper, neither shalt thou be found to be so, having Honour, &c. And when he protested therein, and took the Censer in his Hand to burn Incense, and that thereupon the Leprospy arose in his Forehead, the Priests thrust him out of the Temple. The LXX render it, destruxerat Oriam, i.e. they reproved him. Uzziah layeth, they drove him out in haste. So that you see they went somewhat farther than Solomon's Quellen, find, that he both laws, and justifies this Refulgence in the High-Priest.

But if you look into the History of the Kings of Israel after their Divison from Judah, they are so far from teaching us these Leisions of Fullfear Obedience and Non-refulgence, that you will scarce find any other manner of Succeeding amongst them, but the killing of one King, and the setting up another; and Jehu, for rebelling against and destroying the House of Ahaz, had the Crown entailed by God's Promise to his Pollowry unto the fourth Generation. And the I do not produce any of these Examples as fit for our Imitation at this day (since what Jehu did was not by God's express Warrant and Command) yet I think, they are sufficient Evidences, that neither the Peron nor Power of the Kings of Judah or Israel were always look'd upon as so facult and irrefutable by their Subjects, as you suppose.

M. I am glad you are so ingenious to confess, that most of these Examples you have brought of the Refulgence and Murder committed by the Jews and Israelites upon
Upon their Kings were not lawful, or can be proposed for the imitation of Christian Subjects; and if so, pray make what other use of them you please, since a false, old Rome was a Conspiratrix: I cannot deny but that the SucceSSION of the Kings of Israel, after Nadab, the Son of Jeroboam, was very confused, God stirring up some or other to rebel against them and make them away, as a Punishment for their former Rebellion and Idolatry: Thus Baasha killed Nadab the King 1 Kings 15 of Israel, and reigned in his stead; and for this, and his other Sins, God threatened Evil against Baasha, and against his House: Zimri slew Elah the Son of Baasha, but he did not long enjoy the Kingdom which he had usurped by Treason and Murder, for he reigning but seven Days in Tzvor, which being besieged and taken by Omri, he turns to the Palace, and intruded the King's House over him with Fire. Ver. 15, 16, 17.

This Example Jeshob threatened John with, Had Zimri Peace who now his Master? 2 Kings 10. And yet Nadab and Elah were both of them very wicked Princes; and if it would justify Trench and Murder, both Baasha and Zimri had been innocent; but as for the Example of Jehu's killing his Master King Joram, (you say) it was by the particular Command of God, and is no more to be produced as an Example for Rebellion, and the Murder of Princes by the General of their Armies, than that because the Children of Israel had a Power given them by God, to extirpate and destroy those seven Nations, whose Countries God had given them to inherit, therefore they had a like Right to destroy all other Nations whatsoever, that lay near them. And therefore those Actions in Scripture, which are sometimes commanded by God, for the bringing about the great designs of his Providence, by those humane Means that may seem unjust to us, are not to be produced for Examples, nor alluded as Examples.

2. I so far agree with you, and do by no means allow that particular private Man, of what Condition ever they are, should disturb the Commonwealth and murder their lawful Princes, tho' Wicked or Idolatrous, only to satisfy their own private Zeal or Ambition, and to set up themselves; who perhaps are altogether as bad or worse than they they choose or make away. But yet I think I might very well produce these, to convince you that there were no better Examples for Loyalty or Passive Obedience among the Jews than other Nations; and therefore that your Examples out of the Scripture do hither prove insignificant; yet I cannot but take notice of one passage, wherein, by following the ordinary English Translation, you fall into a great mistake, where you make Baasha to be slain by Zimri, because he killed Nadab; which as it is there rendered in the English as false, for the Writings in our Translation are, because he killed him, viz. Jeroboam, to whom it there immediately relates; which is false, for Baasha did not kill Jeroboam, but Nadab his Son: Neither was it suitable to God's Justice to destroy Baasha for that which he himself had ordained him to do; for God, by John the Prophet, said to Baasha: For as much as I excused thee out of the Dust, and made thee Prince over my People Israel, and how long wilt thou wait in the way of Jeroboam, and how hast thou troubled Israel, to provoke me to anger? And therefore the Text concludes this Narration with these Words, That the Word of the Lord came against Baasha, and against his House, even for all the Evil which he did in the sight of the Lord, in provoking him to anger with the work of his Hands in being like the House of Jeroboam. But the Words which immediately follow, and that he was killed (i.e. Jeroboam) cannot be truly rendered in our English Translation, for the Reason already given; and therefore the bellying Criticks upon this Place translate it thus, leaving out and, therefore he (viz. the Lord) slew him; (i.e. Nadab) by the hand of Baasha; whereas our Translation makes the Scripture to contradict itself. I have no more to observe from this History of the Kings and Chronicles; and therefore pray proceed to what other Testimonies you have to produce.

M. Well, I think I can make it much more plain from other Examples and Expressions out of Scripture, that the Jews were not only under high Obligations to be subject to the Higher Powers, after they were carried Captives to Babylon; but also not to meddle them, tho' they went about to exercise their Power never so cruelly and tyrannically, even to the Destruction of the whole Nation. Now the Prophet Jeremias had given them an express Command: Seek the Peace of the City yer. 19. "Whither I have caused you to be carried away Captives, and pray to the Lord for it; for in the Peace thereof ye shall have Peace": Which made it a necessary Duty to be subject to those Powers under whose Government they lived. And accordingly we find that
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that Mardoci disovered the Trefon of Bigthana and Tereth, two of the King's Chamberlains, the Keepers of the Door, who sought to lay hands on the King Ahathurnas; and how numerous and powerful the Jews were at this time, and what great disturbance they could have given to the Empire, appears evidently from the Book of Esther.

King Ahasuerus, upon the supplications of Haman, had granted a Decree for the Destruction of the whole People of the Jews; which was first known to all the Provinces, written and sealed with the King's King; But this Decree could never be retracted again, for that was contrary to the Laws of the Medes and Persians: And therefore when Esther had found Favour with the King, all that could be done for the Jews, was to grant another Decree for them to defend themselves; which accordingly was done; and the effect of it was, That the Jews at Shushan aye 300 Men, and the Jews of the other Provinces five 75,000, and refused from their Enemies; Without this Decree Mardoci did not think it lawful to refile (which yet was a Case of great Extremity and barbarous Cruelty: as could ever happen) which made him put Esther upon so hazardous an Attempt, as to venture into the King's Presence without being Eald; which was Dead by their Law, unless the King should graciously hold out the Golden Scepter to them; yet when the Jews had obtained this Decree, they were able to defend themselves and to destroy their Enemies: Which is as famous an Example of Puzzor of Obedience as can be met with in any History.

And prayse here what the Prophet Daniel acknowledges to Belshazzar. The most high God gave Nebuchadnesser the Father a Kingdom, and Magnify, and Honor: and for the Magnify thou shalt give him, all People, Nations and Languages remembeld and feared before him: Whom he would he save, and whom he would he destroy, as he would he destroy; and whom he would be his up, and whom he would be his own. And if these Heathen Kings received such a Power from God, as the Prophet here affirms. St. Paul has made the Application of it, that he that refuseth, refuseth the Ordinance of God: And I think these Examples may serve out of the Old Testament, and therefore I shall conclude with the Saying of the Wise Man, who was both a Prophet and a King:

EST. 9, 2, 3: and a King: Where the Word of a King is, there is Power, and who may lay unto him, What doth he do?

I. The last Proof be the strongest you have yet brought, yet I think it will not reach the Point in question; to prove that as Religion whatsoever, for saving the Lives of a whole Nation, can be lawful. I grant indeed, that the Command of the Prophet Jeremia, of praying for the Peace of the City, whither they were carried away Captives, was to be obeyed, being obliged to do it, not only by the Laws of Nature, and in regard of those Benefits of Protection, and enjoying the free Exercise of their Religion and Liberties without being made Slaves, tho' they had been carried Captives; which was no more than removing them out of one Country and setting them in another, according to the Custom of the Eastern Princes of those Times; when they would, by removing the belt and greatell of the People out of a conquer'd Country, prevent their rebellins against them, as they had done before; but that they enjoyed a Property in their Lands and Estates after their Captivity, is certain, by the Prophets commanding them to build and plant Vineyards in the Country of Babylon, during the 70 Years Captivity foretold by him from God. So likewise I grant it to be a necessary Duty in Subjects, tho' Strangers, to be Faithful and Obedient to those Princes and States, under whose Governments they live; and therefore Mardoci do not doubt perform'd his Duty, when he discovered the Trefon of the King's Chamberlains that thought to kill him. But to come to your main Argument, that it was unlawful for the whole Nation of the Jews to refile those who were impowered, by the Decree of King Ahasuerus, to massacre and destroy them, I shall not dispute with you about the Matter of Fact, as you have related it, but only in this particular: that whereas the Jews had eluded out a second Decree, wherein he granted the Jews which were in every City to gather themselves together, and to stand for their Lives, to refile, to stay, and cause to peri all the Power of the People and Province that should assault them, &c. and to take the Seal of them for a Priy; without which Decree, you say, Mardoci did not think it lawful to refile, that it was a Case of so great Extremity as could ever happen; and that therefore Esther was put upon so hazardous an Attempt, as to venture to obtain this Decree, tho' with the Peril of her Life; but
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but that when they had once obtain'd it, they were then, and not before, enabled to defend themselves, and destroy their Enemies. In answer to which, I must needs tell you, as you do not fairly represent the latter part of this Story, for no where appears in the Text (tho' you are pleased to add it) that Mordecai did not think it lawful for the Jews to resist till this Decree was obtained; for it is only there said, *That he saw Esther to the King, and as soon as he came into his Presence, he fell down upon his Face.* (Pray read the Words) And he fhall, if it please the King, and if I have found the King's Favour in his Sight, and the thing seems right before the King, and I be pleasing in his Eyes, let it be written to reverse the Letters devised by Haman the Son of Hammedatha the Agagite, which he wrote to destroy the Jews which are in all the King's Provinces. By which you may see that Esther's Request was not for a Liberty to defend themselves, (as you suppose) but only to try if she could get the King to receive the first Decree obtained by Haman to destroy them. But because the King's Decree, when once issued out, was not to be reversed; therefore he issued this second Decree, *That the Jews a Legal or Civil Power to gather themselves together, and stand upon their Defence against all that should assault them; which was so far obeyed, that the Rulers of the Provinces and other Officers of the King, instead of destroying, helped the Jews, because (says the Text) the fear of Mordecai fell upon them.*

So that tho' I own this Decree gave them a legal Power to stand upon their defence; and did likewise hinder the King's Officers from heading the People, and putting the first Decree for their Destruction in Execution, as otherwise they would have done, had it not been for this law; and for that great Power which they perceived Mordecai had at Court; yet doth it not therefore follow, that it was before that absolutely unlawful for the whole Jewish Nation to have defended their Lives against those Officers or others who would have gone about to destroy them, and so totally extirpate their Nation. So that he Deferment of this Decree was not to confer any new Right in the People of the Jews to defend themselves, but only to be a Confirmation of that natural Right of Self-defence, which all Nations, and every particular Member of Mankind have to preserve themselves: And tho' I grant that the Jews a Legal or Civil Power to gather themselves together, and stand upon their Defence against all that should assault them; which was so far obeyed, that the Rulers of the Provinces and other Officers of the King, instead of destroying, helped the Jews, because (says the Text) the fear of Mordecai fell upon them.

And I leave it to any unprejudiced Perfon, to judge whether it had not been better that the Jews should have thus resisted and saved their Lives, tho' without this second Decree, which only discouraged the King's Officers and others from falling upon them, than that all God's peculiar People should have lain at the Mercy of their Enemies, to be destroyed according to the first cruel Decree.

But farther to convince you that the Jews, after the Captivity, did not think it unlawful to make use of defensive Arms against cruel and perfidious Tyrants, who went about to destroy their Religion and Nation; it is apparent from the famous Example of the Priests Mattathias, with Judas Maccabaeus; and the rest of his Sons, who successefully headed the People of the Jews in that obstinate and noble Retaliation which they made against Antiochus Epiphanes, tho' then their Sovereign, who when he had profaned the Temple, and would have forced the Jews to renounce their Circumcision, and to have sacrificed to Idols, under pain of Death; they joyed together and resolved to defend themselves, and to stand up for their Religion and Nation, then ready to be destroyed: And you find by the History, as it is related in the Books of the Maccabees and Joshua, that God did blest those Arms with Success, which they had taken up in their own defence, against a Prince infinitely more Powerful than themselves, who, with his Predecessors, had been their Sovereigns for above 130 Years. And tho' Antiochus died long before the end of the War, yet did they still prosecute it against his Successors; Nor did they ever make Peace with them, till Judas Maccabaeus (who had before recovered and purified the Temple) was acknowledged High-Priest by Alexander the pretended Son of Epiphanes, and that they had call'd off that Yoke of Subjection which they were under to the Kings of Syria, and had fetted the Government of their Nation upon the Princes of the Atticaman Race, in gratitude of that Deliverance they so justly owed to their Piety and Courage; and which
which continued in this Family till the Conquest of Judah by Pompey, after 106 years free Enjoyment of it: So that it is plain, the Jesus, before the coming of Christ, both Priests and People, did not think it unlawful to defend their Lives and Religion, in case of great Extremity; and that our Saviour Christ hath any where, by his Gospel, retrenched whole Nations of that Liberty, lies upon you to prove.

But to conclude; as for the Text you have cited out of the Proverbs, that which do not as little Service; for thou grant, it is true, that no Man can lay to an absolute King or Monarch, When dost thou i.e. call him to account as his Superior; yet doth it not therefore follow, that a whole People or Nation have no Power to defend themselves, in any Case whatsoever, against his unjust Violence or Tyranny; this not being the Act of a Superior, but an Equal (as I have already said) nor any Political, but a Natural Power.

M. I confes this is the notablest Example of Restraint that you have brought yet: But I think it may be easily answered, if we supposse with Josaphus and other Authors, that tho' Alexander the Great was certainly polliced of Palestine, by Right of Conquest, and the Submission of the High-Priest Jaddua unto him; yet his chief Captains conspiring together, made such a scambling Division of the Empire among themselves as they could, every one almost seeking how he might suprefp the rest, and attain the whole alone for himself; so as thereupon the Jesus were as free from the Macedonians, as any other of their bordering Neighbours; none of the said Captains having any lawful Interest or Title to Judah: But that which turned to the Benefit of some others, brought a great Detriment (for want of Ability) unto them; for one of the said Captains, viz. Antiochus, having gotten to him the very great Kingdom in Syria; and another, viz. Ptolemies in Egypt, the Jesus dwelling betwixt them both, were miserably (on every side) vexed by them; Sometimes the Egyptians, by Oppression and Force, brought them under their Subjection, and imposed great Tributes upon them; and sometimes the Syriacs growing mightier than the Egyptians, did likewise greatly affright them; especially in the Reign of Antiochus Epiphanes, whose Invasion and Government was most unjust and Tyrannical: He shed innocent Blood on every side of the Sanctuary; spoiled the Temple, erecting in it the Abomination of the Gentiles, and caused it to be named the Temple of Jupiter Olympius. Not to mention the Propagation of the Law, and unspikeable Cruelties exercised upon those who refused to offer Sacrifice unto Idols; until Mattathias, moved with the monstrous Cruelty and Tyranny of the said Antiochus, made open Restraint, the Government of that Tyraunt being not then either generally received by Submission, or settled by Continuance: So that after the Time of Alexander the Great, the Jewish Nation was governed by their own High-Priests and Sanhedrim, and lived according to their own Laws in all Matters both Civil and Ecclesiastical: tho', more often, I own, with a Subordination to the Sovereignty of the Kings of Egypt, till this Invasion of their Religion and Liberties by Antiochus: So that they had a legal Right to the free Exercise of their Religion, which could not, without the highest Violence and Injustice, be taken from them.

F. Notwithstanding what you have now said concerning this Action, I doubt not, but if you will consider Josaphus a little better, as also the two Books of the Maccabees, you will find, that not only Antiochus Epiphanes, but also Antiochus the Great and Seleucus Philopater, were true and lawfull Monarchs of Caeo-Syria, and consequntly of Palestine. And tho' I grant there had been Wars between Antiochus the Great and Ptolomey Philopater, concerning the Dominion of that Country; yet it is plain out of Josaphus' Antiquities, Lib. 12. That Antiochus had reconquered all the Country from the Egyptians, tho' he afterwards parted with half of the Tribute of it to Ptolomey Epiphanes King of Egypt, as a Dowry with Cleopatra his Daughter; yet surely he retained the Supreme Dominion of it to himself; for we find in the second Book of Maccabees, that Seleucus Philopater supplied all the Costs of the Sacrifices out of his own Revenues; that is, of those Sacrifices that were offered for the Health of the King, as they were afterwards for the Roman Emperors: And we find in the beginning of both the Books of the Maccabees, that the King of Syria had Power to make and unmake the High-Priest whenever he pleased, as having the Dominion of Caeo-Syria and Phoenicia; over which, as appears by the second Chapter of the second Book of Maccabees, Seleucus had made Apollonius Governor under him, so that there cannot be more certain Marks of Sovereign Majesty.
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Majesty exulted by the Great Turk over any of those Tributary Princes or Governors, which he places and displaces at his pleasure. And therefore, it is apparent, notwithstanding what you have said to the contrary, out of I know not what Authors, that the Government of Antiochus Epiphanes was an unjust Usurpation: for, bating this Tyranny in the exercise of it, he had a jufter Title than ever Alexander the Great had; since, besides Conquest, he had your own Right of Preemption by this Device: And I have Graunt (besides other more ancient Authors) on this side in this matter. And pray now see Graunt's Opinion, in his last Book of J. B. & P. cap. 4. which I will read into English; and I think with B. might sufficiently for my Opinion.

"The Fact of the Maccabeis may seem like to this, (viz. the Example of David before going) for that some do defend these Arms by this Presence, as if Antiochus were not their King, but an Intruder, I suppose to be vain; since no where in all the History of the Maccabeis, Antiochus is called by any other Name but that of the King; and that disagreeably, since the Jews had long since acknowledged the Empire of the Macedonians, in whose Right Antiochus had succeeded; for that the Law forbids a Stranger to be set over the People is only to be understood of a voluntary Election, and not of that which the People were forced to submit to by a necessity of the Times. But what others say, viz. that the Jews were led the Right of a People, who were in their own Power, is not true. For first of all, the Jews being conquered by Nechochim, were, by the Right of War, obeyed by the same Right the Medes and Persians, as Successors to the Gallas, whose whole Empire devolved upon the Macedonians, with which Jaquin the wife agrees in his 36th Book: Hence the Jews are said by Timotheus, to have been during the Empire of the Medes and Persians, Viz. a Tit'am, of which neither did they covenant any thing with Alexander, and his Successors, but submitted themselves to their dominion without any Conditions, as they had happened under that of Darius before. But if the Jews were sometimes permitted to observe their own Rights and Laws, that was merelyaneous, proceeding from the Beneficence of those Kings, and not from any Law superinased on their Empire. Therefore there is nothing which can defend the Maccabeis in this matter, besides the most extreme and most certain Danger, (viz. as long as they so contained themselves within the bounds of Self-defence; and that according to David's Example, they retired into defect Places for their Security; nor took Arms until they were set upon." So far Graunt.

"If I shall not farther dispute this Point, though I thought I had very good Authority on my side; but I think I have a better Apology to make for this Action of theirs, viz. That God might very well, either by an express Revelation, or at least a Divine Impulse of his Holy Spirit, command or excite Maccathus, and his Sons the Maccabeis, to take Arms in defence of those Privileges, which had been so often conferred on them, till at last it pleased God to restore the Jews to an absolute Liberty for some Years, under their own Princes; which they abusing, by Cruelty and Ambition, tyrannizing over their Subjects, and murdering their Brothers, it was no wonder that God was pleased to revenge himself on them, and confound upon the Romans, who gave it relief to Herod; the Son of Antipater, the Hellenist. And therefore you can with no more Justice urge this Example of the Maccabeis, to prove Subjects may revolt the Supreme Powers, than to alledge the Example of Jethus as an Authority for Rebellion: Since, as I said before, whatsoever God is pleased to bring about by humane Means, but yet by his particular Precept or Revelation, is to be full look'd upon as an Exception from the general Rules of Non-resistance and Passive Obedience.

"For I confess what you say would fully answer my Objection, could you as well make out, from the History of the Maccabeis, or Jethus, that their Maccabeis Captains did at all act in those Wars they made, by any express Precept, or Divine Revelation from God, as without any just Grounds you suppose it. And therefore, I desire you would shew me, if you can, any Testimony out of the Books of the Maccabeis, or Jethus, to prove that they acted thus by virtue of any such Divine Inspiration, and then I am contented to yield the Cause; which, if you cannot do (as I think you can't) I must look upon my self as to
have had the better in this Controversy, concerning the Right that Subjects had to refilt, in Case of Necessity, before the coming of Christ.

M. Yet for all that, some of the Fathers, and modern Commentators on these Books of the Maccabees, do hold, that such wonderful Victories, as were obtained by Judas and his Brethren, could not have been without the miraculous Providence of God, and consequently a Divine Inspiration assisting them; especially considering the strange Judgment that we read fell upon Antiochus for his Impiety; and that Judas had oftentimes Divine Revelations, appears by that Dream or Vision, mentioned in the last Chapter of the second of Maccabees; of Jeremiah the Prophet's giving him a Golden Sword, and in giving it, speaking thus, Take this Holy Sword, a Gift from God, with which thou shalt wound the Adversaries: Which Dream, if it were sent from God, as is highly probable, sufficiently confirms the commonly received Opinion, that this Refitance of the Maccabees was by Divine Warrant, or Inspiration: And whenever you can shew me, since the coming of Christ, any Refitance so miraculously asserted as this was, I will grant it also to be lawful.

F. I do join in this with you in this, and must only suppose (until you give me better Evidence to the contrary) that the Jesus, under the Conduct of the Maccabees, did not take up Arms against Antiochus, and his Successors, by virtue of any Divine Inspiration to Mattathias, or any of his Sons: For it appears plain, as well by the Scripture, as by Josephus's Testimony, that there was no Divine Revelation after Malachi; neither do the Books of the Maccabees, Josephus, Sulpician Severus, or any other ancient Ecclesiastical Writer, mention those Maccabees as Men inspired by God. I grant, indeed, they might be excited by some divine Impulse of God's Spirit to do what they did: But this is so far from being at all miraculous, that I do suppose that divers great and good Men have been, in our latter Times of Reformation, stirred up by the same Divine Spirit to undertake, and perform extraordinary things, for the Reformation of Religion, and the Deliverance of God's Church and People. And therefore, as for the Vision, or Dream, which you mention, it doth not appear, that it was any more than an ordinary Dream; and if this might pass for a Proof of a Divine Revelation, I could quote you many such Dreams as this, out of the Lives of Luther, Calvin, and divers others of the first Reformers; whom I suppose you will not maintain to have had any express Revelation to do what they did; contrary to the Civil and Ecclesiastical Laws of those Princes and States, under which they lived. And 'tis true these Books are not held Canonical; yet they were always esteemed in the Church as sacred Writing, as written, tho' not by inspired, yet by pious Men: And though they are not received in matters of Faith and Doctrine, yet you know very well they are commanded to be read in our Churches, as containing excellent Precepts, and Examples in matters of Morality; and though therefore, though perhaps they would not be so good Authority for a Presbyterian, yet, I hope, we of the Church of England, cannot refuse them as Rules of Morality. But I think we are now come to the last Instances that can be brought before the coming of Christ; and therefore pray will you now proceed with your Quotations out of the New Testament, which, I suppose, you have ready for me.

M. I confess I am not able, in a Story so imperfctly related as this of the Maccabees, to prove they had God's express Warrant for this Refitance; and you, on the other side, produce but a negative Argument, that they had not (viz.) because neither Josephus, nor the Book of the Maccabees expressly mention any such thing. And yet for all that Mattathias might, (for ought that you, or I know) have acted in this matter by Divine Revelation; since, as the Rabbinists suppose, there was for a long time after the Times of the Prophets, a lower sort of Revelation given by God to some particular Men called Baal, that is, the Daughter of the Voice, which seems to have been some private or inward Voice, by which God revealed his Will in some particular Cases. And we read that long after this, Josephus relates, that Hircanus, the last good High-Priest of the Maccabeus-Race, had the Gift of Prophesy by Divine Revelation: And why his great Grandfather might not have it likewise, I see no Reason. Besides all this, there might be other Reasons that God might allow to the People of the Jesus a greater Liberty of Refitance, even without Civil Authority, to revenge the Propagation of
Dialect the Third.

of his Temple, and Religion, being the Place where he was pleased particularly to place his Name, than are allowed to us Christians at this Day, who have no such visible Temple, nor are under such severe Obligations to exterminate Idolatry. So that what Mannaian, and the People of the Jesus acted in this manner, they might do it by the Right of Zealot for the defence of the Law of Moses; even as Phineas did, who, by killing Zimri and Caah for Fornication and Idolatry, did that which in another occasion, and at another time, would have been downright Murder.

But be it as it will, I think we Christians are by the Laws of the Gospel tied to a stricter Subjection to the Supreme Powers, (if it be possible,) than the Jesus themselves were, and whatsoever they might have done under it, for their own Defence, and to avoid Persecution, yet Jesus Christ doth now require higher things of us; and hath by his own Example, as well as Precept, forbidden us to resist the Supreme Powers for any Persecution for Religion whatsoever; since he hath ordained his Religion to be propagated, and defended by Sufferings and Persecutions, and not by force of Arms, against the Will of the Supreme Powers; and if we for Religion, the most weighty of all Concerns, surely not for any temporal Thing whatsoever. But the Fear of this requires more time than this Evening will afford, without trespassing to much upon your, as well as my own Repose. And therefore, I should be glad of another Evening's Conversation with you to free your Mind; if we were possible, from this dangerous Error, and get bring you over to the true Beliefs and Prac"
DIALOGUE IV.

Whether Absolute Non-resistance of the Supreme Powers be enjoined by the Doctrine of the Gospel, and was the ancient Practice of the Primitive Church, and the constant Doctrine of our Reformed Church of England.

M. OUR Servant, Sir: I see you are better than your Word, since you come somewhat before the time appointed.

F. I do not deserve any great Commendation for it; for this Evening being a time of leisure, I had nothing else to do but to wait on you. And indeed I was impatient till I was with you; since I desire nothing more, than to receive Satisfaction in this weighty Controversy; since I know how great a Matter you are both in Divine, as well as Civil Knowledge.

And therefore, I believe you to proceed in the Method you first proposed, by giving me these places of Scripture out of the New Testament, which you suppose prove your Doctrine; and in the next place show me, that they were always understood by the ancient Fathers, as well as the Practice of the whole Primitive Church, in that Sense.

M. I very well approve of your Method; and therefore, to go on where we left off, I shall, in the first Place, lay down some plain, and easy Propositions, as the Grounds of our future Discourse, which, I hope, you will have no Reason to deny.

First therefore, I suppose, that our Saviour's Kingdom not being of this World, he came not to alter the Civil Government, or Polity of it, (as you have already asserted.) And therefore did not alter any of those Rights of Sovereign Powers, and those Measures of Obedience and Subjection which were before fixed and determined by God himself: Neither hath given the People (either considered as particular Men, or as a collective Body) any Power or Right to refuse, or rebel against such Supreme Magistrates, though they never so much abuse their Power, by their tyrannical Government, either by persecuting the true Religion, or by any other Violences and Oppressions whatsoever.

And our Saviour himself tells us, That he came not to destroy the Law, and the Prophets, but to fulfil it; that is, to fulfil the antient Types and Prophecies in his own Person, to perfect an External and Ceremonial, by a Real and Evangelical Fulfilment; to perfect the moral Laws with new Inferences and Degrees of Virtue.
Dialoge the Fourth.

Virtue and Obedience; but he abrogated no moral Law, and therefore not the Laws of Obedience and Subjection to Princes, which have always been reduced to the Fifth Commandment. Pray tell me how you approve of this Doctrine?

F. I do readily agree to the greatest part of it; but yet as one Saviour hath not been pleased expressly to enjoin us to submit the Supreme Powers, when they manifestly break and transgres all the Ends of Civil Government, and consequently dissolve it; so on the other side, he came not to destroy those natural Rights, which Mankind enjoyed before his coming, of defending themselves; and providing for their own Happiness and Security, when their Civil Governors either could not, or would not protect them. And as I grant, that our Saviour made no Alteration in Civil Governments, by abridging the Rights of Sovereign Power; so likewise hath he not confirmed upon them any new Rights or Privileges of depriving, or enslaving their Subjects, without any Contradiction or Resistance; and consequently hath altered nothing in these natural Rights, or Means which the People had before his coming, of hindering the Supreme Powers from perverting those main Ends of Government, the Happiness and Preservation of the People.

And that this Liberty doth not any way destroy those Rights or Privileges which are necessary for their own Security, and the well-governing of their People, I have, I think, sufficiently proved in our last Conversation. Do, that unless you can now shew me, by such express Authorities, as whereon you can have any ground to deny it, I hope you will pardon me, if I cannot believe, that Christ by his coming into the World has taken away, or abridged that natural Right which Mankind before enjoyed (even after the Institution of Civil Government) of Resistance or Self-defence, in Cases of Extremity, against those who exercise nothing of that Supreme Power, with which God hath invested them, but the more Title. For had the Intent of our Saviour's coming been for this End, he had, instead of seeking us from the Yoke of the Law, laid a much heavier upon our Shoulders, if the Doctrines of Passive Obedience and Slavish Resignation were to be taken in that large Sense, and unlimited Extent, that those Assertions have been pleased to give them. So that though I grant our Saviour came to perfect, and not to abrogate the moral Law, with new Injunctions of Virtue and Obedience, and therefore hath not abrogated any Laws of Obedience and Subjection to Princes; so hath he neither abrogated the great Law of Nature, of Self-defence in the People, when they are universally assaulted, or oppred by their Livers, Liberties or Properties.

And tho' I grant, Obedience to Princes hath been reduced to the Fifth Commandment; you neither doth, that by commanding us to honour our Father and Mother, forbid all Resistance of Children to the violent and unconscionable Actions of their Parents, much less of those whom they may command, or set on to kill certain us, as I have, I think, sufficiently proved at our first Conference. And therefore I mean, proceed to your Prerogatives, and shew me, that they prove as much as you have affirmed.

But before I come to my Proofs, I Jesu give me leave to obferve to you, by way of Intexadiction, that as our Saviour hath left the Government of the World as he found it, so the Laws, besides all this, given such admirable Laws, as will bind and reach Princes to govern, and Subjects to obey better, which is the most effectual way to secure the publick Peace and Happiness, to prevent the Oppression of Subjects, and Rebellion against Princes: But he has not interposed in new ameliorating the Governments of the World, which is not of such Consequence as some Men imagine. It is not the external Form of Government, but the fatherly Care, Wisdom, and Justice of Governors, with the dutiful Obedience of Subjects, which can make any People happy. If Princes and Subjects prove good Christians, they may be happy under most forms of Government; if they be not, they can be so under none. Had our Saviour given us such Liberty to resist, to depose, or conquer the unnatural Princes, he had done them no kindness at all: For to give Liberty to Subjects to resist, is only to proclaim an universal License to Factions and Seditions, and Civil Wars: And if any Man can think this such a mighty Blessing to the World, yet methinks it is not a Blessing proper for the Prince of Peace to give.
that teaches Subjects to reverence and obey their Prince as the Image of God, and quietly to submit, and yield to his Authority, and that enforces those Laws both on Princes and Subjects in the Name and Authority of God; and from the Consideration of the future Judgment, when Princes, who abuse their Power, shall give an account of it to their great Maller, and when Subjects who resist, shall receive to themselves Damnation; and those who patiently suffer for God's sake shall have their Injuries redress'd, and their Obedience rewarded: I say, such a Person as this, takes a more effectual Course to reform the Abuses of Civil Power, and to preserve good Government in the World, than all your wise Politicians, and State-men, who think to reform the Government of the World by some State-Spells and Charms, without reforming those who govern, and those who are governed. This our Saviour hath done, and this is the best thing that could be done; nay, this was all that he could do in this Matter: He never suf'd any Civil Power and Authority, and therefore could not new model the Governments of the World: He never offers any external Force and Compulsion to make Men obey his Laws, and therefore never forces Princes to rule well, nor Subjects to obey. But he has taken the same care of the Government of the World, as he has done of the other Duties of Piety and Virtue, that is, he has given very good Laws, and threatened those who break them with eternal Punishments; and as the Laws and Religion of our Saviour prevail, so will the Governments of the World mend without altering the Model and Confinement of them: But I come now to those places of Scripture I have to urge against your Opinion:——

F. I pray, Sir, pardon me, if I interrupt you; and beg leave to make some Remarks upon this Preface you have now made. I will not deny, but you have spoken some hard Truths in what you have now read, though not without a Mixture of divers Mistakes: For though I grant that John, Chief hath not interpolated in new building the Governments of the World, he hath likewise given Princes no Authority to alter those which they find ready-made, and modelled to their Hands, in those Countries wherein God hath placed them at the Helm. And though you tell me those Models of Government are not of such consequence as some Men imagine, yet I hope you ought to have a better Opinion of this of England; since it is only to this Frame of Government, that you'd own we owe all our Freedom and Happines above divers other Nations, our Neighbours: Since, if it were not for our Laws, and Original Constitution to the contrary, I do not see why we may not be as absolute Slaves as any in Turkey, whenever the King pleases. I grant indeed that it is the fatherly Care, Prudence, and Justice of Governors that can make any People happy: But I desire you to shew me how many Governments there are in the World where Princes exercise this fatherly Care as they ought, without any known Laws; or where Subjects express a dutiful Love and Obedience to their Governors (unless fervile Fear must be called so) whilst they find themselves miserable Slaves and Bogus.

I also yield, that if Princes and Subjects are good Christians, they may be happy under most forms of Government; and if not, they can be happy under none, is true in this Sense, if you take Happines for the Hopes of a future Life: But otherwise there have been divers Princes who have been very good Christians; and yet by carelessness of their Affairs have governed their Subjects very ill: And likewise, I know some Subjects who have been very loyal to their Prince, and very good Christians, and yet have been made very miserable; as Witnesses the Protestant in Hungary and France.

But as I do not suppose, that our Saviour hath given Subjects Liberty to resist tyrannical Princes upon every Flight Occasion, much less to depose or murder them; yet will it not follow, that if he hath given Liberty to Subjects to resist in some Cases of, it would only serve to proclaim an universal Licence to Seditions, and Civil Wars: Since I do not suppose such Wars to be lawful, but when the People are in as miserableCondition as a State of War can bring them to: And if our Saviour had not allowed them this Power, no rational Man would think it a Blessing proper for the Prince of Peace to give, or to come into the World to produce Slavery, and the arbitrary Power of the Sword.

Though I grant he inflicts Princes to rule as God's Ministers and Vicegerents, and to express a fatherly Care and Concern for the Happines of their Subjects; and
and that he likewise teaches Subjects to obey their Princes: Yet you know God well, how seldom these Instructions have all those good Effects either with the Princes, or People. And therefore, as on the People's Side, besides these Obligations of Conscience you speak of, there are likewise ordained temporal Punishments to keep Subjects to their Duty; so likewise there is often need of something else besides meet Conscience and Honour, to keep Princes from tyrannizing over their Subjects.

And though I suppose the Conclusion of a future Judgment may go a great way with some Princes, to make them perform that great Truth God hath given them; yet pray tell me, have you not read (if not known) some Princes in the World of late Times, who have either believed no such thing as eternal Damnation, or at least have found a way by nice Distinctions, or Equivocations, to evade all Laws, Oaths, and Promises whatsoever? And what Satisfaction is it to me, or how doth it serve to alleviate my Misery, when I am made a Slave, and a Beggar, that those that had the Rule over me will be damned for so doing? But you tell me, that I must quietly and patiently suffer this for God's sake, and that then we shall have all our Injuries redressed, and Obedience rewarded. I grant indeed that a single Penitent may be rewarded in this kind, for preferring the Common Good or Quiet of the Nation before his own Private Interest: But that whole Nations, and Bodies of People, are obliged by the like Rule, I utterly deny, since I do not find where our Saviour either enjoins or requires such an absolute Submission at their hands; and if he doth not, it is no better than Will-worship to say it, and therefore it full lies upon you to prove it to me.

To conclude, I think it may be a more effectual Course, to preserve the main Ends of Government, for the People sometimethes to refit the incomparable Tyranny and Violence of the Supreme Powers in those Cases of Extremity I have already put, than to let those who have got the Power over us in their hands, do whatsoever they please with it, so our Ruin, without any control. And also, I desire you to consider, whether the Fear of such Resistance from Subjects, when thus outraged and oppressed, may not often be a more powerful State-Spell or Charm (as you call it), to keep the Supreme Powers in their Duty, than those many Sermons, and other Discourses that have been lately preach'd and published, that their Power is irreprehensible; and that therefore, all their Subjects are bound to endure whatsoever Tyranny they have a mind to exercise upon them. In short, I absolutely agree with you, that as our Saviour never usurp'd any Civil Power, or Authority, and therefore did not new-model the Governments of the World; so hath he also left Subjects a Right to maintain whatsoever Models, or Forms of Government, God hath thereunto pleased to establish among them, when they are in danger to be altered, or invaded, either by a Domestick Tyranny, or Foreign Force. And without this Right of Resistance, for you to talk us, That Jesus Christ hath given us a good Laws, and threatened those that break them with eternal Punishments; and that as our Laws, and Religion of our Saviour ground, that the Government of the World must exist without any more advice, altogether as reasonable, as to preach, that because Christ hath given us good Laws, and threatens over-lapping Punishments to those that break them, therefore they are sufficient to keep Men from robbing and murdering their Neighbours; and that all Men giving up their Natural Rights of resisting such Robbers, and defending themselves against them, should wholly rely upon the Efficacy of the Commandment against Stealing, or else on the more powerful Motive with such People, of a Judge, and a Gallow, should let them do with us what they please, whenever we fall under their Power: And therefore, if you imagine I would give me some better Proofs, that our Saviour hath enjoined all Mankind an absolute Submission to the Supreme Powers, under pain of Damnation, without any Resistance in any Case whatsoever: But I pray pardon this Digression, which your own long Preface extorted from me.

M. I shall not further dispute this matter with you; and therefore to oblige your Command, I shall begin with that Divine Anfwcr of our Saviour to the Pharisees and Herodians, when they confuded together to entangle him in his Talk. They came to him with great Ceremony and Address, saying, Master, we know S.C.R. p. 49. that thou art true, and teachest the Way of God in Truth, neither coueft thou for any Man; for thou respecteft not the Persons of Men. Tell me therefore, what thinkest thou? 15, &c. Men; for thou art right not the Person of Men. Tell me therefore, what thinkest thou?
Is it lawful to give 'Tribute to Cæsar, or no? They thought it impossible that he should give any Answer to this, which would not make him obnoxious either to the Roman Emperors, if he denied that the Jews might lawfully pay Tribute to Cæsar, or to the Pharisees, and People, if he affirmed that they might; for there was a very potent Faction among them, who thought it unlawful for the Jews to own the Authority, or Usurpations of any Foreign Prince, or to pay Tribute to him as to their King, they being expressly forbidden by the Law, to set a Stranger over them for their King, who was not their Brother, that is, who was not a natural Jew. And it seems they could not distinguish between their own voluntary Act in chusing a Stranger for their King (which was indeed forbidden by their Law) and their submitting to a Foreign Prince, when they were conquered by him. Our Saviour, who knew their wicked Intention in all this, that they did not come with an honest Design to be instructed in their Duty, but to seek an Advantage against him, expresses some Indignation at it, Why tempt ye me, ye Hypocrites? But yet to return them an Answer to their Question, he bids them shew him the Tribune, that is, the Money in which they used to pay Tribute, and enumerated, whole Image and Supercription it had. For Coming of Money was then as certain a Mark of Sovereignty, as making Laws, or the Power of Life and Death. Well, they acknowledge that the Image and Supercription on the Tribute Money was Cæsar's; upon which, he replies, Render therefore unto Caesar the things that are Caesar's; and unto God, the things that are God's. The plain meaning of which Answer is this; that since by the very Impression on their Money, it is evident, that Cæsar is the Sovereign Lord, they must render unto him all the Rights of Sovereignty; amongst which, Tribute is one, as St. Paul tells us:Render therefore unto all their Dues, Tribute to whom Tribute is due, Custom to whom Custom, Fear to whom Fear, Honour to whom Honour. Whatever their rights due to Sovereign Princes, and doth not interfere with their Duty to God; they must give to Cæsar, who at this time was their Sovereign.

And though our Saviour commands us, only in general, to render to Cæsar the things that are Cæsar's, without telling us, what Cæsar's things are, this is sufficient for making his Answer ambiguous, and of no use in the present Controversy, that it fuggeth us to three plain and natural Consequences, which are sufficient to end this whole Dispute. First, That our Saviour did not intend to make any Alteration in the Rights of Sovereignty; but white Rights he found Sovereign Princes possessed of, he leaves them in the quiet Possession of; for had he intended to make any Change in this matter, he would not have given such a general Rule, to render to Cæsar the things that are Cæsar's, without specifying what those things are.

S.C.R. p. 56. are. Secondly, And therefore he leaves them to the known Laws of the Empire, to determine what is Cæsar's Right; that is, whatever is essential to the notion of Sovereign Power, whatever the Laws and Customs of Nations determine to be Cæsar's Right, that they must render to him; for he would make no alteration in this matter. So that Submission to Princes, and Non-re sistance, is as plainly determined by our Saviour in this Law of paying Tribute; for Submission, and Non-resistance, are as essential a Right of Sovereign Power: and as inseparable from it, as any thing can be; and by the Laws and Customs of Nations, and is so determined by the Apostle St. Paul, as I shall shew hereafter. Thirdly, I observe farther, that when our Saviour joins our Duty to our Prince with our Duty to our God, Render to Cæsar the things that are Cæsar's, and to God the things that are God's, he excepts nothing from Cæsar's Right, which by the Laws of Nations is due to Sovereign Princes, but what is a Violation of, and an Encroachment on God's Right and Sovereignty; that is, we must pay all that Obedience and Submission to Princes, which is consistent with our Duty to God. This is the only Limit our Saviour sets to our Duty to Princes. This, I hope, is sufficient for the Explanation of our Saviour's Answer to the Pharisees and Herodians, which evidently contains the Doctrine of Obedience and Submission to Princes, enforce'd on us by the Authority of our Saviour himself.

F. I shall not dispute, that this Inference of our Saviour did enjoin the Jews to pay Tribute, and render all those Rights and Duties to Cæsar, as the Supreme Power, which are necessary to its Excellence: But you seem to me to stretch this Prerogative a great deal too far, when you thus suppose an absolute Submission to Princes,
Princes, without any Refusall, to be as plainly enjoind by our Saviour in this Law, as paying Tribute. For the Reason you give for it, viz. that Subjection, and Non-refusall, are an essential Right of Sovereign Power, and as inseparable from the Nature of it, as any can be, and that it is so acknowledged by the Laws and Customs of Nations, is the thing which I deny, and which having been the Subject of our last Conversation, is still to be provd: And I think I have there sufficiently prov'd, that absolute Non-refusall is no essentail Right of Sovereign Power, nor inseparable from the Notion of it: Since by affenting it, no just Right of Sovereign Power will be thereby defrayed, or taken away, but rather confirmed. And that I may make it out yet plainer by a familiar Infince: A General of an Army hath an absolute Power over the Lives of his Soldiers that transgres his Rules of War, or Military Discipline: But the Pope or in a mad or drunken Fit he should command some Troops of his Guards to cut the Throats of all the rest of the Army, and they should be such obedient Cuckcombs as to go about to put this Order in Execution, doth it therefore derogate from the Absolutenesse of his Power as General, if the Army will not stand still, and let three or four hundred Fellows take away all their Lives? But that this Principle of Passive Obedience in your Senec, of suffering Princes, or other Supreme Powers, to defray or enlave them, is so far from being acknowledged by the Laws and Customs of all Nations, that I am think I have proved it to be contrary to the Laws of Nature and Reason; so doubt not but I can much easer make it out by the Laws and Customs of all Nations, as well barbarous as civilized, to be both unreasonable and impracticable. And that it is otherwise determin'd by St. Paul, I desire you to prove to me, when you come to make ufe of the 13th to the Romans, so much influfed upon by tho' of your Opinion.

But before I make an end with this Text we are now upon, I cannot but take notice of your laft Affertion, That by rendering to Caesar the things which are Caesar's, God excepteth nothing from Caesar's Right, which by the Laws of Nations is due to Sovereign Princes, but what is a Violation of, and Encroachmen on God's Right and Sovereignty, that is, we must pay all that Obedience and Subjection to Princes, which is consistent with our Duty to God. Now if this be the only Limit of our Saviour's says to our Duty to Princes (as you suppose) I wonder by what Law the Learned Docto's, from whom you borrow this Principle, as also those other Clergymen of the Church of England, could justify their refusing to render the King's late Proclamation of Indulgence, or Toleracion: For if the King (as they own in the Oath of Supremacy) is the only Supreme Governor of his Dominions, in all Things, or Causes whatsoever; he must likewise be the Caesar here meant in this Text; and consequently an Author of Passive Obedience, ought to have been paid to this Declaration. Since you say, that Obedience is by the Law of Nations due to Sovereign Princes, to whom we must pay all that Obedience and Subjection, which is consistent with our Duty to God; and I hope you will not say, that this Declaration was inconsistent with that Duty, or was any Violation or Encroachment upon God's Rights of Sovereignty.

M. As for your last Observation upon those Clergymen who refused to render the Declaration, I must confess, I have, according to my Civil Law Maxim, no Excuse ready for them; since with us it is always true, in this as well as other abovementioned Questions, that he who stands at the Head of the Laws, and is the first to give a decision, must be allowed to have the final Say, and cannot be charg'd with a Contradiction with the Established Law. But it will not justify them, to say that they are bound to do what the Law of the Church prescribes, if the Law of the State requires another thing. For, as I have before observed, the Laws of the Church are not like the Laws of the State, they are not the same thing, and it is not consistent with the Law of the State, to say that they are consistent with the Law of the Church. But I must confess, I have taken from divers Sermons and Treatises, that have been Preach'd and Printed of late by our City Divines; to whom I shall leave to answer this Objection. But to proceed with the Design in hand, I shall come in the next place to prove an absolute Subjection, without Refusall, to be due to the Sovereign Power, from our Saviour's Rebut to St. Peter, when he drew his Sword, and struck a Servant of the High-Priest, and smote off his Ear; which is as plain a Declaration against Refusall, as Words can make it: Then Mat. 26. 51, said Jesus unto him, put up thy Sword unto his place; for all they that take the Sword, shall perish by the Sword. For the understanding of which, we must consider upon what occasion St. Peter drew his Sword; for we must not think that our Saviour doth absolutely forbid the use of the Sword; which is to defray all Civil Governments, Ib. p. 53, and the Power of Princes, and to proclaim Impunity to all the Villanies that are
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are committed in the World. The Sword is necessary to punish Wickedness, and to protect the Innocent: Even in the hands of Princes it is an Instrument of Justice, as St. Paul tells us: That they bear not the Sword in vain; but are the Ministers of God, Revengers to execute Wrath upon him that doeth Evil. In the hands of private Persons it may be lawfully used in self-defence: Thus our Saviour, a little before his Crucifixion, gave Commission to his Disciples to furnish themselves with Swords, though they parted with their Garments for the Purchase. Which we suppose was not designed as a meer modish, and fashionable thing, but to defend themselves from the private Affairs of Robbers, and such like desperate Enemies, who, as Josephus tells us, were very numerous at that time: For his Ministers Authorised to defend his Life against him, who hath no Authority to take it away.

But the Case of St. Peter was very different: He drew his Sword indeed in his Master’s Defence, but against a lawful Authority. The Officers of the Chief Priests and Pharisæi, came with Judas to the Place where Jesus was, to seize on him. This was a lawful Authority, tho’ employed upon a very unjust Errand; but Authority must not be refil’d, tho’ in defence of the greatest Innocence. Men who draw their Swords against lawful Authority, shall themselves be the Instruments which doth not signify what the Event shall always be, but what is the Decay and Merit of the Action. Rebels may sometimes be prosperous, but they always deliver Punishment; and if they escape the Sword in this World, St. Paul tells us, they shall receive Damnation in the next. What can be said more expressly against Resistance than this? St. Peter never could have drawn his Sword in a better Cause, never in the Defence of a more sacred Perfon: If we may defend oppressed Innocence against a lawful Authority, if we may oppose unjust and illegal Violence, if any Obligations of Friendships, Gratitude, or Religion itself, could justify Resistance, St. Peter had not met with this Rebuke. But though it was a very unjust Action, yet it was done by a just Authority; and lawful Powers must not be refil’d, though it were in defence of the Saviour of the World: And if St. Peter might not use the Sword in defence of Christ’s Person, there is much less pretence to fight for his Religion; for though some call this fighting for Religion, it is only fighting for themselves. Men may keep their Religion if they please, in despite of earthly Powers; and therefore no Powers can hurt Religion, though they may persecute the Professors of it: And therefore when Men take up Arms to avoid Persecution, it is not in defence of Religion, but of themselves; that is, to avoid their suffering for Religion. And if St. Peter might not fight to preserve Christ himself, certainly neither he, nor we, ought to take up Arms to defend ourselves from Persecution. Christ was the first Martyr for his own Religion; his Person was infinitely more sacred and inviolable, than any one of us can pretend to be. And if St. Peter must not fight for Christ, certainly we must not fight for ourselves, though we abundantly call it fighting for our Religion. And who were these Powers St. Peter refil’d? They were only the Servants and Officers of the High-Priest. The High-Priest did not appear there himself, much less Pilate, much less Caesar; and yet our Saviour rebukes St. Peter for refil’ing the inferior Officers, though they offered the most unjust and illegal Violence. It seems he did not understand our modern Difflcations between the Person, and the Authority of the Prince; that though his Person be sacred, and must not be touched, yet his Ministers, who act by his Authority, may be oppos’d. We may fight his Navies, and demolish his Garrisons, and kill his Subjects, who fight for him, though we must not touch his Person. But he is a mock Prince, whose Authority is confin’d to his own Person, who can do nothing more than what he can do with his two Hands; which cannot anwer the ends of Government. A Prince is not merely a Natural, but a Political Person, and his Personal Authority reaches as far as his Commission doth. His Officers and Ministers of State, and Commanders and Soldiers, are his Ends, and Eyes, and Ears, and Legs; and he who refil’eth those who act by his Commission, may as properly be said to refil’ the Personal Authority of the Prince, as if he himself were present in his Natural Person, as well as by his Authority. Thus our Saviour seems thought, when he rebuk’d St. Peter for striking a Servant of the High-Priest, and slitting off his Ear.
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F. In answer to this Place, which you have now brought to prove, that the Refusal that St. Peter would have made on our Saviour's behalf, was absolutely unlawful, I shall not insist, as some do, that Christ came into the World on purpose to be a Sacrifice for Sin, and that therefore it was inconsistent with his Design, and the Perdon he undertook, to refit and oppose, had it been never so lawful to refit: Tho' our Saviour himself, by the Words which St. John relates him to have spoken to St. Peter, seems to favour this Interpretation, when, after he had bid him put his Sword into the Scabbard, he adds, The Cup which my Father hath given me, shall I not drink it? And so likewise the Answer he gave Pilate, who asked him whether he was a King? Then saith that I am a King; in this end was I born, and for this cause came I into the World, that I should bear witness unto the Truth. Nor yet shall I go about to interpret these Words, For they that take the Sword shall perish by the Sword, in that Sense, which Grotius puts upon it, tho' quite different from yours, as if it were not designed as a Rebuke to St. Peter, but for the Encouragement of his Disciples, and being indeed a Prophecy, that the Jews, who now came against him with Swords, and Staves, should perish by the Sword of the Romans, who should be the Avengers of Christ's Death: But I shall take it in the same Sense as you do, as a Rebuke to St. Peter, for going about to refit a lawful Authority, tho' employ'd upon a very unjust Errand. Yet will I not prove that the Supreme Power may not be exercised in any Case, or by any Person whatsoever, let them use their Power never so cruelly, or tyrannically, against their Subjects. I grant indeed, it proves what I have never denied, that a private Person, tho' innocent, ought not to refit the Civil Officers that come to seize him, for a Crime whereof he is accused before a lawful Authority, for this is not only unlawful by the Command of Christ, but also by the Law of Nature and Nations. For in England it is not only penal for a Man to refit the Officers of Justice that come to seize him, the he be innocent of the Crime whereof he is accused, but also to withdraw himself from Justice by flight. And tho' upon Trial he be found innocent, yet if he be for the cause he shall forfeit all his Goods, and that very justly, because no Man ought to suspect the publick Justice, or to withdraw himself from the Trial of the Laws. But to apply this to the Case of our Saviour, tho' the Act, which these Priests and Soldiers came about was in itself unjust; yet was it not to either in respect of these Officers themselves, who acted by a lawful Authority; nor yet was it unjust or unlawful in respect of the High Priest and Sanhedrim, who sent them. For, since it belonged to them alone to judge of a Prophet, who they suspected sought contrary to the Law of Moses, since they did believe our Saviour to be such a Prophet, it was in respect of them neither unjust nor unlawful to seize him, and bring him before them, to give an account of his Doctrine: And they might likewise do this either by day or by night, with the help of more or few Men, according as they should think fit; since they feared the People might refuse him: especially since they look'd upon him as one who went about to make himself King of the Jews; in opposition to Caesar; and therefore whilst they lay under that Obligation, always were under as high an Obligation, as an en masse Confidence could lay upon them, of taxing him, and bringing him before the High Priest and the Sanhedrim, or if they had believed him to be the true Messiah, or the King of their Nation, it had been impossible that they should ever have gone about to put him to Death. Which likewise our Saviour himself acknowledged, when praying for them that crucified him, he said, Father, forgive them; for they know not what they do. Luke 23. 34.

Luke 23. 34.

Luk 23. 34.

Luk 23. 34. For they had not only what they did.

For they knew not what they did. And therefore our Saviour coming to them, all Righteousness, and to be the exact Pattern of Divine and Moral Authority, could not do less than rebuke St. Peter, for making use of the Sword.
against a lawful Authority. But what is this to the Cales that I have put of the 
Restance of whole Nations, or great Bodies of Men, against an unjust Force and 
destructive Violence upon their Persons and Estates, by those who pretend to 
act as the Supreme Powers, tho' contrary to all Laws natural and divine, and who 
have no Pretence to act as they do, but only their unjust and arbitrary Wills back'd 
by Power. And that there is a great difference in these two, I will clearly show 
you, from your own Concession, that no Man caneth Authority to defend his Life 
against him that hath an Authority to take it away; and therefore I suppose St. Paul 
might, only with the help of those that were with him, not only have defended 
his Life against those whom we find (in the 25th of the Acts) were by Order of the 
High-Priest, and Chief of the Jews, to have lain in wait to kill Paul by the way, but 
also against any that Fovus the Governor himself should have sent for the same end: 

Since he there declares, That it is not the Manner (i.e. Law) of the Romans, to deliver 
any Man to die before that he is accus'd have the Accusers face to face, and have licence to 
answer for himself concerning the Crime laid against him. And therefore as Caius could give 
Fovus no Commission to murder Men, so neither did God himself, or the Supreme 
Authority commit Murder, or to authorize others to do it. And if a 
single Person might do this, certainly much more a whole Nation, or the City, may justify such a Restance, where their Lives, Liberties and Estates lie at 
flake, from the Violence or Tyranny of the Supreme Power; and therefore I do 
not see, but that i may very well grant the Instance you have put to be conclusive 
against this Restance made by St. Peter on our Saviour's behalf: So that in 
do not reach the Cafe in hand, that all Restance of Supreme Power is unlawful. 
So that unless Princes and their inferior Officers receive Authority from God to 
commit Murder, every Man may defend himself against them, who is in want 
to take away their Lives by Violence contrary to Law. And therefore I 
see no Reason, from any thing that you have hitherto said, to believe that Christ 
did not allow this Distinction, between the Person and Authority of the Prince, to be 
good in some Cases; or, tho' his Person should be sacret, yet that his Miniflers, 
who act not by his Regal Authority, but his Personal and Tyrannical Will, may 
be opposed. Nor can I find any Consequence from what you say, That he is a weak 
Prince whose Authority is confined to his own Person, who can do nothing more than what 
he can do with his own Hands; since no Man in his Wits affirms any such thing: For 
I grant, that an Absolute Prince hath Power to make Laws, and to command them 
be put in execution, which do not contradict the Laws of God and Nature; 
and a Limited Prince hath likewise a Right to command in all things, that do not 
expressly confederate God's Natural and Revealed Laws, and also those Positive 
Laws of his Country (which he is not the fole Maker of) that do not contradict 
the former: And if he can do this, I think he is endued with an Authority suffi- 
cient to answer all the Ends of Government, without supposing that he must 
have an irresistible Power (and without which he cannot answer those Ends) to 
murder and enslave whomsoever he will. I grant, indeed, a Prince is not mediocr 
ly a Natural, but a Political Person; but certainly his Personal Authority, as King, 
do not reach as far as his Commission, or that he who refutes those who act by 
his Commission, may be fai in all Cales to refud his Regal Authority: Since at 
this rate the poor Protestants in Ireland, at the beginning of the laff Rebellion, 
had been in a very woefull Condition, if it had happen'd (which was not 
possible) that King Charles the Fift should really have granted a Commission 
to Sir Pheliam Onial to destroy them; which no Man could then certainly tell but 
that he had, since Sir Pheliam publickly shewed such a Commission, and fild affirned 
the Truth of it, till he came upon the Gallows. But this is only by the brig; and 
in answer to what you have now fai to this matter. So that there is no need of 
supposing what our Saviour intended one way or other in this matter; since he 
did not rebuke St. Peter for refuling the inferior Officers, because they offered 
unjust and illegal Violence; but because he refused those who acted by a true and 
legal Commission from the High-Priest and Samburibin, who suppos'd our Saviour 
to be a fale Prophet.

M. If this Distinction of yours were true, it would render the Example of 
Christ's Suffering, in obedience to the Supreme Power, tho' unjustly, yet without 
Restance of of the way to us; whereas I as I fay to you, whereas Christ took 
such a mean and suffering a Person upon him, because it was most agreeable to the 
Religion which he preached; and of which he was to be an Example; and there-
Dialogue the Fourth.

fove, tho' Christ suffered for other Reasons, and to other Ends and Purposes than we do or can suffer, yet his Sufferings are an Example to us, because God chose to save and redeem us by the Sufferings of his Son, not only that he might expiate our Sins by his Blood, but also that he might be an Example to us of Meekness, and Patience, and Submission to the Divine Will, and Subjection to Government, even in the most unjust and infamous Sufferings. We may consider further, that Christ's Sufferings, in obedience to the Will and Appointment of God, do not make him unfit to be our Example: For tho' God has not so peremptorily decreed that all Christians should suffer, as he did that Christ should suffer; yet whenever we are called to it (as we always are, when we cannot avoid suffering without revolting a lawful Authority) our Sufferings are as much the Effects of God's Decree and Appointment, as the Sufferings of Christ were; and in such Cases every Christian may and ought to say, as his Lord did, 'The Cup which my Father hath given me, shall I not drink it?'

Thus St. Peter expressly tells the Christians to whom he wrote, and gives it as a Reason why they should suffer patiently, even for doing well: 'For even hereunto a little while ago you were called, because Christ also suffered for us, leaving us as an Example, that we should follow his steps.' Now calling, in the New Testament, signifies the Choice and Election of God, and always supposes a Divine Decree, Appointment, and Constitution, as the Foundation of it. Thus St. Paul tells us, that the Gifts and Calling Rom. 11. 59. (calling) of God are without Repentance; that is, that Decree he made to chuse the Pollietry of Abraham for his People, which still entitled all those of them to the Blessings of the Gospel, who would believe in Christ. Thus the Surname of Christliness is our Calling, and Holy Calling, because it is the Way and Means God hath chosen and appointed for the Salvation of Mankind: And Christians are often called the Chosen, because God has now decreed to chuse all the sincere Disciples of Christ, as he formerly did the Pollietry of Abraham, to be his peculiar People; and throughout the Scriptures of the New Testament, God is never said to call, nor any one to be called of God, but with respect to some Divine Decree and Constitution. And therefore when St. Peter tells the Christians, that they are called to suffer, it signifies that God hath appointed them to it by his positive Will and Decree.

This St. Paul discourses more at large in his Epistle to the Romans, and comforts them under their Sufferings, from this very Consideration; That the Sufferings which they underwent were not the Effects of mere Chance and Accident, nor of the Wickedness and Injustice of Men, nor barely of God's Permission, but of his Decree and Appointment; and therefore they might certainly conclude, that whatever their Sufferings were, they should turn to their good. And we know, Rom. 8. 28, that all things work together for good to them that love God, to them that are called according to his Purposes: Those who are called, that is, to suffer (which is the Argument of the Apostle, 1 Thess. 1. 9) according to his Will and Appointment. And a little after he goes on, and says: And such Persons who are thus appointed, who are thus called by God to suffer, shall be free to conquer, and to receive the Reward of Conquerors. For thus the Apostle adds: For whom he did foreknow, he also did predestinate, to be conformed to the Image of his Son, that he might be the first-born amongst many Brethren. This Conformity to the Image of Christ in this place doth plainly signify a Conformity to him in Sufferings, as is evident from the whole scope of this Place. Some Persons it seems there are, whom God doth predestinate or foreappoint to be conformed the Sufferings of Christ; for this is not the actual Portion of all Christians, though it is the Condition of our Discipleship.

So that though God hath not made us Slaves and Vassals to the Humour of us every Tyrant, yet all the Afflictions and Sufferings of Christians, especially those which befal them on the account of Religion, are as particularly ordered and determined by God, as the Sufferings of Christ himself were; and therefore there is no difference upon this account between the Sufferings of Christ and the Sufferings of his Disciples; and therefore though Christ came into the World on purpose to suffer, in obedience to the Divine Will, this doth not make him ever the left to be an Example to us. Nay, this Obedience to the Will of God, in suffering the hardest things from the most unjust and tyrannical Powers, is an Example to us of the same patient Suffering, and Submission to the Will of God.

It is true, none of us in particular can know, that God hath decreed, that we shall suffer such or such things, and from such or such hands, as our Saviour did: But
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But yet this we know, that it is God's Will and Pleasure, that we should patiently endure those Sufferings, which we cannot avoid without Sin; and since he hath forbidden us by express Laws to refit the Higher Powers, whatever Sufferings cannot be avoided without Reuphe, it is God's Will and Pleasure that we should submit to them. And since none of these Sufferings, which are unavoidable to us, are not bound to submit to them, with the same Cheefulness and Self-renunciation as he did.

There is something indeed in the Example of our Saviour, in which our Circumstances are not bound to imitate; for he punctually knowing what God's Will and Pleasure was concerning him, voluntarily chose that Condition, which he did so well know God had allotted for him. He freely chose a mean and servile Fortune, he chose Suffering and Death; when his Time of offering up himself was come, he went up to Jerusalem on purpose to die there: But we are not bound to chuse Poverty, and Drudgery, and Suffering; we are not bound voluntarily to deliver up our selves into the hands of Tyrants and Persecutors, who thirst after our Blood. We may and ought to use all just and honest Arts to make our Condition as easy and as comfortable in the World, and to avoid the Rage and Fury of bloody Men, because we cannot tell, that it is the Will and Appointment of God that we shall suffer, till our Sufferings are unavoidable; and then we must either suffer or sin, when we must either renounce our Religion, or refit the Supreme Powers; we must embrace Sufferings and Death, as that Portion which God hath allotted for us.

I shall only here observe what a mighty Security this is to all good Christians, how absolute or tyrannical soever the Power be under which they live; that they are safe in God's hands, and all the Powers of Men and Devils cannot touch them, till God by a positive Decree appoints and orders their Sufferings. There could not be greater nor more absolute Tyrants than the Roman Emperors were at this time; and yet they had no Power over the meanest Christian, but by an express Commission from Heaven. This is the special Privilege of the Christian Church above the rest of Mankind, that they are God's peculiar Care and Charge; that he doth not permit any Sufferings or Persecutions to befall them, but what he himself orders and appoints. It is a great Security to the World, that there is no evil happens to Men but what God permits, and that he permits nothing but what he can over-rule to wise and good Ends; but it is a greater Happiness to have our Condition immediately allotted by God, that God may permit a great many Evils to befall us in Anger and Displeasure; but when he takes us into his immediate Protection, and under his own Government, whatever Evils he appoints for us, whether are the Instruments of them, they are certainly for our good. And therefore there is no such Danger in the Doctrine of Non-refitance, as some Men imagine: How absolute forever this may be thought to render Princes, sincere Christians can suffer nothing by it, for they shall suffer nothing more nor less than what God appoints for them to suffer; But as for the Abplitude, you think you have brought me to, by granting that no Man warrs Authority to defend his own Life, against him who hath no Authority to take it away, that does not extend to Supreme Power; since, tho' I grant they have no Authority to take away Men's Lives contrary to Law, yet does it not follow that we may refit and oppose them, if they do. This I absolutely deny, because God hath expressly commanded us not to refit them; and I see no Inconsistency between these two Propositions, that a Prince hath no legal Authority to take away Men's Lives against Law, and that he must not be refit if he does so; for both the Laws of God and of our Country suppose these two to be very consistent.

If there be any Long Speech of yours, the best way may be, to shew you, first, how far I agree with you, and wherein I must differ from you; and I will also tell you what Reasons I have for it. In the first place I grant, that though our Saviour was indeed the Messiah, and true King of the Jews, yet was he not such a Messiah as they expected, nor was he to have a Temporal, but Spiritual Dominion; and therefore would not be such a King, though the Jews would have made him so. I likewise yield, that Christ submitted to the most unjust Sentence, and to the most ignominious and painful Death, rather than he would refit the Higher Powers; though he could easily have called for Legions of Angels to his rescue: As also that he rebuked Peter, when he drew his Sword in his defence,
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and tells Pilate the Reason why he was so easily apprehended, and without any Resistance or Opposition. My Kingdom (said he) is not of this World: if my Kingdom were of this World, then would my Subjects fight, that I should not be delivered to the Jews; but now is my Kingdom not from hence. All which plainly shews, that our Saviour's Submission was no matter of Force or Constraint, because he wanted Power to resist; but it was matter of Choice, that which was most suitable to the Nature of his Kingdom, which was not to be propagated by carnal Weapons, but by Sufferings: Yet though it may not be propagated, sure it may be defended by force, in some cases; as, if we were invaded by a foreign Power, who made War upon the account of Religion; and also in those Kingdoms or Commonwealths, where Christianity or the true Profession of the Gospel is established by Law, and makes a part, not only of the Ecclesiastical, but Civil Constitution of a Nation. In these cases, if those who pretend to the sole Legislative Power (last have it not) should go about to alter the National Religion by force, and put Men to death contrary to the former Laws and Constitutions of that Kingdom, I think such illegal Powers may lawfully be resisted by the People, they having as much Right to the free Exercise and Enjoyment of their established Religion, as they have to their Liberties, Properties, or any other Civil Rights; since by this legal Establishment Religion becomes a part of the Civil Constitution of the Kingdom, and so may be maintained by the same means as other Rights.

2dly, I grant, that in all other Cases our Saviour hath so far propounded his Sufferings to us for our Imagination, as we are engaged by our Baptismal Vow to suffer in the same Cause for which he himself suffered, that is, for the bearing witness, That Jesus is the Christ, or true Messiah, and Son of God. And this the Apostle calls (Speaking of Christ himself): the suffering before Pontius Pilate a good Conscience. The like I also hold of all such Truths, as are the necessary Consequences of this great Doctrine.

3dly, I farther grant, that when God calls any Person to suffer for the Testimony of his Truth, by the Cruelty of those who are the Supreme Powers (as the Apostles and Primitive Christians were by a particular Providence) that then those Powers be not resisted, but patiently submitted to by Christians at this time whenever it proves necessary for the same great Ends for which Christ at first endured, viz. for bearing witness to the Truth of the Gospel, and for the further Propagation thereof by our constant Sufferings and Example, according to that Saying of the Primitive Fathers, Sempiterna Martyrium semper Exspectum est, it is not this absolute Submission to the Supreme Powers, in Matters of Religion, due by the Law of Nature, or that delivered to Moses; but (if at all) purely from the express Command or Example of Christ. So that all the difficulty lies in discovering, when we are thus called by our Saviour to suffer and bear witness to the Truth, though with the Life of our Lives, and all that is dear to us.

And therefore, if I should grant, that whenever we lie under the like Circumstances of giving this Testimony as the Primitive Christians then did, and that it may serve as much for the same Ends designed thereby as we, God is also under the same Obligations; nevertheless I think we are lawfully discharged from it. As for example: suppose the King should, instead of a Pope, have turned Mahometan, and, to propagate or set up his own abominable Superstition here, should have sent for, from Turkey or Persia, a great Army of Turks or Moors, and by them would force all the Christians in England to turn Mahometans, by the same Methods of Dragooning Men and seizing their Estates, as the French King hath exercised upon his Protestant Subjects; can any reasonable Man believe, that we lie under the same Obligation thus to suffer in a Country where the People are all Christians, as we were if we had had the same to be converted in a Country where almost all or the greater part of them were Mahometans or Heathens, and where the Mahometan or Pagan Religion hath been for many Ages the established Religion of that Nation and Government.

For in our Case, there is no farther occasion to bear witness to the Truth by patient suffering for it; nor yet of propagating it by our Martyrdom; since all the People amongst whom we live are sufficiently convinced of the Truth of it: Nor can it be reasonable that our Saviour should give up whole Nations to be thus destroyed, at the Will of one, or a few Men, only to do that of which there is no need: For then Jesus Christ had delivered us up to be met with Slaves and Vassals to the Will and Humour of every wicked Tyrant, (which you seem to disa-
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disapprove) without performing any of those great Ends, for which he at first en-
joined this Submission: And tho' I grant that the Afflictions and Sufferings of
Christians, on the account of Religion, are as particularly ordered and determined
by God, as those of Christ himself; yet, it is only as they may be subordinant to
higher Ends, viz. the Propagation of his Religion, and the Good and Peace of
Mankind; which I think cannot be well promoted by supposing an irresistible
Power in the Prince or State, of rooting Christianity quite out of a Nation or
Country, after it is settled by Law, and become the National Religion thereof,
and of enrolling all the People of it whenever he pleases: And this I take to
be the true Bounds and Limits of our Submission to the Supreme Powers in Mat-
ters of Religion. But supposing, not granting as present, that Christ hath laid any
more strict Commands of Submission upon us in those Matters; yet since he came
not into the World to put us into a more miserable Condition in other things,
than we were before his coming; nor to take away or abridge us of any of those
Natural or Civil Rights that we enjoy as Men or Subjects; therefore if the
People had a Right before Christ, to defend their Lives, Liberties or Properties
against the violent Assaults and Oppressions of Princes or States, they have full
the same Liberty left entire in all Cafes, which remain not excepted by the ex-
press Precepts or Example of Christ; since it is a general Rule in all positive
Laws, that when a Law is not excepted or altered by a subsequent Law, remains
the same as it was before in all other Cafes, which are not so particularly excepted:
And therefore tho' I should grant that it were now unlawful in any Cafe to reifit
the Supreme Powers, who perferue or put Men to Death for bearing witness to
Christ's true Religion; yet doth it not therefore follow that it were unlawful to
reifit in any other Cafe whatsoever, though it were in the defence of our Lives,
Liberties or Properties; since such Defence was lawful (as I have already proved)
before Christ's coming, and is not expressly forbidden by any Place of Scripture, or
Command of Christ or his Apostles.

And without the Considerations of these great Ends that Jesus Christ had to en-
join his Followers an absolute Submission to the Supreme Powers in some Cafes,
(tho' not in all) were to supporpe, that instead of a merciful Saviour, he had only
come into the World to patronize Tyranny, and to render the Condition of Man-
kind much more miserable than it was under the Law of Moses, or in the State of
Nature; and seems to supporpe, that instead of commiserating Men's Sufferings,
he only took delight in making them more miserable. Nor will it be any comfort or
Security to Christians, when they are once made Slaves under an arbitrary tyrann-
ical Power, Thas they are safe in God's Hand, and that all the Powers of Men or Devils
cannot touch them, till God by a positive Decree appoint and order their Sufferings: For if
this were a good Argument against all Resilience, it would be so likewise against
refilling Pirates or Robbers; since whatever we suffer from them is by God's po-
sitive Decree, who thus orders all our Sufferings even from them: And yet I think
(fince Men are not now to be saved by Miracles) he hath likewise also ordained
Resilience as the only humane Means to prevent their Malice and Violence, or
ecape out of their Hands when we fall under them. Nor are the same Ends
unlawful against any other humane Powers, but what God himself hath or-
dained.

And therefore it is a very crude Assertion, to say, that though there could not be
more absolute Tyrants than the Roman Emperors, yet that they had no Power
against the meanest Christian, but by an express Commission from Heaven; where-
as I never knew as yet (and I would be very glad you could show me) where this
express Commission is to be found, whereby Princes, or other Supreme Powers,
are authorised to perprefce, enslave, or take away the Lives of the meanest Chris-
tians barely for Matters of Opinion, or Faults that do not immediately concern
the publick Quiet and Safety: And as you have talk'd a great deal of the great
Security it is to the World, that no Evil can happen to us but what God permits; and that
he permits nothing but what he can over-rule to wise and good Ends; and that God may per-
mits a great many Evils to befal us in his Anger and Displeasure; and that whatsoever Evils
be appoints for us, they are certainly for our good; and that therefore there is no such Danger
in the Doctrine of Non-reilience as some Men imagine; because sincere Christians can
suffer nothing by it, since they shall suffer nothing more or less than what God appoints
them to suffer. All these Arguments might as well be used for not refilling Pirates or
of Thieves, or not endeavouring to divert or oppose a River that had run beyond its Banks, but to let it go where it list, to the destruction of a whole Country, and to the ruine of the Church of Christ, since Christians can suffer nothing by it, for they can suffer more or less than God appoints them to suffer; indeed a wondrous use of Consolation. And therefore, unlefs you can prove that all Tyranny is ordained by God for our good; and that therefore we are obliged under pain of everlasting Damnation to submit to it; all that you have spoken concerning the Example and Sufferings of Christ signifies jutt nothing; so that I think the Absurdity full lies at your Door; since if Christ has not expressly forbidden all Resilience of the unjust Violence of Princes, (as I do not find he has by any of the Texts you have yet brought,) every Man may still defend his Life against him who you grant hath no Authority to take it away; and as for its being forbidden by the Laws of our Country, I shall answer that when you urge those Laws to me.

M. I hope I shall be able to prove that by and by, but in the mean time give me leave to observe, that it seems very strange to me, that you should own Christ hath obliged his Disciples to submit without any Resilience, in some Cafes, to the Supreme Powers, when they persecute them and put them to Death for Religion; and that they might not take up Arms in the defence of their Religion, which is the greatest concern that Men ought to have in this World; and yet that they might do it for so many less considerable Matters, viz. their Lives, Liberties or Possessions, which fare ought to be of much less importance than the Glory of God, which is chiefly maintained by his true Worship. But I fee you have found a Salve for this, and will not allow Princes the irresistible Power of Persecution, when the Religion is once settled by Law; that is, when the Christians were strong enough to resist, which certainly would be no thanks at all for their Submission, since Men, who are weak and unable to resist, must needs obey and suffer; which were matters of Force, and not of Duty; Whereas we find by Tertullian, and all the Ecclesiastical Historians, that though the Christians were strong and numerous enough in the Roman Empire, yet they chose rather to dye than to resist, as I shall shew you more particularly anon, when I come to those Quotations; but I will, if you please, now proceed to the two last Texts I have to cite to you out of St. Paul and St. Peter.

F. That we may not confound things one with another, I pray give me leave now to answer what you have objected against what I said last, before you proceed to any fith places of Scripture; for though, in the first place, I doubt whether the Nonresistance, which Tertullian and other Primitive Fathers so strictly preached up, was founded upon any express Command of our Saviour or his Apostles; yet granting at present that Christ and his Apostles enjoyn'd it both by their Example and Precept, yet this does not reach the Cafe now before us; for there may be very good Reasons why our Saviour might enjoy an absolute Submission to the Supreme Powers without any Resitance, though they persecute us, may put us to Death, for Matters of Religion; and yet he may allow us greater Liberty for the defence of our Lives, Liberties and Estates, when assaulted by the unjust Violence of the Supreme Powers.

For First, Our Saviour ordained his Religion to be suitable to his Person, viz. a meek, humble, suffering Messiah, to be an Example of a meek and suffering Religion. Our Religion is a thing that no Power in the World can take from us; Persecution indeed may increase it and render it more fervent, but can never diminish it, if it be real. And God hath expressly promis'd to great a Reward in another Life for our Sufferings for it in this, that it will infinitely outweigh all that ever we can suffer on that account. And Lastly, Our Saviour Christ was pleased to ordain his Doctrine to be propagated by Miracles and Sufferings, to doting it from all the false Religions that had been in the World before his, or that should be set up in opposition to it afterwards; since neither the Pagan nor Mahometan Superstitions, nor yet the Jewish Religion, can shew the like; to subdue, may ensue from above three hundred Years under such great and cruel Persecutions; nor yet is the Glory of God at all diminished, but rather increas'd under Persecution, since none are then firm to it, but such as are really perfidious of its Truth, and that they ought to suffer the worst that can befall them, rather than forfake it.

Z And
And certainly nothing can tend more to the Glory of God, than to see it sub- 
S C R P 
S. C. R. P. 
C. 4. P. 1.08. 
Rom. 13. 1. 
Rom. 12. 1. 
vised in the highest Powers, for there is no Power but of God, the Powers that 
for, as well as the highest, are absolutely subjects to the Authority of God : Wherefore therefore reflexeth the Power, reflexeth the Ordinance of God, and they that reflex shall receive to themselves Damnation.

This is a very express Testimony against Resilience, and therefore I shall con- 
consider it at large; for there have been various Arts us'd to prevent every Word of 
it, and to make this Text speak quite contrary to the design and intention of the 
Apolline in it: And therefore I shall divide the Words into three general Parts.

"Forst, The Doctrine the Apostle instructs him in; Let every Soul be subject to the 
higher Powers. Secondly, The reason whereby he proves and inforces this Doctrine; 
For there is no Power but of God; the Powers that be are ordained of God. Whoever there
Dialogue the Fourth.

The Punishment of such Resistance, and that resist itself receive to thencefore Damnation. I shall begin with the Doctrine, That every Soul must be subject to the higher Powers; and here are three heads. First, The whole may be subject to the higher Powers; and every Soul, Whose are meant by the higher Powers. Thirdly, What is meant by being subject. First, Who are contained under this general Expression of every Soul; which, by an ordinary Hebraism, signifies every Man: For Man is a compounded Creature of Body and Soul, and either part cannot be free from the other. Scripture put for the whole, sometimes Flesh, and sometimes Soul signifies the Man; and when every Soul is oppos'd to the higher Powers, it must signify all Men, of what Rank or Condition ever they be, who are not invested with this higher Power. And again, the design of the Apostle, as you shall hear more particularly by and by, was to forbid all Resistance of Soveraign Princes; and he had known of any Man, or number of Men, who might lawfully resist, he ought not to have express'd it in such general Terms, as to forbid all without Exception.

And therefore I shall now a little more closely examine your main Argument, or indeed Foundation of all that you have urged for Resistance, viz. That tho' it is unlawful for private or particular Men to resist the Supreme Powers; yet that it doth not extend unto the whole or major part of a People or Nation, whenever they are outrageously oppress'd or assaulted by the higher Powers, beyond what they suppose they are able to bear; whereas the Apostle here commands (Acts 23.4), every Soul to be subject; and therefore if the whole Body of the People be subject to God, they must also be subject to the Prince too, because he acts by God's Authority and Commission. Were a Soveraign Prince the People's Creature, that might be a good Maxim, Rex major sacer tibi, sed minor universis, That the King is greater than any particular Subject, but left them all together; but if he be God's Minister, he is upon that account as much greater than all as God is.

This Body of the People altogether, as was done by one, are (Acts 23.4) equally concern'd in this Command of being subject to the higher Powers, is evident from this Consideration, that nothing less than this will secure the Peace and tranquility of humane Societies. The Restaunt of single Persons is more dangerous to the Prince; but a powerful Combination is very often fatal to the most sissipant Monarchs. The greater the number of Subjects that resist against their Prince, the more do they distress his Government and threaten his Crown and Dignity; and if his Person and Authority be facetious, the greater the Violence he uses against him, the greater is the Influence of the Apostle in the Roman after this manner: All the private and single Man be so foolish as to rebel against his Prince, who will be too strong for him; but if you can raise sufficient Forces to oppose against him, if you can all consent to depose and murder him, this is a very innocent and justifiable, nay, and herculean Achievement, which becomes a Free-born People: How would this have secured the Peace and Quiet of the World? How would this agree with what follows, that Princes are advanced by God, and that to resist our Prince is to resist the Ordnance of God, and that such Men shall be severely punished for it in this World or the next? For can the Apostle be thought absolutely to condemn Resistance, if he makes it only unlawful to resist when he want Power to command, which yet is all that can be made of it, if by every Soul the Apostle means only particular Men, nor the united Force and Power of all the Subjects.

Not can there be any Reason assign'd why the Apostle should lay to his a Command or particular Christiatis to be subject to the higher Powers, which doth not equally concern whole Nations? For if it can ever be lawful for a whole Nation to rebel against a Prince, if any in the same Circumstances be equally lawful for a particular Man to do it; if a Nation may conspire against a Prince who invades their Rights, their Liberties or their Religion, why may not any Man by the same reason resist a Prince when his single Rights and Liberties are invaded? It is not few that and prudent indeed for a private Man to resist, for great and powerful Numbers: But this makes Resistance only a Matter of Difference, not of Concern. If it be lawful for the whole Body of a Nation to resist in such Cases, it must be equally lawful for a particular Man to do it; but he doth it at his own
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Peril, when he hath only his own single Force to oppose against his Prince; so that our Apostle must forbid Resistance in all Men or none; for single Persons do not use to resist or rebel or there is no great danger to the Publick if they do; but the Authority of Princes, and the Security of publick Government, is only endangered by a Combination of Rebels, when the whole Nation, or any considerable Part, for Numbers, Power and Interest, take Arms against their Prince. If Resistance of our Prince be a Sin, it is not the less, but the greater Sin, the greater and more formidable the Resistance is; and it would very much deceive the Gr avity and Sacredness of an Apo stolical Precept, to enjoyn Submission to a few private Citizens, who dare not, who cannot resist alone; but to leave a powerful Combination of Rebels at liberty to resist; so that every Soul must discharge all Subjects, whether single or united; for whatever is unlawful for every single Person, considered as a Subject, is unlawful for them all together; for the whole Nation is as much a Subject to the higher Powers as any single Man. Thus I am sure it is in our Government, where Lords and Commons assembled in Parliament own themselves the Subjects of the King, and have by publick Laws disclaimed all Power of raising any War, either offensive or defensive against the King.

Let us now consider what is meant by the Higher Powers, (οἱ ἐν τοῖς ἄρχοντες), which signifies the Supreme Power in any Nation, in whomsoever it is placed, whether in the King, as in Monarchical Governments, or in the Nobles, as in Arithocratical, or in the People, as Democracies. At the time of writing this Epistle the Supreme Power was in the Roman Emperors; and therefore when St. Paul commands the Roman Christians to be subject to the higher Powers, the plain meaning is, that they should be subject to the Roman Emperor. And thus St. Peter explains it; Be subject to every Order of Men for the Lord's sake, whether to the King as Supreme, (οἱ ἐν τοῖς ἄρχοντες), the Word used in this Text, as to him who hath a supereminent Power, and is above all others, as also unto Governors that are sent by him, Giv. From which Text Epiphanius proves that subordinat Magistrates under the King are ordained of God; and therefore that the Power of Under Officers, since it is the Ordinance of God, ought no more to be resisted than the King's, from whom it is derived.

F. I hope I shall not be very tedious in answering your long Speech, much less a small share of natural Reason and Grammar will do; it therefore, to be as short as I can, I do freely acknowledge, that not only private Men, but whole Nations, are, by this Precept of St. Paul, to be subject to the higher Powers, without any Rebellion against them, as well as particular Persons, as far as they are Powers ordained by God. And therefore it is necessary that you should consider what is the true signification of the Word ὁσιος, which if it be once discovered, you will find it carries its own limitation along with it; for it excludes both the Directory of the Supreme Power, and also the illegal and wicked Exercise of it; and of this Opinion is the learned Dr. Sanderson in his Lectures on the Obligation of humane Laws; where, in his fifth Lecture, § 12. (as I remember) he speaks to this purpose, in an answer to an Objection, that then all those who have the power of the Sword, that is, of compelling those who are under their Power to perform their Commandments, ought then to be styled in Confess; His Answer is to this purpose; "That the "Power he means, and on which alone lies the Obligation of Confidence, is not that "Power which the Greeks call ὁσιος, that is, natural or physical Power of Foe; "or else that which is only de facto, by which any one is able to do whatever he "pleases without any hindrance; but that Power which they call Ἠσιος, that is, "lawful Power, or of Right; to wit, that which belongs to him that hath it by "the Law of Nature, or Civil Constitutions, by reason of the Person "who bears it, and in respect of those who are to be subject to it, To this "Ohsios, or lawful Authority, the Apostle doth now so much preface an exact Obli "gience, that he names it five times in the space of three Verses, but says not "one word of this ὁσιος, or Force. So far he. And if our Translators of this "Place had rendered the Word ὁσιος, Authorities, instead of Powers, as they have "render'd it in other Places, and as they were fain to do in the first of Peter, ch. 3; ver. 22. where ὁσιος and ὑπηκοομενοι coming together in the same Verse, they "render the former Word by Authorities, and the latter by Powers, which if "they had constantly done, they had effectually prevented the false application "of this Text; since no Man in his Wits can imagine, that when a Prince (for
(for Example) destroys, oppresses and enlivens its Subjects, he sets thus as a lawful Power or Authority; or that belongs to him (as Dr. Sanderson very well expresses it) by any natural or municipal Laws; much less can he be the true Author of any Power, by God; and that these Words may be so rendered instead of the Powers that are appears from Psalms, who more than once hath thus spoken of his Purposes, his Plans of Power or Authority.

So that if this Text were to be understood in your Sense, this Place of Scripture would serve no countenance and defend all the Tyranny, Cruelty and Oppression which the most wicked Tyrants can commit; all which must be ordained by God, by virtue of this equivocal Word Power. But that you may the better see the absurdity of this Interpretation, pray let us put these things into the Text instead of Words, and see how it will run then. There is no Tyranny, Violence or Oppression committed by Princes, or their subordinate Officers, but what is ordained by God. Whosoever therefore refits this Power, refits the Authority of God. You'll say, perhaps, that this is not your meaning, yet is it the true Sense that must arise from your Interpretation of this Place; whereas it implies no more than God's approving all just and lawful Governments, and confirming from Heaven those moral Duties of Subjection, Obedience and Non-refusal, which were always due, and must ever be, to lawful Authority; that is, such as are agreeable to the Laws of God and Nature, which you plainly see are not due to mere Force, Violence or Cruelty; for that is absolutely excluded out of the Text, which will by no means admit of it: The higher Powers or Authorities ordained by God having no Command from him for any of those wicked Purposes.

M. I doubt, for all your Confidence, that you very much mistake the Sense of S. C. A. P. thele Words; for in the first place your (or rather your Doctor's) Criticism between Power and Power, will not do, for they both signify the same thing in Scripture, other Words or Authority, in the Prophets you see not. For, I must not have brought under the Power of any thing, 1 Cor. 6. 13; must signify Force, and Ill-will must signify Authority and Divinity. Thus Ephes. 1. 21. There's nothing deep, nor complex, nor obscure, nor difficult, which are several Names and Degrees of Authority as well as Power. And in the second place you do much more mistake, when you suppose by this Word Powers to be meant only the true, or just Exercise of Civil Authority, whereas the are the of Authority, the Persons themselves who exercise Authority and Dominion, the , the Ministers of God which bear the , the , the , the and , the King and his Governors and Magistrates, 1 Pet. 2. 2. 13, 14. And therefore, I must return you, you do very ill to separate the Power or Authority from the Persons intrusted with it.

But suppose I should grant you that this Word Power, here signifies the Exercise of Authority, yet doth it not signify the right and lawful use of this Power, but the Right to exercise this Authority, whether well or ill, as all one, as to the Submission due to it; because no Refusal can be lawful or right for want of a superior Jurisdiction over it. The Truth of this is evident from John 19. 10. That says to , that says to , 1 John 1. 10, 11. That says to , that says to , that says to , and against them, the , the , , that every have their, against me, except it were given them from above. And therefore I must reduce your Argument into the form of a Synthesis, that you find may more plainly see the absurdity of it.

Powers not ordained by God, may be refitted without danger of Damnation.

But Powers exercised tyrannically, are not ordained of God; Therefore we are not forbidden to refit them.

In this Synthesis the Minot is not true; for though Tyranny be not the Ordinance of God, yet the Power, or Authority (of which this Tyranny is but an Abuse) is of divine Institution, for tho' the Supreme Power is commanded to rule mildly, yet is it washed enabled to act otherwise; for the good or ill use of it is left indifferent in respect of the Subjects Submission, though not of the Magistrates Command: So that the Abuse of this Power doth not make void the Authority, though acting contrary to the Laws of God or Nature. The Obligation not to refit the Supreme Powers receiving not any Validity from their Judicature.
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Justice, nor is it weakened or annulled by their Violence or Injustice. And was God's Anointed, and Pilate had his Authority from above, notwithstanding their high Abuse of it.

So that upon the whole matter, I incline to believe, that the Reason which made St. Paul call the Magistrates by the absurdi Power, was this: He wrote to Christians living in the Roman Empire; and it was the Custom of the Latin Tongue to call Persons ended with Power, Potestas. You may observe it in Ulpian, L. quid sa. D. de ædib. edid., § 19. And in Angulius, Epist. 42. who says, Suec Paeftas veritatis fuerant aliquem corrigat, ludent habet ex ico qui fuerit mendacius, free imminet veritati in aliquem veritas, ludent habet ex ico qui fuerant corruent; and mark that, Paeftas imminet veritati, must needs signify a Man abusing his Authority. And in Justinian, Jurisdictione de fidei commissi quattuor, & tantum in urbe deligi Magistratibus solutum, in perpetuum autem eisam per Provincias Potestatibus delegat. The modern Languages, Italian and French, which were bred out of the Latin, retain this ancient way of speaking; for Potestas in old French, and Potessta in Italian, expresses not the Function only, but the Person who manages it. Thus antiently the Latin Word for the Chief Justice, was Jusitica, as you may find in Gratiani lib. 4. cap. 6. and Roger Hoveden's Annals: To our King is called in the Absurd, Majesty, as the Greek Emperor, ἡγεσία βασιλική.

Many dangerous Consequences flow from thence; but I desire not to make Sport with that unhappy Distinction which had almost ruined as flourishing, and strongly temper'd a Kingdom as any in the Christian World. It expost

Magistrates, and all in Authority, to the Contempt and Injuries of the lowest Fort of People; for when discontented it is very obvious for them to tell them; though Reverence is due to their Function, yet, that setting their Office aside, they will take the Liberty only to correct their Persons; and that the Magistrate is not at all affected, though the Man be fondly beare. Indeed, it is against common Sense to put such a difference between the Person and the Authority of Kings; for if it were real, neither God, nor the Laws of the Land have made any Provision for the King's Safety; for his Authority is not capable of receiving any Benefit; and therefore it must be acknowledged by all sober and reasonable Men, that this Authority doth but convey such and such Privileges upon the Person who only can be prov'd against them; and consequently whatever is attempted against his Person, is attempted against his Authority likewise.

F. I doubt you will have no better Luck in Censurings than my self, and that they will do your Cause as little good: For if there be no difference in the Scripture between Erastus and Demas, as you affirm; and that both of them signify, not the Authority alone, but the Persons ended with it; and that they are all from God; then Tyrants and Usurers are ordained likewise by God; and consequently Oliver Cromwell was as much the Ordinance of God, as King Charles; and if this be your Doctrine, much more may it do you. But pray keep it to your self, lest if your Friends the Old Cavaliers come to know it, they will quite banish you their Company: Besides, I can shew you other Consequences that will not be so likely; for which I have now a mind to quoad more after, for I have no mind to enter into that troublesome Debate any more: For I told you enough of my Mind concerning it the last time we met face to face.

But since you will needs have these Erastus, not to signify Powers or Authoritie, but the Persons themselves, you shall have your Will for once; only I pray now answer me one short Question: When, for Example, Charles the Sixth, King of France, fell mad, and would have killed his Servants, by what Authority did they distinguish and separate between his Person and his Power? and thought that they might well reflect and bind the one without any Diminution to the other. Or by what Right did the Portuguese take and imprison their late King, and make his Brother Regent in his room, but because the former used sometimes in a Frolick to murder his Subjects out of the Window, or as he met them upon the way; and was besides found, by reason of an inscrutable Folly, to be utterly incapable to govern? Pray tell me, did not the Servants and Subjects of these Princes then separate the Authority from the Person? If not, they must have let them alone to have done what they would, the Consequence of which you may easily imagine.

M. These
Dialogue the Fourth.

Mr. These Infliances of the Folly and Madnefs of Princes are the main things that you gentlemen of Commonwealth Principles have to defend them withal: But to show you there is a great difference between mad or foolish Princes and Tyrants, who are in their right Wits, I will show you my Reasons why the one may not deny, and the other Folly and Madnefs do so far incapacitate the Persons that are much more from performing any of the Functions of God in Government. In the place, they ought to be restrained for the Common Good of their People, as themselves too. And lastly, because it is the highest Courteous and Benefit that can be done such mad or foolish Princes, to set them up above, and hinder them from exposing their Folly and Madnefs, and rendering themselves ridiculous to the World: Whereas a Tyrant, whom I suppose in his right Wits, though he never so much misstate or opprefle his People, yet Civil Government may be well enough carried on and maintained under his personal Conduct; and as long as he has Wit and Sense enough to govern, he is so well

F. But this must I suppose you will not deny, but that this Power of re

fusing, and hunting up mad or foolish Princes, is wholly exercised by the Law of Nature; since I never heard of any Civil or Municipal Law that made Pro

fition for it.师

M. I shall not much dispute with you; it may be so; but what do you infer from thence?

F. Why, no more than this; that if I can prove to you, that there is no such great difference between Madmen and Fools, and habitual Thesaurists; as you imagine there is, there is a like Right to the People by the Law of Nature, to refuse and defend themselves against the same as the other; and therefore I will examine each of your three Reasons one after another, and see whether they may not be applied to such Tyrants, whom alone I suppose you may be re

fused, as to Abd-Allah or Fools; and if they do, I suppose you will not deny their Reasons that are under these Misfortunes, that they hinder them, from acting against the People, much more from performing any of the Functions of Civil Government, much more from performing any of the Functions of Civil Government, as silly and Madnefs themselves. And I think I have already proved, that when Princes bring things to this pass, they do as much deferve Tyrants or Guardsmen to keep them from doing mischief, and to manage their Kingdoms for them, as foolish mad or foolish Prince we have read of in History. But the Mischiefs of it is, that such Tyrants, not being mad enough to be taken up like Madmen or Fools, of Civil Government, by the greates of the Rewards that they are able to bestow upon their Followers, may foolishly bring the best Government into a State of War and Confusion; And till then I do not allow their Subjects to mislead them.

Your next Reason is, that they ought to be restrained for the Common Good of their People, as well as themselves; lest they should not only hurt or murder their Subjects, but themselves too. Now pray consider, if these mad and foolish Princes may be restrained and reformed, because they only murder, or hurt a few of their Subjects that may come in their way, then have not such Tyrants much greater Reason to be reformed and secured, that through unreasonable Revenge or Superstition, make War upon and destroy the People, for no other Reason but that it burns Cities, massacre whole Towns of innocent Subjects, and enslave and oppress a late flourishing Kingdom's ought not there as well to be restrained or reformed, as the Common Good of Mankind, though perhaps they will not hurt
hur or make themselves away, as Mad-men or Fools may. Or can any reasonable Man shew me, why the Extravagancies of such mad or foolish Princes may be refil, but the furious wicked, and tyrannical Actions of the other, must be submitted to as the Ordinance of God? Or lastly, why a natural Infirmary or Weakness, such as Folly or Frenzy, shall make a Prince incapable of Government; and yet why insufferable Tyranny, which is a moral Disability, shall give Princes a greater Privilege not to be refil, I cannot understand; and the latter is much more destructive to the main Ends of Government, i.e. the Preservation and Good of the People, than the former can possibly be.

As for your last Reason, that it is the highest Couterly that can be done to such mad and foolish Princes to shunt them up, and hinder them from exiling their Folly and Madnes, and rendring themselves ridiculous to the World, I think the Reafon will hold much more strongly for the one, than the other. For as such foolish and mad Princes would, if they could come to themselves, thank their God who had done them so charitable an Office as to refil them, and shunt them up; so likewise, I verily believe, that if the Grace of God, or some natural Means or Accident, could so far open the Eyes of such a Tyrant, as to let him see the Folly and Wickedness of those Courts he takes against the People, he would indeed be angry, thank his Subjects for advising him; because thereby they had not only hindered him from making himself any farther the common Hatred of his own Subjects, as well as his Neighbours; but also from committing such heinous Sins and Offences against God, as Murder, Violence and Oppression. To conclude, I grant, that as long as a cruel or wicked Prince can so far restrain his Vices and Paffions, as to maintain the Ends of Civil Government above mentioned, he is to be obeyed as the Ordinance of God. But when he shall set no Bounds to his Tyranny, but resolves that his Lust shall be unconfined, whereby he becomes insupportable to his People, they may as well dilligently his Perfon from his Powre, as they do in the Cafe of Princes, when they are either Fools or mad Men.

M. But pray consider the rest of the Consequences of my last Dilecoute; and will not then the supposing a Power in the People of making this Distinction when the Princes become intolerably Tyrannical, make them to take upon them to judge it so, when it is quite otherwise, and so not scruple to rebel, or to refit (as you call it) whenever they are in the Mind to do it? And we have the more reason to be afraid of this, because from the long Parliaments, and their Adherents, making use of this Distinction among other specious Pretexts, were derived all the Miseries of our last Civil War. And therefore, though I own it is an easy thing to judge of the Madnes and Folly of Princes, as well as other Men; yet (the Wickedness and Partiality of humane Nature consider'd) it is a much harder Task to judge rightly what Actions of Princes are destructive to Civil Government, and render them as incapable of it, as the most extravagant Actions of Fools and mad Princes can be pretended to make them so.

F: If the Inclination of Mad-men and Fools seems to displeafe you, because it is very pat to the Subject in hand, I think I may likewise remark, that these Inconveniences you suppose of making the People Judges in this Cafe, is the sole Objection I can find you have against: what I have said; for otherwise, I do not see you have any thing to allege against the finenes of the Parallel. But I have already, I believe, made it pretty plain, that murdering, enflaving and robbing of the People of their Properities, are things as easily to be judged of as Folly or Madnes: And if a few Domesticks about the Prince shall be allowed to judge when their Monarch is mad or foolish enough to be refil, and that up, I cannot see any Reason, why the whole Body of the People may not as well be able to judge, when, by his Tyranny and Oppression, he hath dislodged the Government, and entered into a State of War with them.

But to return now to the last part of your former Answer, wherein you grant that this Word Power, doth sometimes signify not only the Perfon, but the Exercise of Authority; but that it doth not signify the right or lawful Use of it; but Abuse too; and for the Proof of this, you allude the Speech of Pilate to our Saviour; I am very well satisfied that that Text will make nothing for your
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your purpose: For though I grant that the Word in that place denotes Power of Authority, yet doth it not there signify the Abuse of it: For certainly Plutus would never have told our Saviour, that he had a Power to abuse his Authority, and to condemn him, the innocent; neither would our Saviour have answered him, that he had that Power from above. And therefore, I think I may very well maintain my Syllogism to be true, notwithstanding your denying of the minor Proposition. For since you cannot affirm Tyranny to be the Ordinance of God, yet that the Power or Authority, of which this Tyranny is but an Abuse, is of Divine Institution; which is but a fantasy, if it be looked into. I am an old saying, Contra res opin, et res quae, and you may as well tell me, that Vinegar, notwithstanding its Acidity, continues Wine Government, when it degenerates into the ranker Tyranny, continues still God’s Ordinance: And if this be the true Consequence you draw from your Argument, it signifies little, viz. that the Abuse of this Power, doth not make void the Authority of the Law of God or Nature. For I think I may maintain the clear contrary to what you affirm, viz. that the Obligation not to reft Supreme Powers, doth receive some Validity from the Justice they execute, and is weakened, and at last annulled, by their intolerable Violence or Injustice.

Nay are your Inferences of Saul or Pilate, to the Question in hand: I grant Saul was God’s Anointed, and could not have been lawfully reftitled by David, notwithstanding his murdering of Ahimelek, and the rest of the Priests: And Pilate might have his Authority from above, notwithstanding, he did all things to justify. Yet doth it not therefore follow, that if either the one or the other had declined themselves from Enemies to the whole Nation of the Jews; and that instead of governing and protecting them, they had gone about utterly to defroy them, I think they had then ceased to be the Ordinance of God, and their Divine Commission had been at an end. To conclude: As for the Reason you give, why St. Paul might call the Roman Emperors by the Name of Power, I shall not deny it. But whether by the Word Regnum, the Apostle means Power or Powers, is more to be considered: For if he means the former, he all urges Obedience to them as they are the means of the Happiness and Preservation of the People, as appears by the third and fourth Verets of the Chapter you now quote, where the main Reason St. Paul gives for our Obedience, is, That Rulers are not a Terror to good Works, but to the evil; and that, (viz. the Supreme Power) is a Minifier to us for our Good: And indeed, it had been a very good way of enforcing our Obedience, for him to have said the quite contrary, that this Power was to be obeyed, because he was a Terror to good Works, and a Plague to all good Men, and a Minister to us of all manner of Mischief and Misery: This had been indeed an excellent way of proving the Supreme Powers to be the Ordinance of God.

M. Before I can give you a full Answer to what you now say, I must beg leave to look back to the beginning of your first Answer, where you objected, that if by the Higher Powers here mentioned, the Persons, and not the Authority of those in Power, are to be understood, then it would follow, that Tyrants and Ultrasurers are likewise the Powers ordained of God; which Objection, I think, may admit of an easy Answer:

First, "Can there be no wise Reason given why God may advance a bad Man S.C.R. p. (or Tyrant) to be a Prince? If there may, then it is no Reproach to the Divine Providence. The Natural End of Humane Societies is the Preservation of Publick Peace and Order; and this is in some measure attained even under the Government of Tyrants: But God hath a farther End than this, to bestow and reward a virtuous Nation, or to punish a loofe and degenerate Age; and there cannot be a greater Bleffing than a wife and virtuous Prince, nor a greater Plague than a merciless Tyrant: And therefore the Providence of God is as much concerned in forming a good or a bad Prince over any People, as in rewarding or punishing them. Upon this account God calls the King of Affrias, A
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Isa. 10. 5, 6. "Affright, the Rod of his Anger, whom he raised up for the Punishment of an Hypocritical Nation." 

B. p. 131. Secondly, I have already proved, that by the Powers in this Text, the Apostolic means the Persons of Soverain Princes; and therefore, according to his Doctrine, those Princes who were then in being, that is, the Roman Emperors, were advanced by God; the Powers that be, that is, the Princes and Emperors who now govern the World, are ordained and appointed by God, and that thus it is, God himself tells us: I have made the Earth, and given it to whom it seemed meet unto me; and now I have given all these Lands into the hands of Nebuchadnezzar, King of Babylon, my Servant.

This was also the Belief of the Primitive Christians under Heathen and persecuting Emperors. Tertullian, who wrote his Apology under Severus, affirms, that Caesar was chosen by God, and therefore that the Christians had a peculiar Propriety in Caesar, as being made Emperor by their God." So likewise St. Augustine, De Gratia Dei, speaks to this purpose (as I remember): "God gave the Happiness in the Kingdom of Heaven to the Godly alone: But this Earthly Kingdom both to the Godly and Ungodly, as it pleases him. He then gave the Government to Maximin, gave it also to Diocletian: He who gave it to Augustus, gave it also to Nero: He who gave it to the Vespasians, Father and Son, most beloved Emperors, gave it also to the most cjual Domitian: And (not to recount the rest of them) he who gave it to Constantine the Christian, gave it also to the Apollite Julian. These things, without doubt, the only true God governs as he pleased, by Causes, though hidden, yet not unjust." So likewise almost all the rest of the Fathers do own, that wicked and tyrannical Princes are given as Punishments to the People for their Sins; and so upon this account are to be endured, and not reviled, since it is God's Will to have it so, who

S.C.R. p. 138. But as for Usurpers, I think we can give you a very satisfactory Answer: for the most prosperous Rebel is not the Higher Power, while our Natural Prince, to whom we owe Obedience and Subjection, is in being: And therefore, the such Men may get the Power into their hands by God's Permission, yet not by God's Ordinance; and he who refilth them, doth not refil the Ordinance of God, but the Usurpations of Men. Whereas in Hereditary Kingdoms, the King never dies; but the same Minute that the Natural Perich of a King dies, the Crown defends upon the next of Blood: And therefore he who rebelleth against the Father, and murders him, continues a Rebel in the Reign of the Son, which commences with his Father's Death.

It is otherwise indeed, where none can pretend a greater Right to the Crown than the Usurper; for there the Possession of Power seems to give a Right: Thus many of the Roman Emperors came to the Crown by very ill means; but when they were put off'd of it, they were then the Higher Powers: For the Empire did not depend by Inheritance, but sometimes by the Election of the Senate, sometimes of the Army, and sometimes by Force and Power, which always draws a Contest (and Submission) after it. And therefore, the Chief End of these Princes was to ensure that the Christians to enquire by what Title the Emperors held their Crowns, but commands them to submit to those who had the Power in their hands: For the Possession of the Supreme and Soverain Power is Title enough, when there is no better Title to oppose against it; for then we must presume that God gives him the Irresistible Authority of a King, to whom he gives an Irresistible Power; which is only the means whereby Monarchies and Empires are transferred from one Nation to another: There are two Examples in Scripture which manifestly confirm what I have now said.

The first is in the Kingdom of Jethro, after the Ten Tribes had divided from the Tribe of Judah and the Family of David, where God had not entailed the Kingdom upon any certain Family: For after Jeroboam the first King, it is plain by the Story in the Books of Kings and Chronicles, that for some SucceSSIONS there was nothing but Rebellion, and the Murder of one King by another, so that the Kingdom rarely descended from the Father to the Son; and in the whole Succession of these Kings, it only remained in the House of Jethro for four Generations, and then it returned to its former Uncertainty, as you may see in the 15th Chapter of the 2d of Kings: All which plainly shews, that where there is no regular Succession to a Kingdom, there Possession of Power makes a King, who yet
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"yet cannot afterwards be refuted and opposed without the Guilt of Treason!
And this was the Cæde of the Roman Empire at the writing of this Epistle:
And therefore the Apostle might then very well say, that the Powers that be are
ordained of God; and that whoever had the Supreme Power in his hands, was
the Supreme Power, that might not be refuted.
But it was otherwise in the Kingdom of Judah, which God himself had en-
tailed on David's Family, as appears from the Examples of Josiah and Athaliah, which
we discoursed of at our last Meeting but one: Which Examples plainly
shew, that no usurpations can extinguish the Right and Titie of a Natural or
Hereditary Prince: Such Usurpers, though they have the Possession of the Su-
preme Power, yet they have no Right to it; and though God for wife Reafons,
may sometimes permit such Usurpations, yet whilst his Providence secures the
Perils of such depopled and banished Princes from Violence, he secures their Title
too.

But to prove more plainly, that no Resistance is to be made against the Per-
vasive Authorities of the Supreme Powers, let them be forever so cruel and tyrani-
nical, as it is evident not only from what St. Paul hath here written; but I shall
also have leave to insist farther on that Text of St. Peter before cited; in his 1st
Epistle 2d Chap. Submit yourselves to every Ordinance of Man for the Lord's Sake, who-
ter is he to the King, as Supreme; or unto Governors, as unto them that are set by him for the Punishment of Evill-doers; and for the Praise of them that do well: Whereby Ordinance of Man, whether we understand, as some do, every Humane Law; or
rather, divers, more truly, Authorily, writes, every Humane creature, (as it is in the
Original) that is, every Man endowed with Supreme Power, it comes all to the same
Sentence, and the King as the Supreme Power, and his Ministers or Officers, as
Powers subordinate to him, and acting by his Commission, are to be submit-
ted to and obeyed as much as himself: And it had been in vain for St. Peter to
have concluded this Exhortation with fear God and honor the King, if he had al-
low'd it lawful in any case to resist him, since certainly no Man can honour him,
whom he resists: And that this is a Doctrine everlasting truth, appears by the
time in which St. Peter and St. Paul wrote these Epistles; which was either under
the Reigns of Claudius or Nero; and I suppose you will hardly meet with two
world-Men, or more cruel Tyrants, in all the Catalogue of Emperors: Since the
former committed many wicked and cruel things by his freed-men and Officers,
and also banished the Jews, and Christians together with them, from Rome: And
the latter is so notorious for his Cruelty, and Persecution of the Christians, that
his Name passes into a Proverb. And yet these were the Higher Powers, to
whom the Apostles commanded them to be subject. From whence you may fee
your Error in interpreting the Abuses, to signify just and lawful Authority; whereas
it plainly signifies in this place, the Men settled with this Authority forever tyrani-
nically they abuse it.

F. You have made a pretty long Reply; and I have heard it patiently, be-
cause, I confess, that on this depends the whole Controversy between us: And
therefore I shall beg that you would hear me with the like Patience; because
what you have now said, I grant to be of that weight, as to require a large, as
well as a considerate Reply. And therefore I shall make bold to consider the last
part of your Speech in the first place, because I can soonest dispatch it: As for
your Argument, that we ought to be subject to the most tyrannical Governors
without any Resistance, because Claudius or Nero, whom you suppose to be cruel
Tyrants, then govern'd the Empire, and persecuted the Christians.

In answer to this, I must tell you, that if you please better to consider of it,
you will find it very doubtful whether St. Paul wrote this Epistle to the Romans du-
ring the Reigns of Claudius or Nero. The Learned Monsieur Capel, in his Dis-
course which he hath written, upon purpose, concerning the Time of the Writing of
this Epistle, proves this Epistle to the Romans to have been written during the
latter End of the Reign of Claudius. But those Learned who will have it writ-
ten during the Reign of Nero, do all agree, that it was in the beginning of it,
within the first five Years, when the Administration of Affairs was under the Mi-
nistry of Seneca and Burrhis, and when the Government of the Empire was most
just and moderate, and divers Years before ever Nero burnt the City, or perfec-
tued the Christians, and did so many extravagant, cruel, and tyrannical Actions, as

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forced
forced the Senate to declare him the Enemy of Mankind. But as for Claudius, he never persecuted the Christians at all, as I know of.

M. I pray, Sir, give me leave to interrupt you a little: Did not Claudius persecute the Christians, when under the notion of Jews he banished them from Rome, as appears by Acts, the eighteenth, when Aquila and Priscilla were forced to quit Italy and come into Greece, because of that Epistle? And yet it was this very Claudius, to whom St. Peter (if not St. Paul) doth require all Men to be subject without any Refitance.

F. I think this Difficulty will easily be answered; for in the first place, tho' I grant that Claudius towards the latter end of his Reign banished the Jews from Rome; yet he did not banish the Christians from thence, as we know of, any otherwise than as they were Jews by Nation; and upon this account it was, that Aquila, being a Jew by Birth, was forced to quit Rome with the rest; but neither Socrates, nor any other Author, tells us, that he likewise banished the Christians, tho' I know indeed there are some learned Men that would interpret this Passage in the former Author, in his Life of Claudius: 'Judaeos expulit in urbe; sanctos Christi Roman expulit;' to be meant of the Christians being expelled Rome; so, by indigation, Christ their Prophet to Sedition. But tho' I own that our Saviour was sometimes called Christus by the Pagans, by way of Contempt, yet that by this Christus here mentioned, cannot be understood our Saviour Christ, is very evident; for it had been very improbable for Socrates to have made Christ, who was dead above thirty Years before, to have excited the Jews to Sedition: And therefore, Lord Primate Usher, in the 2d Volume of his Annals, with much better Reason, supposes, that not our Saviour, but some scoundrel Jew called Christus, who headed this Sedition, was the cause of the Banishment of the Jews from Rome: So that this was no more a Persecution for Religion, than it would have been for the Parliament in King Charles' the Second's Reign, during the hour of the Popham Plot, to have banished all the Papists out of England upon the account of their former Rebellions, and confiant Machinations to overturn the Government, and Religion established by Law; But supposing this Epistle to have banished the Christians as well as Jews, it had signified nothing; for it was no Persecution for Religion: And besides, being made in the last Year of Claudius, it was but a temporary Epistle; and we find the Jews to have lived quietly as Rome in the Reign of Nero, as appears by the last Chapter of the Acts.

But as for Claudius' Government, it was so far from being an insupportable Tyranny, that there was no Prince that did take more care to do impartial Justice, according to that small Capacity he was Master of, than himself. And the I yield, that by his Proconsuls, Presidents and Freemen, there were many Oppreditions and Cruelties committed in the Provinces; yet it was only against some private Men, and did not extend to the destroyng and enslaving the whole Body of the People, who during his Reign generally enjoyed their Liberties and Properties, with as great Freedom, as under any of his Predecessors.

And as for Nero, all Ecclesiastical Historians agree, that if this Epistle of St. Paul was written in his Reign, it was within the first five Years of which was in his Non-age, under the Administration of Seneca and Burrhus; during which time all prophane Historians agree, that the Empire was never better governed; and as for the Wickedness and Violence that Nero committed afterwards, when he persecuted the Christians, murder'd his Mother, his Wife, and most of his kind, and most intimate Friends, and set the City on Fire: St. Paul was so far from knowing any thing of them, that sure he would not have urged it to the Romans, as a Reason of their Subjection to him, that Rulers are not a Terror to good Works, but to the evil, or that he was a Minister to them, that is, to the Subjects for good; nay, even in the word of his Reign, as far, as Justice was duly administered by himself, or his Under-Officers, I grant, he was not to be resisted, notwithstanding his Personal Crimes, which could only reach a few Persons, since a wicked Man may often make a tolerable Prince.

And though Domitian was in his own Person a cruel Tyrant, yet he was so far commendable, and to be born with by his Subjects, that during his Reign the Proconsuls, Presidents, and other Inferior Magistrates, were never freer from Corruption and Oppreseion: Whereas when Nero (who was a mild good-natured Prince) succeeded him, by his too great Lenity towards those Inferior Magis
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Magistrates, all things presently degenerated into a most sad Condition, Justice being foul and perverted, and the Poor robbed and oppressed, by the Violence of the Rich and Powerful. And even Nero himself had this Commendation from his greatest Enemy, Suetonius, that he would not be governed by his Officers and Freed-men (as Claudius was) to do foolish and unjust things. So that if Nero himself had not by burning the City, and by murdering the innocent Citizens in the Night, made himself a publick Enemy; I do not see but his Government might very well have been bore with, notwithstanding his Personal Crimes and Vices:

For if you please to remember, I have already excepted Perditional Faults in Princes, from being any justcause of reilitating their Authority; if they are such as can any way consist with the Common Safety and Welfare of the People.

M. I must confess I never yet consider'd this matter, concerning the Time when St. Peter and St. Paul wrote these Epistles; and you'll pardon me if I do not readily allow what you say, but I promise you to consider farther of this matter, whereas the Author you have quoted: But however, whether the Christians were then actually persecuted, or not, or whether those Emperors were then actually Tyrants, or not, fitness very little to me: For these Holy Apostles might very well foresee, not only by Divine Revelation, but by Natural Prudence on their Part, that the Emperors would make great Tyrants and Persecutors of the Church; and the late Example of the Emperor Caligula had shewn them not only the Possibility, but also the great Likelihood that it might happen again: And therefore at no wonder, that these very Apostles do, in consideration of this, command all Christians to submit to, and obey all Supreme Powers, and their Subordinate officers, upon pain of Damnation: And if St. Peter, in this Epistle last quoted, commands Servants to be subject to their Masters, not only in the Good and Gentle, but also to the Froward, (that is, to the Cruel and ill-contrived) and gives this Reason for it: For this is thank-worthly, if a Man for Confidence towards God endures Grief, suffering wrongfully; And enforces it with this great Motive, for you be sure of the goal, because Christ also suffered for us, leaving us an Example, that you should follow his Steps: And if Servants, or Slaves, were to be subject to their Masters, lest them use them never so cruelly, it will, I think, hold more strong for Sovereign Powers, who are the immediate Ordinances of God.

R. You need not have made your Answer half so long, if you had been pleased to return your notice, that I have excepted any Refinements which might be then made against the Roman Emperors, upon the account of Persecution for the more Score of Religion; since I grant, that our Swidden hath, for those particulars Reasons I have already alleged, commanded us to a patient Suffering, and bearing Testimony to the Truth of his Religion by Martyrdom, on any other Sufferings which he shall think fit to inflict upon us by lawful Authority, and for the like ends for which they were to suffer. Yet hasty he not therefore taken away all those other Natural Rights, which whole Nations had of Self-defence against Tyranny and Slavery, whatsoever they are exercised upon them. Nor doth yor Argument from the Duty of Slaves, and their Masters, at all concern Sovereigns, nor did he with a new Mark, to demonstrate: For I hope, there is a great deal of difference between them and perfect Slaves, who having no power over their own Perfons, and so had neither Liberties nor Properties to lost.

But besides, if you please better to consider this Text, you will find, that this dist whiskly concern such Christian Slaves who were for their Religion's sake oftentimes the more cruelly treated by their Heathen Masters: And therefore those Words you have but now repeated, If a Man for Confidence sake suffers wrongfully, as likewise those in the 26th Verse, If you do well, and suffer for it, can only be meaning of Suffering for the Protection of Christ, since no Heathen Emperors, nor Masters, ever persecuted their Subjects, or cruelly treated their Slaves, for well doing; that is, doing those Duties and Services that they owed them; and therefore, this place makes nothing at all to the Question in hand.

M. But pray tell me, doth not the Apostle Paul expressly command every Soul, that is, every Man whatsoever, (not whole Nations excepted) to be subject to the Higher Powers? And since you grant it to be true as to particular Men, why it should not likewise hold as to whole Nations, I can see no reason, unless you will be wiser than the Apostle, and make Exceptions out of this general Rule, where the Scripture itself makes none: For can anything be more express than this, that they
they that refuseth shall receive to themselves Damnation; and the Word is in the plural Number, they, and must therefore take in all Men, none excepted: I have urged this already, and finding you have not given me an Answer to it, I make bold to remind you of that Obligation.

F. I beg your pardon, if the multiplicity of your Objections hath made me omit any thing that was material to be answered; but the truth is, I suppose that I had in effect done it already; but since you will needs have it made plainer to you, I hope you will pardon me, if in the doing of it I am forced to use some Repetition.

Therefore in the first place, I shall not deny the Interpretation which our Translators put upon this Word Ψηφια, which they sometimes signifies not external Damnation, but temporal Judgments; yet I will own it will not well agree with what follows in this place, which are only temporal Reaons and Motives for this Duty. Now understand this Word Ψηφια in the Scripture Sense; and tho' I do it will be much at one; for I have already proved to you, that whether you take those Ψηφιαι for Powers or Perils, they are not absolutely irresistible, and I have St. Chrysostom on my side in the Interpretation of this Word, who understands no more by it, than that Civil Power or Authority is from God, but not the Tyrants or wicked Men that execute it; but if it be taken for the Peril endowed with this Authority, I have also shewn you, that when they degenerate into intolerable Tyrants they lose their Character, and may be reft as well as Madmen and Fools.

So much in respect of the Powers themselves, and now to come to the People: I think I have given very good reasons already, why a whole People or Nation, or the major part thereof, may have a Right to refit the Supremo Powers, and yet that I need not allow particular Persons the same Liberty; and one great Reason is, because they cannot, and the other because they ought not to do it. The first you yourself do acknowledge, since you say, a private Person, when he makes such Resistance, doth at his own peril, when he hath only his own thing to oppose against his Prince. And thatingle Person don't s he stesso't, nor is there any great danger to the Publick if they do. To which I shall likewise add a much better Reason, which I have also given you before, why private Subjects ought not in a Civil State to make publick Disturbances, to avoid any Violence that may be done to their particular Persons or Estates, because every private Subject ought to prefer the Peace and Happiness of the Commonwealth, whereas he is a Member, before his own private Interest, which being a State of the Law or Nature or Right of Reason, cannot extend to the whole Nation or Civil Society; since it is as much against the Law of Nature, for that to be destroyed, beggar'd and enslaved, as it is that God should ordain all Mankind to be so. And therefore our Saviour and St. Paul never intending to alter any of those great Laws of Nature, it cannot be believed that they would urge Mankind to such brutish and severe Rules of Non-resistance and Submission, as should expose them to Beggary, and Slavery, and Ruin, with all the Miseries of this Life: Nor do I find that either our Saviour or his Apostles have either promised eternal Life for such shavish Submission, or threatened Damnation for such Restistance.

M. To answer what you have now said, I must in the first place take notice, that tho' I grant St. Chrysostom, for fear of making Tyrants and wicked Princes to be ordained by God, gives that Interpretation of the Word Ψηφιαι which you have now done; yet he owns the Doctrine of Non-resistance, because the Power is from God, as you may here see in these Quotations out of him, which the learned Primate hath made use of in the second Part of his Treatise of the Power of the Prince, which you may, if you please, read with me, and compare the Greek in the Margin: For it is the pleasure of God, that the Magistrate, whom he hath flamed with his own Image, should have also his own Power. And he that obeyeth not him, makes War, in a fort, with God who hath appointed these things. Let us not therefore invent this Order, nor fight with God; demonstrating by our Deeds that Saying of the Apostle, Whosoever refuseth the Power, religiously the Ordinance of God. So likewise in another Place, If we reverence and fear those Magistrates that are elected by the King, altho' they be wicked, altho' they be Thieves, altho' they be Robbers, altho' they be unjust, or whatever they be; not defying them for their Wickedness, but standing in awe of them for the Dignity of them that did them, and think more ought we thus to do in the Case of God. But it is no matter in what sense this, or any
any other Father takes these Words, so long as the Doctrine of Non-Resistance is secure.

But it seems very strange, that you cannot find that our Saviour and his Apostles have neither promised eternal Life for faithful Subjection, nor threatened Damnation for Resistance; for as sure as the Words are, that they that resist shall receive to themselves Damnation, so sure it will likewise follow, that they that do the contrary, and are patiently subject, shall receive eternal Life. I beg your Pardon for this Interruption, therefore pray go on with the rest of your Reply: And let me see how you can avoid Damnation, if the Words of the Apostle are true.

F. The Question is still the same as it was before, notwithstanding what you have now said; for it is not, whether some Resistance be not unlawful, but whether all Resistance whatsoever be that Resistance forbidden by the Apostle. And to let you see that you do not put such a strict Interpretation upon other places of Scripture, pray tell me the reason why, when our Saviour expressly commands us, Not to resist the Evil, (that is, the Evil Doer) but whosoever shall smite thee on the right Cheek, turn to him the other also. And if any man will sue thee at the Law, and take away thy Coat, let him have thy Cloak also. And whosoever shall compel thee to go a Mile, go with him two. Give to him that asketh thee, and from him that would borrow of thee turn not thou away. (Or yet these more severe Commands) of pulling out thy Eye, and cutting off the right Hand, if they offend thee; for the Kingdom of Heaven's sake; and that he that can receive it, let him receive it: What is the reason, I say, why these places of Scripture, which taken literally, are as strict as this you now quote, That they that resist shall receive Damnation; yet that most of the Fathers, as well as the more modern Commentators, put a figurative, and not a literal Sense upon these Texts? Pray tell me your reason why they do so.

M. I think the reason is very plain, because to understand them in a literal Sense, were utterly unpracticable, and contradicitory to the common Sense and Notions of Mankind, and those natural Duties of Self-preservation, which St. Paul approves of, when he says, No Man yet hated his own Flesh; and it was altogether unsuitable to the Doctrine of Christ, which was intended for the perfection of humane Nature, that is, of Men's Souls and natural Reason, and for the Quiet and Happiness, not Hurt and Destruction of their Bodies.

F. I grant your Reasons are very good and self-evident; but pray tell me, is it not as much against the common Sense and Notions of Mankind, that God should give Civil Soveraigns an Arbitrary Irresistible Power to Murder, Destroy, and Ruin their People, if they should think fit to do, or that Jesus Christ, who, you say, came into the World for the perfection of our humane Nature, and not for the destruction of our Bodies, should give the Supreme Powers an Authority to do the same things with Murderers and Thieves; and that it was unlawful for Men to defend themselves against their Violence, if they could. So that I can see no reason why this Precept against Non-resistance may not be taken in a limited or rational Sense, as well as Swear not at all; which, tho' as express as Words can make it, yet Commentators interpret it to extend no farther than against swearing in common Conversation. So likewise this Precept, Children obey your Parents in all things; which without the reasonable Interpretation of all things lawful, would oblige Children to obey their Parents in whatsoever they commanded them, whether good or bad.

But to come to your Quotations out of St. Chrysostome, which you would oppose against mine; I think they will not serve so much to your purpose as you imagine. For I grant that the Supreme Magistrate derives his Power from God, but not a Power to murder and destroy; so likewise he that obeyeth him must, wars in a just war with God; and that whosoever resisteth the Power, (that is, when it is executed according to God's Will) resisteth the Ordinance of God: And as for the last Quotation concerning the Reverence that is due to subordinate Magistrates elected by the king, tho' they are Wicked, Thieves and Robbers, &c. and consequently, much more the King who sends them; this, tho' the strongest place of the three, yet will not do the Bishops; for I believe you cannot suppose that St. Chrysostome there means that subordinate Magistrates, sent by the King, were really Thieves and Robbers, and took away Men's Goods upon the common Road, but only
only that by Bribery and Corruption in their Offices they did rob and peal the People, as much as if they had really been so; which extending only to some few Persons, was rather to be born with (as any intolerable Inconveniencies in Civil Government are) than for the People to take Arms and refit them. But I think the Cape would have been much otherwise, had these subordinate Magistrates, by virtue of the Emperor's Commission, made use of his Forces to murder and rob the Subjects of those Provinces over which they were set; and that it would not have been any Rebellion in the People, if they should have taken Arms and refitted them, since the Emperors did not impoverish such Magistrates to murder or rob, but to protect his Subjects.

But to give you a Quotation out of St. Chrysostome, in lieu of yours, I shall shew you his Comment upon these Words in his 25th Homily on the Roman, "Let every Soul be subject to the higher Powers. (that is, says he) that Christ might shew that he had not instituted his Laws so, that he would overturn all common Policy and Government, but that he might reform it to the better, and might also teach us, that superfluous and unnecessary Wars were not to be undertaken, because it was then a common Discourse transducing the Apostles as Seditionists and tyrannicides, and doing all things they could to overthrow the common Conventions of their Country; and therefore he stops the Mouths of the Jews, and Hebræus with these Words.

From whence we may infer, that St. Chrysostome did not believe that St. Paul wrote this only to give Tyrants a Power to do whatever they pleased against their Subjects without any Restraint; not yet that Subjects should begin unnecessary and unlawful Wars, by refitting them upon every Flight Occasion: Nor doth this Father here forbid Subjects to refit in cases of the highest Tyranny or Oppression, that could befall them; so that I take the true Sense of these Places of St. Paul and St. Paul to be no more than this; "Let every Christian submit to the Supreme Powers, i.e. to the Emperor, and all other subordinate Magistrates sent and appointed by him. For all Caesar or Civil Authority is from God; and Magistrates judly exercising this Power are from him; and in his stead, all Supreme Powers, under whatever different Names or Titles they be, are by God's Providence appointed in the World, for its Order, Peace and the well Governing of it. He therefore that refiteth such Supreme Powers, whoever he be, refiteth the Ordinance of God," that is, the means that God hath ordained for the restraining the disorderly Lusts and Passions of Men. And they that will not obey their Laws, as far as the Laws of God or Nature may permit, but will refit, shall receive to themselves Damnation. And thus far even Tyrants and Usurpers may be obeyed, tho' not as such, but as Dispensers of publick Justice, and Executors of the Laws, and so are God's Ministers for Good; that is, for the publick Peace and Safety. But neither the Apostle, nor St. Chrysostome his Commentator, any where say, that either the Power, however exerciz'd, or the Perons that thus abuse it to the Disturbing of Mankind, are Likewise from God.

M. But pray consider the Medium a little more closely, by which the Apostle proves and enforces this Doctrine of Subjection or Non-refistance. For, says he, There is no Power but of God, the Powers that be are ordained of God. Wherefore therefore refiteth the Power, refiteth the Ordinance of God. The plain meaning of which is this, That Sovereign Princes, whether good or bad, Tyrants or good Governors, being advanced to the Throne by God, are his Ministers and Vicegerents, invested with his Authority and Power to govern; and therefore when we refit our Prince, we refit the Ordinance, Constitution and Appointment of God; and such Men do not refit, rebel or fight against Man, but God; as he who refiteth any subordinate Magistrate, refiteth his Prince, from whom they receive their Authority and Commition. And this is a very forcible Argument for Subjection to Princes; for whatever our Prince be, it is certain that God hath an absolute and uncontrollable Right over us, as being the true Lord and Governor of the World; and earthly Princes are placed in the Throne by him, who is at liberty to put the Government of the World into what Hands he pleases, who dare to oppose God? or ask him, why hast thou done so? Whoever hath any Sense of God's Dominion and Sovereignty, dares not rebel against him, and he who believes that Princes are made by God, will no more dare to rebel against his Prince, than against God himself;
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himself; since (as I said before) evil Princes may be sent by God for a Punishment to a wicked People, as well as good ones for a Blessing to a pious Nation.

F. If you had pleased to have considered what I have already said, you might have spared this Objection; for it is no more than what hath been already answered; for tho' I grant that Sovereign Princes are advance'd to the Thrice by God, and are by him invested with Power and Authority to govern; and that when we reft our Prince, we reft the Ordinance of God; yet I desire to be judged only by your own Words in this matter; the Prince receives from God Authority to govern; but is the murdering, ruining and enslaving the People, any part of Civil Government? And when we reft our Prince, we reft the Ordinance of God; but is the refting of an implacable Tyrant, and an Enemy of Mankind, refting the Ordinance of God, or fighting against him? And I desire you only to consider the force of your own Comparison; for (you say) he who refteth any subordinate Magistrates, refteth the Prince from whom they receive their Authority and Commission; yet it is only in such things, which the Prince hath given them Authority or a Commission to do: As for Example, a Bayliff may arrest me for Debt by virtue of the King's Writ; yet if he goeth about to rob or kill me, I may lawfully reft him; and if I kill him, it is no Murder. The same may be said of all other subordinate Ministers, how great fearer they are; there to carry on your Parallel, the same that subordinate Magistrates are in relation to Princes, the same are Princes in respect of God: Therefore if they never received any Commission or Authority from God to destroy and enslave their People, they so far cease to be the Powers ordained by God; and, sure, may then be refted by their oppr'esd People.

As for the rest of your Speech, as far as Earthly Princes are placed in the Throne by God, and govern there like his Viceregent, I own they are not to be oppo- sed; but since you will have them to be submitted to, because they may be ordained by God for a Punishment for a wicked People; I thank you for putting me in mind to answer what you have before said upon that Subject. I do not deny, but God may often, for the Punishment (as you say) of a sinful Nation, give them a wrathful or tyrannical Prince; and likewise that such and such Princes, as imposed by God, is to be both without Resistance, as far as is possible, or may con- fident with their being a People, and with those Enjoyments of Life, which are ne- cessary to their being Subjects and Free-men, and not Slaves: And tho' I grant that God may sometimes punish a wicked Nation by appointing Conquerors, such as the King of Assyria, to carry them away Captive, and to reduce them to the lowest Condition of Poverty and Slavery, as in this Case of the Jews by the King of Babylon, who was then the Rod of God's Anger, and whom he raised up for the punishment of an Idolatrous and Hypocritical Nation. Yet, when he doth so, excluding all farther Resistance in the People, it can only be known by divine Re- velation, and cannot extend to all Conquerors whatever, whether by Right or Wrong. And therefore, as God doth often in his Anger deliver the People up to the Power of some cruel Conqueror or Tyrant; so likewise will he, in his good Time, and upon their Repentance, deliver them from it again. Now this Deli- verance must be performed either by Miracles or humane Means; but Miracles are ceased, and therefore since only humane Means remain, these must be either, Firth by changing the Hearts of such tyrannical Princes into a better and more merci- ful Temper towards their Subjects, as Solomon says, The King's Heart is in the Hand Prov. 21. 1; of the Lord, as the Rivers of Water he turneth it whichever he will. Or else Secondly, By taking away such a tyrannical Prince out of the World, and putting an- other in his stead, who may govern the People more mercifully, and who will not any more destroy or oppress them, as his Predecessors did. Or Thirdly, By libri- ring up some Neighbour Prince to revenge the Injuries and Oppressions done unto such a persecuted and almost ruined People; and to reft them to the enjoy- ment of their former Liberties, Religion and Estates. Or Lastly, By flurring up the People themselves to rise and reft their Oppressors they lie under, by their own single Forces, or by imploring the Assistance of some powerful neighbouring Prince or State. Now I suppose you will not deny, but that the Firth and Second of these Means very rarely happen; and as for the Third, we seldom find that when a former Prince is taken out of the way, his Successor grows so sensible of
the Tyranny and Misgovernment of his Predecessors, as to let go any of that Arbitrary Power which he hath usurped, or to remit any of those intolerable Taxes and Oppressions which he hath laid upon them; but are commonly like Rehoboam, when they come to the Crown, so far from making their People's Tale more easy, that they rather lay it more heavy upon their Necks; as we may see in the Kingdom of France, in the three last Defects, where every Prince hath been still more severe and tyrannical than his Predecessor; for finding himself involved in this absolute and despotic Power, without any unjust Act of his own, he will exercise it as he found it, and will think himself not at all obliged in Conscience to relieve any of those Rights his Predecessors had formerly usurped upon the People; since we find, Princes seldom lose any thing they have once got: And this may continue to all Generations, for, ought we not, (which is much too long for a Punishment) utile some extraordinary Accidents fall out, as we now see by the Example of the Great Christians, who having lain divers Ages under the Mahometan Yolk, are now restored to the Liberty of their Religion, by the Armes of the German Emperor and Francis; and are so far from being blamed for joining themselves to their Deliverers, that they are rather commended by all Christians for so doing. And I see no reason why good Frenchmen, as well Protestants as others, may not as justly join themselves to the Prince of Orange, or any other foreign Prince, who will be so generous as to undertake, their Deliverers from that cruel Yolk they lie under, and will restore them to their ancient Liberties, and the Protestants to the free Exercise of their Religion: Nor can I see any reason why God should deliver a People, into Servitude whenever a tyrannical Prince hath sufficient Power to oppress them; and why God may not be as well able to deliver them, as often as the People find it means and opportunity to set themselves free. For doth such a Tyrant derive his Authority from God, or only because he hath Power? And may not the People, likewise from the same Original, derive a Right to defend themselves against such an intolerable Oppression? Otherwise, God would chiefly regard and provide for this despicable tyrannical Power of Princes, as the chief end of all Civil Society, and make the Good and Happiness of the People a thing subordinate to that, or rather only by the by, which is contrary to Reason. This is true, the Prophet says, That there is no Evil in a City which God hath not seen: So likewise are all natural Evils, such as Famine, Pestilence, Inundations and Foreign Enemies; and yet have not the People in those Cases a Power to rid themselves of them, if they may, by all natural humane Means; and yet they may be likewise Punishments sent from God. And if they may redefl and discharge such common and natural Judgments, without staying for an express Revelation for that purpose; why may they not for the fame Reason rid themselves of such a Judgment as intolerable Tyranny, when they are able, and have an Opportunity to do it? since they proceed from the like common Dispenations of God's Providence. Or else we must believe that the Wickedness of one, or more Persons, for the Destruction of Civil Society, is more particularly derived from God, than the Power of the whole has been for their Own Preservation, and the common Good and Happiness of the Commonwealth: By which means Princes would have the same Power and Right over their Subjects Bodies and Estates, as they have over those of their Beasts, to fell, kill and devour them at their Pleasure.

M. Tho' I grant it may be lawful for People to remove natural Judgments by humane Means; yet doth it not follow, that they may therefore remove by Force, such Punishments as God pleases to lay upon them from the Abuse of Civil Authority by the Supreme Powers, since he hath particularly enjoined them to bear such Punishments patiently without any Reluctance, because they are inflicted by those whom God hath ordained for our temporal Governors and Masters, and whose Violences and Oppressions, as long as they continue in their Sins, God hath very good reason to continue upon them; and if they repent, they may be ascribed to that in his good time, he will either remove them, or turn them to the best; for all things (even Afflictions) work for the good of them that fear him. And God will not suffer those that trust in him to be afflicted beyond what they are able to bear: And if this Doctrine of yours might take place, both Servants and Children, in the State of Nature, might, upon the like Pretence, both resist and turn their Fathers and Mothers out of Doors, because (forsooth) their Government was so unwise and
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and tyrannical, that it was not any longer to be endured by them; and tho' such severe Fathers or Masters may be ordained by God for the Punishment of such wicked Children and Servants; yet that being no more nor any other Judgments, they may be without any Sin removed by Force or Resistance, whenever they thought themselves strong enough to do it: And if this Doctrine be wicked and absurd in private Families, then is it much more so in Kingdoms; for certainly every perfect Subject is due to a Sovereign Prince, as well to a Father or Master; for he is more eminent the Minister of God, and acts by a more sacred and inviolable Authority. And notwithstanding what you have laid to the contrary, that the Precept given to Servants by St. Peter doth not concern Subjects, I think I can very well prove that it doth; as appears from the Example of Christ, which the Apostle there recommended to our imitation, who was the most innocent Person in the World, and yet suffered the most barbarous Usage, not from the Hands of a private Master, but of the Supreme Powers. And therefore, when he commands, in the same Chapter, to Submit to Governors, as to those who are for the Punishment of evil Doers, and the profit of them that do well; it is evident that he did not intend this as a Limitation of our Submission, or as if we were not bound to be subject in other Cases, since in the very same Chapter he requires Submission not only to the god and gentle Masters, but also to the Governors, in imitation of the Example of our Lord, who suffered patiently under unjust and tyrannical Powers. I observe therefore, that the Apostle doth not allude this as the reason of our Submission; but as a Motive or Argument to reconcile us to the Practice of it. The reason of our Submission to Princes is, that they are advanced by God, that they are his Ministers, that those who resist them resist the Ordinance of God; and therefore we must submit for God's sake, out of reverence to his Authority. But it is only an encouragement to Submission, to consider the great Advantages of Government, That Rulers are not a Terror to good Works, but to the evil. But tho' this Metaphor fail in some Instances, yet whilst the reason that other natural Laws (and that can never fail while we own the Sovereign Authority of God) so long it is our Duty to be subject, whether our Prince do his Duty or not. Ex. Alltho' what you have now replied is no more, in effect, than a Repetition of what is more said before; yet I forgive it, since you have not added no other; nor can I see any reason why natural Judgments may be removed by Force or natural Means, but not Moral or Civil ones; unless you could also prove, that it is God's express Command, that we may remove the one, but not the other; nor have you proved it otherwise than by telling me, that Princes are God's Ordinances, and are ended with irresistible Power, all which hath been already considered, and I have already shown you it is neither commanded by God, nor yet ordained by him for the common Good of Mankind. And tho' I own that Afflictions may sometimes serve for a Punishment of a sinful Nation; yet it is as likely that such a great and lauding Punishment, as a merciless Tyrant, may as well bring the People to Repentance, and when they are sufficiently amended, they may very well enjoy the Benefits of it; and they may as well expect that God will bless all lawful Means for that End, whereas I take Resistance or Self-defence to be the principal, since Miracles are ceased. And of this we have an Example in the second of Kings, chap. 18. For tho' Ahaz, the Father of Hezekiah, had submitted himself, and become Tributary to the King of Assyria; yet when Hezekiah his Son turned to the Lord, it is said, that he was with him, and that he rebelled against the King of Assyria, and served him not; and yet he was then as much subject to him, as Jehoshaphat or Zechariah were afterwards to Nebuchadnezzar. So that all that is new, in this Answer of yours, is only the fatal Consequences that it would bring upon all Families in the State of Nature; for then (forsooth) Children and Servants might likewise pretend, that the Government of their Fathers and Masters were fo infupportable, that it was no longer to be endured, and so might rebel against them and depose them, which doth by no means follow; for I have already proved at our first Conversation, that some form of Resistance, for the preservation of Life and Limb, may be lawful against the Outrages or Violence of a Father or Master of a Family; yet do I by no means allow that they should resist them for any other Correlation or severe Usage which they shall inflict upon them; since Servants or Slaves, whilst they continue under their Masters Power, can have no Liberty or Property of their own to defend; and a Son, whilst he remains
remains part of his Father's Family, I grant, differs not from a Servant; so that all that ought to be done, either by Sons or Servants, in cafe the Government of their Father or Master grows so cruel and tyrannical as not to be endured, is to run away and leave the Family: And thus we read, that Hagar, upon the severe Ufage of Sarah her Mistref, fled from her, nor was blamed by the Angel for so doing.

Nor is what you have now said, to prove the Subjection of Servants and Slaves to be as absolute the one as the other, at all convincing; for I have long since proved that a Family and a Kingdom are very different things; and that Oeconomical and Civil Power do not only differ in Species, but in Genera too. For tho' I grant, that Slavery might begin by Compaë, as well as by War; yet Subjection to Civil Power could regularly commence by Compaë only: And therefore since the natural State of Mankind is that of Freedom from Slavery, all Subjects are supposed to be in that State of Freedom, and to have a Right both to their Liberties and Properties, which, if the Supreme Powers go about forcibly to take away, then cease to be so, since they take away the main end of their Institution. I mean, this of such a People, who are properly Subjects, and not Slaves: For of those who own themselves to be Slaves to their Prince, I told you already, I would not take upon me to meddle; since I doubt whether such an Empire can be called a Civil Government or not: So that for all that you have hitherto said, I must still believe St. Peter did not direct this Precept to Subjects, but to Servants under the Yoke, that is, to Slaves, such as had no Property in any thing, nor Power over their own Persons, but might be sold and allotted, with their Wives and Children, to whomsoever their Master pleased; which tho' not of divine Institution, yet since it was so ordained by the Civil Laws of the Empire, neither Jesus Christ nor yet his Apostles would make any Alteration in it; nor hath he thought fit to do so in any of those things which we enjoy as our Civil or Natural Rights, by the Law of Nature, or the Municipal Laws of our Country; and therefore it is not true that there is as perfect a Subjection due to a Sovereign Prince as to a Master, unless the People of that Nation have made themselves absolute Slaves to him, instead of Subjects, which could never be but by their own Consent. It is true, a Prince is more eminently the Miniffer of God, and acts by a more sacred and inviolable Authority than a Master; yet doth it not therefore follow that he acts as God's Minifier, or by his sacred or inviolable Authority, when he destroys or enslave the Subjects: Nor can you say that God hath given him any Authority so to do. And as for the Example of Christ's Suffering, which you urge as a Reaon of our absolute Subjection to Princes, without any Refiñance, I have anfwersed that already, and therefore need not say no more to it; but do own, that in that great Point of suffering for Religion, when we are lawfully called thereunto, we are to follow his Example; yet doth it not prove that we are to suffer in all other Cares whatsoever, concerning which he hath given us no express Precept or Command.

M. I have something more to say to you about this Matter of suffering for Religion, but I shall defer it at prefent, and sfall only now consider the evil Consequences of your Arguments for Refiñance of the Supreme Powers in any

B. P. P. 18. Cafe whatsoever; the Sum of which, if I can well remember, is to this Effect: Shall a Prince be free from all Correction till God Almighty is pleased to chastise him? Must I fig still, and suffer my Throat to be cut, my Eitate ruined; and not dare in any Cafe to defend myself, till God is pleased to interpose; and that in an Age in which Miracles are ceased? God is for the moft part pleased to repitse the Punifhment of Oppreffors till the next World; and if I be ruined in this, what comfort is it to me or mine, that the Injury shall be punished, when I shall reap no advantage by it? Now suppose the Subjects of such a Prince should fuccefed in their Rebellion, and prevail againft him, they muft then submit to another Prince, of whom they have no more assurance they shall be better treated; and if they set up many, they are all Men, and Subject to be corrupted by Power and Greatnesfs; and in an Anarchy every Man will become a Tyrant to his Neighbours. So that this Doctrine of curbing and refifting Princes, is calculated for the ruin of Mankind; and tends to no body's good but theirs, who design thereby to gain a Power of doing to others what they pretend to fear. And when all is done, the Punifhment of Princes, who abufe their Power,
Power, must be left to God Almighty, who only can and will punish his own Ministers.

Now suppose all these were just as it is stated, if the Injuries a Man suffer are insupportable, under any Government he may petition for relief, and in all probability find it; if not, he may fly into another Country for succour; if he cannot do that neither, he will scarce be able to reit: So that if it were never so justifiable, it could be of so much to any such miserable Man; for no Prince, though never so ill natured, will attempt any such thing against any such number of Men, as are in a Capacity of revenging the Wrong done them when they will, only out of hopes they will not, because they ought not. Nor will the Hiftories of all Ages put together afford one Instance of a Monarch, that ever injured any Man at this rate, whom he believed able (if willing) to revenge the Wrong, but that he took care as far as he could to prevent it; and either to take him out of the way, or to put him out of a possibility of a Retaliation. So that all such discontented frettful Rhetorick is of no use in any such Cafe.

But then, on the contrary, if every Ambitious and Factions Man might be left at liberty to infinate into the Rabble, and the great and little Varg, that Princes are to be punished when they do amiss; that they are bound to Act according to Laws, and to their Oaths; and if they do otherwise, are presently to be treated as Tyrants, and the common Enemies of Mankind; that it is lawful for a Man to defend himself against the Injustice and Oppreffion of his Prince, &c. This can only serve to fill the World with Rebellions, Wars, and Confusions, in which more thousands of Men and Millions mutt of neccifity be ruined, and Wives ravished and murdered, in the space of a few Days; than can be destroyed by the worst Tyrant that ever trod upon the Earth, amongst his own Subjects, in the space of many Years, or of his whole Life.

F. I perceive you think this place of Scripture will not carry you through; and therefore you would fain confute my Arguments by ridiculing them. But in anawer to the Expedients you have now proposed, I think I may make this return. First, as for Petitioning when a Government grows insupportable; suppose then, the Prince declares he will not be petitioned in this Matter; but as the French King lately did, when the Protestants would have petitioned him against the Violation of the Edict of Nantes, will not hear or receive them; or suppose he lays any Man by the Heels, that shall offer no humbly to petition him, either in his own, or the Peoples behalf, as King James lately served the Bishops; then this Expedient can signify nothing. As for the next, flying into another Country for succour, that is a very forry Comfort, that a Man must be forced to go and beg his Bread in a strange Land; and whatever this may be a Duty for private or single Persons, yet it cannot extend to a whole Nation, since if all the People should go away, the Commonwealth or Civil Society would be dissolvd; and farther perhaps, as now in France, and in all Tyrannical Governments, it is commonly practifed, the Prince should forbid his Subjects to go out of his Kingdom upon Pain of Death, or being sent to the Gallies; then I think this Expedient would signify nothing neither. But now, if nothing else will do, you say Resistance can be of no use for such miserable People, because a Prince will not dare to attempt any such thing against such a number of Men as are in a capacity of revenging the Wrongs done them, where they will only out of hopes, that they will not, because they ought not to do it. I grant indeed, that never any Tyrant, when he went about thus to oppress his People, designed they should be in a capacity to revenge the Wrong he did them when they would: And therefore such Tyrants take very great care by Guards and Standing Armies to prevent it. But yet I can shew you a Prince, who very lately received such Encouragement by the Writing and Preaching of our High Clergy, that he seem'd resolved to bring in Popery and Arbitrary Government upon us chiefly out of hopes that the People would me, because (as he thought) they ought not to reit: And tho' I allow grants, that few Monarchs injure particular Men so much, but that, if they believe them able to revenge the Wrong, they will take care as far as they can to prevent it; yet this signifies nothing, if once a whole Nation comes to be oppressed, and disfigured against the Government: For if such a Prince or Commonwealth have not the Affiance of some other Power, either his own Standing Army or his Neighbours, his Authority would soon be at an end. Thus we read
of the Mafiacre and Expulsion of the French out of Suil; it was done in the twinkling of an eye, and before those in Power had the least Sufpicion of it. So likewise in the late Revolt of the Portuguefe from the King of Spams, his Government was at an end in little more than a Day's time; and that Nation will tell you that they leaped upon the Benefit of being governed by a Prince of their own, and enjoying their own Laws, as very well worth that Ex pense of Blood and Treasure they were at to obtain it. To conclude, I do not speak this to encourage the Rabble, or great and little Villagers (as you call them) to take Arms, and punish Princes when they do amiss: Nor have I at all afferted, that Princes may be punished by their Subjects, unlefs you can prove to me, that every one who refills the Violence of another is his Lord and Master. Neither do I maintain, that the Princes are bound to act according to Laws, and to their Oaths, yet if they do otherwise they are praftically to be treated as Tyrants, and the common Enemies of Mankind; or that it is lawful for every private Man to defend himself against the Injustice and Oppreffion of his Prince. I grant, such Doctrine would ferve to fill the World with Rebellions, Wars, and Confufions, and may produce all thofe dreadful Confequences you have here fet forth.

But on the other fide, under fuch a Tyranny as where the whole People, or the major Part of them, fhall happen to be affaulted, enla vled, and opprefled to that degree, that no Man can tell when he is safe; if I fay, in fuch cafes a Tyrant may deftroy more thousands of Men, ravish more Women, and ruin more Families and Eftates, than it is likely to be done by the highest Refiffance the People can make againft him: Since they are mad if ever they make this Refiffance, unlefs they are all morally fure, either by their own Strength or the Affiftance of their Neighbours, of succeeding in the Attempt.

Nor do the Confequences of fuch Refiffance but rarely fall out in the manner you fuppofe: For it feldom happens but that the new Prince, to whom the People fubmit themselves, will (being warned by the Example of his Predecessor) take care to govern with greater Mercy and Moderation; and it is much more unlikely, that if they fufpe, or fet up many Reprefentatives out of their own Body, that they will be prefently corrupted by Power and Greatnes thus to oppref the People; and laftly, it is much less probable, that the People can continue long in an Anarchy, without any Government at all. So that, to conclude, this Doctrine of refilling of Princes, or other Supreme Powers, in Cases of extremity, is fo far from tending to the Ruin of Mankind, that I cannot fee how they can be safe without it: And tho' the Punishment of Princes, who abuse their Power, may be left to God Almighty, yet I am confident the refilling of thofe, who tho' they have the Power of the Sword in their hand, yet act as none of God's Ministers, is neither contrary to the Laws of God nor Nature.

At I perceive you want Testimonials out of Scripture to justify your Doctrine of Refiffance, and therefore you are, when prefiled by thofe, forced to fly to your old Refuge of Self-defence by the Law of Nature, in which tho' I have been for ceived to follow you, and quit the Method I propofed to my felf; yet I would have you to know, it is not for want of more Texts of Scripture, and therefore I must fll farther inore the true Senfe of that Place of the flrft of St. Peter: Submit your felves to every Ordinance of Man for the Lord's fake, whether it be to the King as Supreme, or unto Gouernors, as to them that are sent by him, for the Punishment of Evil-doers, and for the praife of them that do well. For this is the very fame Doctrine which St. Paul taught the Romans, Let every Sou1 be fubjeé to the Higher Powers. For the fame Word is ufed in the Original, τοιχεος and ὑποτασσωs; and therefore to submit and to be fubjeé is the fame thing, which, as St. Paul tells us, signifies Non-refiffance: Only as St. Paul speaks of not refilling the Higher Powers, that is, Emperors and Sovereign Princes, he therein includes all thofe who act by their Authority; and St. Peter, to prevent all Cavilies and Exceptions, diftinctly mentions both, that we must submit to all Humane Power and Authority, not only to the King as Supreme, that is, in St. Paul's Phrafe, to the Higher Powers, to all Sovereign Princes, who are invited with the Supreme Authority, but alfo to thofe who are fent by him, who receive their Authority and Commifikion from the Sovereign Prince.

F: You may spare your Pains for making fo many Explanations on this Text, for I have already granted, that all due Submifion is to be given, not only to the Supreme Powers, but alfo to all thofe who are put in Authority under him,
them, and that not only for Wrath, but Confidence sake; yet is this place to be underfooted in the same Sense as the former, that is, as far as they make use of this Power for the great Ends of Government, (viz.) the Good and Preservation of the People, and not for their Ruin and Destruction, by taking away their Lives, Liberties, and Properties at their pleasure. So that this Precept is to be underfooted, according to the Reason which both St. Peter and St. Paul give for this Submission, because Rulers are not a Terror to good Works, but to the evil; and because such Governors are for the punishment of Evil-doers, and for the praise of them that do well: And even a Government, where a Heathen Prince hath such Supreme Power, may, and doth most commonly, in respect to most of its Subjects, give more Complacence and Encouragement to good Works than bad ones; and therefore Obedience to such a sort of Governors is not only lawful, but a Duty; yea, though through Ignorance and Malice they might perfecute the true Religion. For I have already proved, that at the time of Writing these Epistles there was no actual Persecution begun by the Roman Emperors against the Christians; and though they did afterwards perfecute them, yet even such as did so, being commonly Men of good Morals, and having much of Goodness, Justice and Prudence in their Natures (such as was Trajan, and the two Antoninius's), they would not fail extremely to encourage the Practice of such, and other Virtues by their Examples, and by good Laws to preferre their Subjects from the Mischiefs of Tyrannisa, and keep them in Order, Peace and Security; for it is to be observed whether they be Tyrants or not only govern contrary to, but also subvert all the Laws of Government.

And if this be the Sense you put upon this place, I think I fail easily shew you not only the Absurdity, but the Inconsistency of this Interpretation, which indeed doth undermine all that Obedience and Subjection that is due from Subjects to their Sovereigns, unless they rule well, that is, according to their Humours or Fancies. Now, I pray, consider whether these great Apollines intended to oblige the Christians of that Age to yield Obedience to those Powers, which then governed the World. If they did (as I think no Man will be S. C. B. p. 149, 150.) so hardly as to say, that they did not) then it will be proper to inquire whether they were true; then I believe it will hold true of all Kings in all Ages of the World; for there cannot well be greater Tyrants than the Roman Emperors were at this Time: And so this will prove an eternal Reason why we should be subject to Princes, notwithstanding the many Failures and Miscarriages of their Government. And if it were not true, it is very strange, that two such great Apollines should use such an Argument to perfecute Christians, soSubject to the Powers as all this proves the quite contrary; that they ought not to be subject to the present Powers, because they were unjust and tyrannical; and which indeed, in Contradiction to the Original Design and Institution of Civil Power, were a Terror to good Works, and not to the evil.

The Christians were at this time actually perfecute by the Jews in Palestine, and if they were not then also perfecute by the Emperors, yet it was that which they might daily expect, considerin their extraordinary Wickedness and Cruelty: And yet the Apostle exhorts them not to resit such Powers; because they were not, (that is, should not be) a Terror to good Works, but to the evil: So that if he only means that they should be Subject to us, while they encouraged this Virtue and virtuous Men, but might rebel against them when they did the contrary; how could the Christians of those Days think themselves obliged by this to submit to the higher Powers?

For this was not their Case, they suffered for Righteousness sake; the Supreme Powers were a Terror to them, though they were innocent; though they could not change them either with breaking the Laws of God or Men: And therefore, upon your Principles they were not bound to submit to them whenever they could find it safe to resist. So that either you put a false Comment upon the Text, or the Apostle undertakes to deter them from Refusall, he urges such an Argument as was proper only to perfecute them to rebel.

F. Had
F. Had you been pleased to have minded more attentively what I said last, you would not have thus misrepresented my Sense: For I have already proved, that there was no Persecution in the Roman Empire against the Christians when those Epistles were written, nor for many Years after; And I have also granted, that if the Emperors had so persecuted them, they ought not to have refuted. And therefore, by good Works, and Evil-doers, Ec. is in both those Texts of St. Peter and St. Paul, is not to be understood, only believing in Christ, or behaving themselves as became innocent Christians, but in general that at that time when the Apostles wrote the Epistles under Claudius, and the beginning of Nero, (and indeed through his whole Reign where he governed by his Deputies) the Supreme Power was then really a Terror to evil Works, that is, to all Offences against good Manners, and the publick Peace of the Commonwealth, and were also a Punishment for Evil-doers; that is, those that did transgress against the publick Laws ordained for the restraining Men from committing any sort of publick Wickedness or Immorality. So that I own that neither the Heathens, nor the Christians, had then any Reason to take Arms or refit the Supreme Power at this time.

But admit there had been at that time great Mischarriages and Abuses committed against the Government, and that good Men had been oftentimes punished, and evil persons rewarded, and the ends of Government to some extent perverted; especially at Rome, where the Emperors took a Liberty of doing many unjust and tyrannical Actions: Yet I have no where (that I know of) affirmed, that Princes ought to be refuted only for being evil, or wicked; or that all the evil Actions and Misgovernment of Princes, or their subordinate Ministers, ought to be refuted, much less punished, by the People: But I have all along S.C.R.135. affected the contrary; for I own, that no humane Government can be so exact "and perfect, but it may be guilty of Mischarriages." Good Men may lie, and bad Men may flourish under a virtuous Prince, much more under those that are themselves wicked and unjust. And there are many Degrees of evil Government and Tyranny, some of which may confit well enough with the common Safety of the People, which was the Condition of most of the Subjects of the Roman Empire under the Reigns of Claudius and Nero; since they did then enjoy the Prosperity of the Commonwealth, and all the Civil Rights of Subjects. And therefore you very much mistake me in supposing that I maintain we are only bound to be subject to those Supreme Powers, who rule well, or who punish Wickedness, and reward Virtue; since I grant this was scarce ever performed exactly, even under the most regular Governments: Yet there is a great deal of difference between bearing with the common Infamities of all Governments, and such intolerable Violences that dilate the Government itself, as by making War upon the People, and invading their Civil Liberty and Property. As for Example: No Man doubts, but the King may pardon a Robber, or a Murderer; but if, instead of hanging, he should pardon all Thieves and Murderers that should rob or murder in a Year or two together, and should likewise live them in his Guards to kill and rob whom they pleased, provided he had a name of the Rouser; I would very faint know of you, or any other reasonable Man, whether the People were bound to bear it; and whether they might not refit them, though they had the King’s Commission for so doing?

To conclude: When the Apostle here says, that Rulers are not a Terror to good Works, but to the evil; and that they are for the punishment of Evil-doers, and for the praise of them that do well; the Apostle only means in general, the great Advantages of Civil Government for the Suppression of Wickedness, and Encouragement of Virtue, which is the true End, and the best Improvement of humane Power. But this also is in great measure obtain’d under evil, and (to some degree) tyrannical Princes; and therefore this Argument for Subjection is good, even under a Tyrant. Publick Justice was administered under the Government of Nero, and good Men were then often rewarded, and bad Men punished. And though Justice be not so equally, and so universally administered under an evil Prince, as under a good one; or, through such a Tyrant may oppress many of his Subjects, and be the occasion of divers Calamities, yet whilst the main Ends of Civil Government are maintained, it lays a sufficient Restraint upon the unruly Lufts and Passions of Men, and gives great Security to the just and Innocent.
Dialogue the Fourth.

Innocent. And therefore, good Men are concerned to promote the Peace and Security of Civil Government, though the Prince be in some degree a Tyrant; for there is more Security to be had under such a Tyrant, than in a Civil War, or Anarchy.

In ordinary Cases it is very possible for private good Men to live easily and tolerably under a very bad Prince; and though it should be their Lot to suffer, yet since the Peace and Quiet of humane Societies is in itself so great a Blessing, and the publick Good may be better consulted by the Prefervation of Government, than by Restistance; it becomes every good Man rather to suffer patiently under such a Tyrant, than to shake and unsettle Civil Government, and disturb the natural Course of Justice by Sedition and Tumults, for the private Interest of himself, or a few other Men.

Yet all this is to be understood of such Degrees of Tyranny, or evil Government, as may conflict with the main Ends of a Civil Society, or Common-wealth; and as far as the publick Good of the People may be better consulted and preserved by the Restistance, than Restistance of it. And as I grant it to be every Man's Duty patiently to suffer many Injuries and Abuses, rather than to make any publick Disturbance; so on the other side, when the main Ends of Civil Government, viz. the common Prefervation of the Peoples Liberties and Properties, are actually, or about to be destroyed, I think every honest Man, that his careful of his own, and his Politery's well-being and Happiness, may, nay, ought (if no other Remedy can be had) to make Restistance, not for the Destruction, but Prefervation of Civil Government, which I look upon as good as dissolved, before such Restistance can be lawful.

As I must confess your Doctrine, as you have explained it, is not so bad as I supposed at the first hearing; but if People may never rest till things come to such a State, as that, by a general Invasion of Mens Lives, Liberties and Properties, the Civil Government be in a manner destroyed (as you suppose), the People may stay long enough before ever they shall be in a Condition to make this Restistance. For in all the small Observations that I have made out History, I never could find the People generally reduced to so fad a Cafe as this you have put: Most of the Rebellions, and Alterations of Government that I have read of, having begun from a few tyrannical Actions committed upon the Persons or Estates of some great and powerful Men, who being beloved by the People, were able to stir them up to revenge their particular Injuries. Thus one single Act of Lucretia in the younger Tarquin's ravishing Lucretia, gave occasion to Brutus, and her Husband Collatine, to take Arms against the King his Father, and by expelling him and his Family to set up a Commonwealth. And therefore, since this Cafe of such an extreme intolerable Tyranny, as you mention, can never, or at least very rarely happen, I think I may still maintain what I first affirmed, that it is much better to put this Mchief to the venture, and suffer all the Inconveniences that may happen from it, than by allowing the People to be their own Judges, when the Government proves infupportable, to give them a Right of judging and refitting whenever they shall pretend that it is so; which they may make use of not to secure their own Liberties and Estates, but to gratify their own Humours, or else the Ambition or Revenge of great and factious Men.

So that unless there is some Power that is irrefrangible, from whence there lies S.C.R. 160. no Appeal, it is impossible for any Government to subsist. And though it 160.

is not necessary that this Power should be always in the Hands of one Man Bid. p. 161.
yet if God hath placed it in the Hands of a Prince, there must be irrefragi-
ble, because he is it. For if once it be made lawful to refit the Sup-
reme Power where ever it is placed, you divulge humane Societies, or at least expose them to perpetual Disorders and Convolutions. Factious and ambi-
tious Men will still find Pretences to refit good Princes as well as bad, and no Government can be any longer secure than whilst ill-deserving Men want Power to refit.

"Now then to pass a true Judgment on this whole Matter, we must not only consider what present Inconveniences we may suffer from the irrefragable Power of the worst Tyrant, but also what an irreparable Mchief it is for ever to unsettle the Foundations of Government. We must consider whether Civil Government be the greater Blessing to Mankind, or a Tyrant the greater Cc Curfe;"
"Curfe; whether it be more desirable to endure the Infolence and Injufice of the ge ne re tyrant, when the Power falls into such a Hand; or for ever to be deprived of the Security of Government, and the Beflings of Peace and Or-der. And therefore, there is great Reafon why God fhould fo severely forbid the Reffistance of all Princes, though the crueleft Tyrants you can imagine; and why we fhould quietly and contentedly submit to this Divine Ap-pointment, because the Reffistance of the Supreme Powers (were it once al-lowed by God) would weaken the Authority of all humane Governments, and exfope them to the Rage and Frenzy of ambitious and difcontented States Men, or wild Enthusiats. And this, I think, is a fufficient Anfwer to this Pretence, that the Afpilte limits our Subjeftion to Princes to the regular "Exercife of their Authority."

P. I fee we are even come where we fet out, to the Nefcefit of an irrefiible Power, and the Mischief that muft follow, if the People ever judge for themselves; which indeed is but the fame Argument in Politicks which the Church of Rome makes ufe of for the Necefit of an inftallable Judge in Spirituals; because otherwise, if the People judge for themselves in Matters of Re-ligion, there would nothing follow but Anarchy and Confufion in the Church; and that there would be as many Religions as there are Men. And fo you likewise urge, that if the People may ever once come to judge when they are aflaulted, enlaved or oppreff'd, and should have a Right of making Reffistance, nothing but Anarchy and Confufion muft follow in the Commonwealth. And truly I think the Argument is as good for the one as the other: And as I hope we may be always good Orthodox Christians without fuch an inftallable Judge in matters of Faith, fo I think we may be loyal Subjects to our Prince without in-veiling him with an irrefiible Power of doing with us whatever he hath a mind to.

But since you have only repeated what you have faid at our laft Meeting, when we firft began to debate this Queftion, fo I muft beg your pardon, if I re-fresh your Memory, and again repeat my Anfwers. In the firft place, I deny that it muft follow, that if once it be made lawful to reftitute the Supreme Power where ever placed, this muft dissolve Civil Societies, or exfope them to perpet-ual Disorder; because (forfeth) fome factious and ambitious Men will find Pretences to reftitute good Princes as well as bad. For firft I have all along fuppo-ed the Commonwealth Civil Society as good as dissolved, before fuch Reffistance is lawful: And therefore, the Convulfions or Diforders of a Civil War can fcarce be worse than if fhould ever be the State; and until the People are under this Condition, I grant factious and ambitious Men may make Pretences to reftitute good Princes, as well as bad, and may find fome Followers as wicked as themselves to take their part. Yet this Infection feldom or never feizes upon a whole Nation, who hath always Power and Affeption enough for the Supreme Powers to join with them to fuppofe fuch Rebels. I grant, we ought always to consider whether Civil Government be the greater Benefit to Mankind, or a Tyrant the greater Curfe; and I do never fuppofe fuch Reffistance to be lawful, but when the Power falls into fuch Hands, that they may call themselves Governments, yet the People are almost as totally deprived of all that Security, and fuch Beflings of Peace and Order, which they may juftly expect from it, as if they were in a State of War. And therefore, as you fuppofe that God Almighty forbids the Reffistance of the moft cruel Tyrants, becaufe this Reffistance, were it once al- lowed, by giving the People a Power of judging, would weaken the Authority of humane Governments, and exfope them to the Rage and Frenzy of ambitious and difcontented States Men, or wild Enthusiats: And this you think a fuf- ficient Anfwer.

And on the other fide; if this Reffistance be in no cafe lawful, though in ne-ver to great Extremities, and that the People muft not judge when they are fo cruelly ufed, as that it is no longer to be endured, not only the Princes of this World fince the Power of Peace and Or-der be as fere a Tyran as thefe Inftruments of Tyranny whom they may hire and employ to that purpose; by which means all Government whatsoever will not only be absolute, but arbitrary, and without any fufficient Obligations to either Mercy, Juftice and the Common Good, than what the tyrannical Will or Humour of one or more Men shall please to allow. So that
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that the Lives, Liberties and Estates of a free People or Nation shall be in as bad a Condition as if they were Slaves, if all means of defending themselves by their own Obedience, or joining with one another, would be wholly denied them. And whether God can ever be the Author of such an Institution, I appeal to your own Reaion to judge, when you are in a more sedate and equal Temper.

If I see fit in vain to argue this Matter any longer with you; and therefore I must tell you, that I cannot but look upon these Doctrines of Passive Obedience and Non-re sistance, as true Christian Doctrines; since the ancient Fathers of the Church and Primitive Christians did always both believe, and practice them; and in imitation of whom our own Church of England (which, I think, of any in the World come nearest to the Primitive) doth likewise maintain the Thirty Nine Articles, Canons and Homilies; whereas you can shew me no express Text of Scripture, nor Testimonies of the Fathers, nor Examples of the Primitive Christians to justify this Resistance; which whenever you can do, I shall be of your Opinion; And if you dispute the Truth of the Practice of these primitive Christians, of which the Reverend Primate hath made so ample a Collection in that Treatise you now shew me; I thank you for your kind offer of it, but I do not now need it: For since I began to consider this Controversy with you, I have carefully read over that Treatise, and I cannot find that this said Collection out of Prophane as well as Ecclesiastical Writers, will prove any more, than those Principles, which I own to be true, and yet will not impugne this I here defend.

In the first part of this Discourse it is proved by Scripture, as well as other Testimonies, that the Authority of all Sovereign Powers is from God, which I also allow; yet doth it not hinder but that the Conquest and Submission of the People is a necessary Means or Condition of conveying this Authority, when God doth not please to make or nominate Kings himself. *ady, That the Persons as well as Power of Sovereign, though wicked Princes, is also sacred and irreproachable; yet this is to be understood whilst they continue to act towards their whole People as the Ordinance of God, and by virtue of that Divine Commission which they have received from him.

In the second Part of this Discourse it is proved from Scripture, Testimonies of the Fathers and other Authors, that particular Subjects are bound to obey the Supreme Powers in all lawful and indifferent things, or else to submit and suffer the Punishment in case of their unlawful Laws or Commands. As also to bear with any Violence and Injury that may be offered to them, rather than to disturb the publick Peace and Civil Government of the Commonwealth, which I also allow.

*ady. That in the Time of the Primitive Church, and before the Christian Religion was settled by Law, and become part of the Civil Constitution of whole Kingdoms and States, it was unlawful to refit the Supreme Powers in cause of Persecution, though to Death it self, for the Testimony of Christian Religion; which I have also allowed through this, whole Conversation. Yet none of these Quotations, as I can see, do reach the matter in Controversy between us, and affect it expresly to be absolutely unlawful for the People of any Kingdom or Nation to make use of defensive Arms, and refit the intolerable Violence and Tyranny of the Supreme Powers, if they shall happen to make War upon their People, and go about to take away and subvert the main Ends of all Government, viz. the Preservation of Mens Lives, Liberties and
Civil Properties. Neither do they any where affect, that in limited or mixt Governments, such as most of those now in Europe, where the People, by the Fundamental Constitutions of the Government, or the after Concessions of Princes, retaining their own absolute Power, enjoy divers Privileges and Liberties, unknown to those who live under absolute Monarchies: That such a People may not, upon the manifest Invasion of such legal Right by force, resist and defend themselves and their just Rights, against the violent Invasion of the Prince.

M. I cannot deny but you have fairly enough represented the Chief Heads, or Principles, which the Reverend Primate undertakes to prove in this excellent Treatise: And I think you have yourself granted enough to confute all you have already said. For in the first place, if it be unlawful for every particular subject to resist the Supreme Powers, it will likewise follow, that it will be also unlawful for a whole Nation: For a whole Nation is only a System or Collection of particular Persons, and Universals have no real Being in Nature; but only in our Ideas: So that if it be unlawful for every particular Person to resist and defend himself in case he is injur'd and opprest, it must be also unlawful for a whole People, which consists of Individuals, to make such Resistance; and it is a Rule in Logick, that nothing can be affirmed of Individuals, which may not also be affirmed of the whole Species.

So likewise if you grant, That the Primitive Christians ought not to have resisted the Supreme Powers in case of Persecution for Religion, I think it will likewise as well prove, that they ought not to resist upon any account whatsoever, since certainly there cannot be greater Wrongs or Violences committed in the World by Supreme Powers, than to allow them an Irresistible Power of putting those to Death that bear witness to the Truth of the Gospel, since a whole Nation may be as well thereby destroyed if they prove firm to the Christian Religion, and that the Prince continue obstinately cruel. And you might as well argue, that patient Suffering without Resistance ought not to be exercised in this case; because it is destructive to Mankind, and the Quiet of a Civil Society, as to argue from the same Reason, that a whole Nation is not obliged to suffer without any Resistance; when their Lives, Liberties and Properties, are invaded by the Supreme Powers. So that if the Primitive Christians might not resist the Roman Emperors, when they made so great a part of the People, and were so vast a Multitude in the Roman Empire in the time of Tertullian, as he tells the Emperor Severus, in his Apology for the Christians, to this effect: "That had they a mind to proceed open Huility, and to practise secret Revenge, could they want Numbers of Men, or Force of Arms? Are the More, the Martens, or the Fastians themselves, or any one particular Nation whatsoever, more in number than they, who are spread over the whole World? They are indeed not of your way, and yet they have filled all the Places you have: your Cities, Islands, Fields, Towns, Assemblies; your very Towns, Tribes and Wards, yea the Palace, Senate, and Judgment-Seat.

Nor need I to mention at large the famous Story of the Theban Legion, who all of them suffer'd Death rather than they would either Sacrifice to Idols, or resist the Emperor's Forces, tho' they were between Six or seven thousand Men, and might have fold their Lives dear enough: And if an Emperor may mutter so many thousand demands for your Resistance, I see no reason why he may not put a whole Nation of Christians to Death by the same reason.

Nor will one of your Reasons which you bring for it, signify any thing, that the Christians were to suffer without Resistance, because Paganism was then the Religion established by the Law of the Empire; for if a Municipal Law, as this was, ought to be over-ruled by the Natural Law of Self-defence, when they happen to clash, then the Christians who lived under the Heathen Emperors, might lawfully have taken Arms against the Government, because they were deprived of their Lives and Fortunes against all Equity and Humanity: For to persecute Men to a remarkably regular and peaceable, both in their Principles and Practices, is as manifest a Violation of the Law of Nature, as is possible. And if it was lawful for them to resist, then they seem bound in Conscience to do it whenever they had a Probability of prevailing: For without doubt it's a great Fault for a Man to throw away his Life, impoverish his Family, and encourage Tyranny, when he hath a fair remedy at hand.

F. If
Dialogue the Fourth.

F. If you had a little better remembered what I have already said on this Subject, you might have spared these Objections; for as to the first of them, it is rather a Logical Fallacy, than a true Answer: For in the first place, I have all along asserted, that no Man ought to give up his Right of Self-defence, but in order to a greater Good, (viz. the Publick Peace, and Preservation of the Commonwealth.) And therefore Dr. Ferri, and others of your Opinion, do acknowledge, that Daniel might have made use of defensive Arms to defend himself against those Cut-throats that Saul sent to take away his Life, though he might not have resorted Saul's own Person; and you yourself have already granted, that no Man can want Authority to defend his Life against him that hath no Authority to take it away. So that if this Law of Self-defence is sometimes suspended, it is only in Submission to a higher Law of preferring the publick Peace of the Commonwealth, or Civil Society, which being once broken and gone by a general Violence upon all Mens Lives, Liberties and Properties of that Nation or Kingdom, that Obligation of maintaining the publick Peace being taken away, every Man's Natural Right of not only defending himself, but his innocent Neighbour, again takes place. And therefore your Logical Maxim, that nothing can be affirmed of Individuals, which may not be affirmed of the whole Species, signifies nothing in this matter; for every Individual had before potentially a Right of Self-defence, tho' they were under an Obligation not to reduce it into A, till the Bonds of that Civil Society were dissolved; and then it is true, they do not then resit to maintain that Civil Government which is already gone, but to get out of a State of Nature, and set up a new one as soon as they can.

But as to your second Objection, which I confess hath more weight in it than the former, I shall make this Answer; That you yourself have given a sufficient Reason why a whole Nation, or Church, that professes the Christian Religion, cannot be destroyed by all the Malice and Persecution that can fall upon it by persecuting Monarchs; for you tell us, that it is the special Privilege of the Christian Church, above the rest of Mankind, that they are God's peculiar Care and Charge; and that he doth not permit any Suffering, or Persecutions, to befall them, but what he himself orders and appoints: And that it is a great Happiness to have our Condition immediately allotted by God. So that it seems it cannot be in the Power of the cruellest Tyrant utterly to destroy Christianity, in any Country where it is truly taught, by all the Persecution that he can use. This was the State of Christian Religion while it was in its Infancy; and in which we may observe more particular Declarations of God's Providence by Miracles, and the Divine Inspirations of his Holy Spirit, than after it was grown up, and that all the World became Christians. In its Infancy, 'tis plain that Princes could not destroy it, because it was supported by Miracles, and supernatural Means; but in the other State, when Christianity was once grown up, settled and able to shift for itself, by being made the Religion of the Empire, and the greatest part of Mankind embracing it in those and other Countries, Princes then could not destroy it if they would, because their Subjects had then a Right to it, and a Property in it, as much as they had to anything else they enjoyed, and consequently might be preferred by the same Humane Means. Thus during the State of the Jewish Church in the Wilderness, and for some time in the Land of Canaan, we find the Children of Israel fed, and delivered from their Enemies, by Miracles. But after they had been long settled in it, and had renounced the immediate Government of God, they were then left to preserve themselves by the same natural Means with other Nations.

And though I grant that such Persecutions, whenever they fall out, are very prejudicial to the Peace and Happiness of those Nations that labour under them; yet this is no sufficient Reason against Patient-suffering for Religion without Resistance: For since our Saviour is the Author of our Salvation, and hath ordained that it shall be propagated not by Force or Resistance, but by Sufferings; and that he hath promised us an eternal Weight of Glory for our submitting our Wills and Natural Affections to his Divine Commands; it is not for us to dispute the Reason of it, since that he who pleased to bestow upon us so great a Benefit without our Defence, much more will give it to us upon what Conditions he pleases, though never so hard to be performed. Yet is this to be so understood, as that this Suffering for the Testimony of Christ, may serve for that great End for which he ordained
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ounded it, (see) the Propagation of his own true Religion, by our bearing Testimony to it, in our courageous and patient Suffering, which in a Kingdom or Nation where Christianity, or any true Profession of it, is become the general and National Religion, cannot now be suppos’d to be necessary. And this may serve also for an Answer to your last Reply: For though I own, that the Municipal Laws of Commonwealths cannot abrogate any of our Natural Rights, but only in order to some greater Good or Benefit residing therewith; yet certainly the Reveal’d Law of God may, and doth in some cases abridge us of divers of those Rights, which Men by the Law of Nature might have made use of.

But as for your Quotation out of Terrissus, tho’ I have good reason to question the very Matter of Fact, since I can hardly believe, that how numerous soever the Christians might be, or whatever Mistake they might have made privately by setting the City on Fire in the Night-time, which he also mentions a little before, as one of the Ways by which they might have revenged themselves: Yet do I not think, that they were then either for Strength or Number sufficient to have made any considerable Resistance, if they would, against the Pretorian Bands, and other standing Legions, which were then, if not all, yet for the greatest part Heathens: The most part of the Christians of those Times confining chiefly of the meaner and mechanical Sort of People, altogether undisciplin’d and unarmed; and so perhaps these Christians were under no other Obligations to Non-resistance, than what the particular Providence of God had brought them to, as the French Protestants, who remain still in France, are now under, that is, Obligations of Fear, and not of meet Confidence.

And as for your Example of the Tiberian Legion, though it is true they might have fold their Lives dear before they had been killed; yet would this Resistance have serv’d them to little purpose against the rest of the Army, which might consist of 30 or 40000 Men, all Heathen, and headed by the Emperor himself: But what if after all this flirr about this Story, it should not be true? for Euchirius and Successus, who lived nearer the time in which this Action is suppos’d to be done, man no mention at all of it, though they had very good occasion to do it. The first Writer that ever made any mention of this Story, was Euchirius Archishop of Lyons: who did not write this Act of the Martyrs till above 15 Years after the thing was done; and he is also followed by one Abo in his Martyrology, who lived likewise some time after him, when writing of Legends began to grow in fashion. But granting all the Matter of Fact to be as you relate it, it proves no more than what I have already granted, that the Christians were at that time obliged to lay down their Lives for the Testimony of Christ, rather than to make any Resistance; but that this Precept is of a confinant and eternal Obligation, when the Ends for which it was ordained, are no longer of any use, and when our Religion is established by such Laws as the King himself cannot abrogate or dispense with, I utterly deny: And certainly, if you were not very much blinded with the Prejudice of these Notions of Paffive Obedience and Non-resistance, you would not leave all the People of England at the Mercy of a Popish King, to be dragged out of their Lives, Liberties and Eftates, as the Protestants have been in France and Savoy, whereas the King shall please to put them to that severe Trial.

M. You have given me a very long, and I wish I could say a satisfactory Answer; and I fee, provided it would serve your turn, you do not value how much you villify the Sufferings of the Primitive Christians, by making them not of Ability to make any considerable Resistance, if they would. Though Tertulian expressly affirms the contrary; and so you likewise take upon you to follow the Example of a late Doctor, and to question the Truth of the Story of the Tiberian Legion; though it might not be committed to writing before Euchirius published it, yet might he very well have received a faithful Account of this matter either by Tradition, or by some private Memorials that might be kept of it in that Church; since they suffered this Martyrdom not far from Olidanum, a Place now call’d Martinbich in Villains, a part of Switzerland, and not far from Lyons; so that he might very well have a sufficient Information of such a remarkable Action as this was.

Nor
Dialogue the Fourth.

Nor doth what you say, favour left of a Lutheranarian Principle, whilst you maintain, that a patient Submission to the Supreme Powers is not of confiant and eternal Obligation in all Circumstances, which is contrary to the Opinion of the Primitive Fathers, and also of the Church of England. But if St. Paul's Doctrine be true, that we are not to do the least Evil that God may come; and if our Saviour hath enjoined us, not to reftiff the Supreme Powers upon any account whatsoever, and also to lay down our Lives for the Testimony of the Truth, we ought certainly to observe his Commands, let the Confequence be what it will, though it were to the total Destruction of a whole Church, or Nation; Since God, if he pleafes, may lay the just Confe of his Providence lay faith severe Judgments upon us; who can also infinitely reward us for our patient Suffering of them in the Life to come.

R. I think I may, without any Crime, quaff the Truth of Territians's Account of the Power the Chrifians had to make any considerable Refiftance in his time; for sure he may be out in such a nice Matter of Fact, since he could be guilty of fuch great Errors in point of Doctrine: For before he turned Mockiani, he was like our Quakers, and thought all Refiftance, of what kind foever, unlawful; and therefore he tells us, in his Apologia, "Idem fumus Imperatoribus, qui & vnusmodus refi*; and a little after, "Quadragesimum mifum non vivi in Imperatorum, sed in quendam," etc. To be in the Treatie he write upon that Subject.

And as for the bare Practice of Primitive Chrifians, they are nor of any general binding Example to us, unless the Principle they go upon be true; since I doubt not but many of them suffered Death out of a pure Defire of Martyrdom, of which Sufpicion Severns tells us, they were more covetous, than Men were in his time of Bishops; insomuch that it was a common thing even for Women and Boys to offer themselves to voluntary Martyrdom, that the Council of—- was forced to make a Decree on purpose to forbid it.

And as for the Truth of the Story of the Theban Legion, it not being recorded by any Writer of the Age in which it is said to have been done, I think a Man may very well question its Reality without any Sufpicion of Hereby: And when I can see tho' Arguments answered by you, or any Body else, which the learned Doctor you mention hath brought against it, I will give more Credit to it than now I do. But you may call me a Person of Lutheranarian Principles as much as you please in this matter; until you are able to prove to me by better Arguments than you have done hitherto, that the Doctrine of Non-refiftance in cafe of Persecution for Religion, is of confiant and eternal Obligation, unless it be in the fame cafe in which the Primitive Chrifians were obliged to fuffer, rather than reftiff; and till this be done, I fear not fuffering under St. Paul's Codex of doing Evil that Good may come of it; and unless God had in downright Terms commanded it, I will never believe but that I may have a very good Right, in such a Government, as ours, to defend my Life againft any one that would take it away upon the bare Word of Religion; nor can I think it a Doctrine fittable to the Justice and Goodness of God, to ordain a whole Nation to faf as a Sacrifice to the Cruelty or Superflition of any one, or more Men.

But since you are pleased to urge me with Examples of Primitive Chrifians, who chose to die rather than reftiff or rebel againft their Prince, may give me leave likewife to tell you a few Stories, wherein their Primitive Chrifians have not fhow'd themselves fo fanch in this manner as you would make them.

In opposition therefore to your Theban Legion, I may fet those Legions that composed the Army in Gaul, and which faluted Julian (afterwards the Apo#ate) Emperour, contrary to their Oaths of Allegiance to the Emperour Conflantinus; renouncing which, they took an Oath to the former, whill the latter was yet alive; and had certainly fought against him, and refifted him with a witnesses, had he been enhanced to have died by the way, before they could meet to decide the Querre.

Mr. Pray give me leave, Sir, to interrupt you a little, though I cannot deny the Matter of Fact to be as you lay, and likewife that this Army was for the most part Chrifian; yet they were, I fuppofe, drawn in partly out of Hatred to Conflantinus, because he was an Ariam, and partly out of Compaffion to Julian, who was at that time upon very ill Terms with Conflantins his Kinman, the whole

Fi. Arm. Mereillius Lycs
Army suffering many Hardships for his sake, for whom they had a great Love and Esteem. But certainly their Loyalty to Julian is very commendable; for though immediately after the Death of Constaninus, he openly declared himself to be a Heathen; yet notwithstanding that, and his Persecution of the Christian during his whole Reign, we cannot find that either the Soldiers, or any other Christian, ever resisted or rebelled against him; but that they look’d upon it as unlawful to resist him, may appear by several Authorities out of the Fathers of that time.

F. Since you cannot deny the Matter of Fact, you strive to extenuate it by their Haerted to Constaninus for his Apostacy from the Catholick Faith; and the severe and rigid Treatment of Constaninus: But if their Haerted to him, because he was an Arian, could make them join with Julian to rebel against him, pray tell me why they might not have rebelled also against Julian, after he had declared himself an Apostate from the Christian Faith? Could they have had such another Leader as Julian himself? But he resigned too small a time, and was too constantly at the head of his Army, to give them any opportunity to serve him as he had served his Predecessor.

And indeed this Army of Julian’s was but too obedient to him, since we find that though they had been Christians before, yet at the time of Julian’s Death they were then in Profession Heathens; for you will find in all the Ecclesiastical Historians, that when after the Death of Julian, they chose Jovian Emperor, he at first refused it, saying, that he being a Christian, would not command Heathens; whereupon they confessed themselves to be all Christians; but certainly this had been a very impertinent Objection, had they been publicly known so at that time.

And though I grant, Julian countenanced the doing of a great many violent things towards the Christians; yet it is certain that he never made any Sanguinary Laws against them, but rather forbid them to be put to Death, or to suffer any Hardship on the account of their Religion; though I confess the Heathens, because they thought it would be acceptable to him, put many Christians to Death by Force and Violence: So that however he might be pleased with it, and converse at it, yet did he never enact it by any publick Law, or Edict; or if he had, do I allow the Christians a Liberty to have taken Arms, and rebelled him upon the account of Religion? For though I own, the Christian Religion had been established by Law by Constaninus the Great, yet was it not so thoroughly settled as to forbid the free and open Profession of the Pagan Superstition; the Heathens being admitted to all Offices and Commands, as well as the Christians, and might freely perform all the Rites of their Superstition, publick Sacrifices to their false Gods only excepted: So that if Constaninus by his Edict could without any Rebellion, shut up the Heathen Temples, and give the Christians the publick Liberty of professing their Religion, why should not Julian have the like Prerogative, since his Power was alike supreme and absolute, to recall those Edicts, and to make quite contrary ones, if he had so pleased?

And though I allow own, that the Christians did not actually rise in Arms against Julian; yet that there were many of them would have done so, is very likely, since they openly pray’d for his Destrucion, and gave him very undutiful, sallow, nay reproachful Language, upon the account of his Apostacy, whenever he came in their way. And thus some of those who are called Fathers, were of an Opinion, that an Apostate, though an Emperor, might be put to Death. Pray read, what I have lately transcrib’d out of the Writings of Lucifer Calarisanius, (whom St. Jerome calls a Man of a wonderful Constaninus, and of a Mind prepared for Martyrdom) who writing to the Emperor Constaninus, says thus to him: “Pray theew not one of the Worthippers of God, that ever spared the Adversaries of his Religion: And before he reads him his own Doom out of Deut. 13. 1. If there were any among you a Prophet, or a Dreamer of Dreams, saying, let us go after other Gods (for the Orthodox always charged the Arians with Idolatry) that Prophet, or a Dreamer of Dreams, shall be put to Death. You see what you are commanded to suffer.” [And again.] “Hear what God hath ordained by Myself, is to be done with you, for perverting me to revolt from God, Deut. 13. 6. If thy Brother, the Son of thy Mother, or thy Son, &c. once thee secretly, saying, Let us go, and serve other Gods, thou shalt surely kill him, &c. Here it is commanded, that my Brother

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Dialogue the Fourth.

"...shall be put to Death for inviting me to forfake God." [And in pursuance of this Doctrine, he tells him a little further to this purpose;] "That if he had been in the hands of Marsman or Princes, and should have gone to live after the manner of the Heathens, without doubt they would have killed him with the Sword, which he repeats twice for fear he should forget it.

And this Treatise being sent for by the Great Atheist, and being by him perused, he was so far from condemning any thing in it, that, as you may fee in his Letter to this Lucifer, (which is in the same Volume from whence I transcribed this) he highly praiseth him for writing it, and calls his Book, the Doctrine of the true Faith, besides many other Commendations, too long here to be repeated. And as for Julian himself, Socrates the Ecclesiastical Historian, writing of the manner of his Death, says, that it was believed by many that he was killed by some Christian Soldier of his Army, whom he applauds for so doing.

M. I cannot deny but the Carriage of some Christians of those Times, even of those who are called ancient Writers or Fathers, might be too untuteful, and may be attributed to the morose, monastick Temper of the Father you have quoted, though a great deal of this sort of Carriage may be attributed to that Christian Zeal which the Jews called the Spirits of Fortitude, and the Greeks called παθορικ, which we render Bulderii or Confidence, and which did often transport them to say those indecent things to persecuting Kings, or their Governors, which had been infeffurable in any Man's efe on another occasion; and this was not only in Words, but Actions too. That is, the Emperor#Procclus, or Decius, (for my Author doth not know which it was) would have entered into the Cathedral Church of Antioch in time of Divine Service, Babylas the Bishop, standing in the Church-porch, thrust the Door against him, telling him, that he would not suffer him, who was a Wolf, to enter into the Sheepfold of Christ. And we also read, that Valentinian (who was afterwards Emperor), being then an Officer under Julian, and waiting upon him to the Door of a Heathen Temple, gave the Priest a Box on the Ear, because he offered to sprinkle him, being a Christian, with his profane Holy Water: Yet I confefs, Theodorus commends the Action; and says, they after that Valentinian Emperor, him who had before struck the Priest: And therefore, I wonder to what purpose you quote such Passages out of ancient Writers, and the Actions of Primitive Christians, which, if you are a Man of that Loyalty or good Breeding, as I hope you are, you will not yourself approve of.

E. I do not tell you I quote them for our Imitation; but only to let you see, that the Actions of those you call Primitive Christians and Fathers, are not by your own Confession to be the only Pattern for us to follow; so that indeed their Practices can signify nothing to us, unless the Principles they acted by were suitable to the Laws of God and right Reason; unless you will have no Precedents to be good, but what shall rest with your Humour, and those Principles you have already imbibed: And if Babylas the Martyr might, without any Sin, thrust the Emperor out of the Church by force, and that Valentinian was commended for striking the Emperor's Priest on the Face, I think here are by your own Confession two sufficient Primitive Examples of Resilience, both of the Emperor's Person; as also of those Commission'd by him, as certainly this Priest was, or else he could not have had no Right to have exercised his Idolatrous Worship, after the Temple had been flush up under Confession and Conflagration.

But I now desire your Patience to let you see, that not long after these Times, the Christians, as well Soldiers as others, were not so through paced in these Doctrines of Passive Obedience and Non-resilience, as you would make them; for it was by the Power of the Christian Legions in Britain, that Maximus took the Boldness to rebel against the Emperor Gratian, and making himself Emperor, marched into Gaul against him; where the poor Prince being also deffered by his Christian Army, and forced to fly away with a few Followers, was not long after murdered by Andragatus; after which, this Maximus had so good Success, that he professed him not only of Britain, but Spain, Gaul, and part of Germany; and was also acknowledged for Emperor by all the Subjects in those Provinces, as well Clergy as Laity, though the Emperor Valentinian, the Son of Gratian, was then alive. And all the Bishops making their Applications to him, deffer'd him to call a Council in Gaul, to suppress the Herefy of Prifession, which he did in compliance with their Requefts; wherein they commended that Heretick, and his Followers,
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lowers, of Hereby; who afterwards (at the inclination of Ihazius; and some other Bishops) were by this usurping Emperor condemn'd, with divers others, to suffer Death; being the first that ever suffer'd that Punishment for Hereby. This Maxi-

mian, after five Years Reign, was overcome, and kill'd in Battel by the Emperor Théodoricus, who retook that part of the Empire to Valentinian II.

And farther, to let you see that the common People of these Primitiae Times, though they were not able to make Emperors so well as the Army, yet they were not so faint-blooded as not to resist the Emperor's Orders, whenever they thought they

entrenched upon their Religion, or that they went about to persecute them for it: I can give you a great many Examples out of Ecclesiastical History, of which

1. I will only here set down some few: The first is out of Servatus, Ecl. Hist. when the Emperor Constantius, at the Indigation of Maximian the Asian Bishop, had

perfwrd him to send some Bands of Soldiers into Paphlogonia, to terrify the Peo-

ple, and make them turn Arians. The Inhabitants of Maximian, enflamed with a Zeal for the Orthodox Religion, marched against the Soldiers, with a good

Courage; and having provided themselves with the best Arms they could, they

gave them Battel, in which few or none of the Emperor's Soldiers escap'd. And

though I confess, (the Historians say) these People were most of them Novationists; yet this Action ought not to be condemned only for that Caufe, since they were rather look'd upon as Schismatics than Heresects, and were in all things else,

except that one point, about reconciling the Episcop, very Orthodox; but in all other things were more strict and scrupulous, than the Catholicks themselves.

So likewise, when the Orthodox at Constantiople had chosen Paul for their

Bishop, but the Emperor resolving to make Macedonius Bishop in spite of their

teeth, and had sent Philip, the President, to Macedonia, that See as a hire was

about to give him Possession of the Church, though they were guarded all along

with Soldiers, yet when they came near the Door, the People made that Resistance, that they could not get in till several thousands of them were kill'd.

And some Years after, when the Emperor Théodoricus II. had banish'd St. Chrysostome, A.D. 394, the People flock'd together about the Palace, so that the Emp-

peror, to pacify them, was forced to recall him from his Banishment.

And when St. Ambrose was banish'd by Valentinian, at the Indigation of his Mon

arch Theodoricus, the People did resist all such as came to carry him away: And such

was their Zeal for the Truth, and Love to their imprisn'd Bishop, that they chose

rather to lose their Lives, than suffer their Pastor to be taken away by the Soldiers,

that were sent to drag him out of the Church. I could give you more Instances of this kind, from these Primitiae Times; but these may be sufficient to

shew you, of how little account the Doctrine of Non-resistance was in those

Times, after Christianity was once settled, and that the People supposing they

had the Law on their side. Neither do I produce them as fit to be imitated as

all like Cases, but only to let you fee, that the Example of those Times you call

Primitiae, are no sufficient Argument of what was lawful, or unlawful to be done.

M. Since you yourself do allow all, or however, most of these Actions, to be

unlawful, I think you might very well have spared the mentioning of them: since I

grant, that about the end of the 4th Century, when these things happen'd, not

only the common People, but also the Clergy began to grow very corrupt in their

Manners: And therefore, I cannot much value any Precedents that you can bring

in that time, to justify Resistance in Christians, unless you could shew me any

before the time of Constanine, which I am sure you are not able to do, much

less any Authority from the Primitiae Fathers, which judiﬁth Resistance of

the Supreme Powers upon any account whatsoever.

F. 'Tis a very hard matter to satisfy you by Quotations; for before the time of

Constanine, it is evident the Christians were not only weak, dispirited and dis-

armed, but also the Laws of the Empire against them. And I have already

granted, That Self-defence against Persecution upon account of Religion, was un-

lawful: but when, in the time of Constanine's Son and Successor, the People hav-

ing the Law on their side, stood upon their defence against those who would

have taken away their Lives, as in the Examples I have brought of the Inhabitants

of Paphlogonia, then the Iniances came too late; and the Age is grown too

corrupt, that they are no longer Primitiae Christians, than they observe your

Doctrines.
Dialogue the Fourth.

Doctrines. But as for express Precepts, or Testimonies out of the Scriptures and Fathers, to juftify Refiftance, I think it is very needless to bring any; for the great Mr. Hooper teueth us very well, that it is the Intent of the Scripture to deliver us all the Credenda and Agenda, necceffary to Salvation; but in other Matters; within the Compafs of our Reafon, it is enough if we have eviden Reafon for them, Scriptures non contradicent; and if the Scripture doth not forbid such Refiftance for Self-defence, (as I hope I have now proved to be lawful) I do not value whether there be any express Authority to be quoted out of the Fathers for it or not: For whatever the Scripture leaves free, I think the Fathers have no power to forbid.

M. I see it is to no purpose to argue longer with you from Primitive Examples or Testimonies: And therefore I come now to the left thing I proposed; B.P.O. 11, which is to shew you, that the Doctrine of our Church of England, as it is contain'd in the 39 Articles, Canons, and Book of Homilies, is as expressly for Passive Obedience, and against all Refiftance of the Supreme Powers, as the Primitive Church itself: And therefore I shall begin with the Infancy of the Reformation, under Henry VIII. for there I begin the Reformation of Religion in this Kingdom.

F. I pray, Sir, give me leave to interrupt you; for I must tell you, I will not be concluded by any thing that the King or Church, in those Times did publish concerning Matters of Faith or Practice; since, unless it were in that one Political rather than Religious Article, concerning the Pope's Supremacy, the Church in all other Speculative and Prædical Doctrines, was as much infected with Popery as it was before: And therefore, if you will have me to be converted by your Authoritie, I pray begin with the purer Times of Edward VI. and Queen Elizabeth.

M. I shall comply with your Desires, since you will have it so: And therefore I shall begin with the 39 Articles of the Church of England; where, in the 37th B.P.O. 11, Article, (as they were past under Queen Elizabeth, Anno 1563.) you may find it runs thus: "The Queen's Majesty hath the Chief Power in this Realm of England, and other her Dominions, unto whom the Chief Government of all the Estates of this Realm, whether they be Ecclesiastical or Civil, in all Causes doth appertain, and is not, nor ought to be subject to any foreign Jurisdiction."

It is true, this Doctrine is not limited to the particular Case of Subjects taking up Arms; but it seems to me by two necessary Consequences, to be deduced from it: First, Because if the Pope, who pretended by a Divine Right, had no Power over Kings, much less have the People any such Power, who pretend to an Inferior Right, as that of Compact. Secondly, Because the Article makes no Distinction, but excludes all other Power, as well as that of the Pope. And in truth, the Plea is the fame on either Side; the Pope says, as long as the Prince governs according to the Laws of God, and the Church, (of which he is the Interpreter) so long the Cenfures of this Church do not reach him: And say the People, as long as the Prince governs according to the Laws of the Land, (and of the Meaning of those Laws they themselves will be the Interpreters) so long are they bound to be obedient; but as soon as the King doth any thing that may contradict the Pope, then he is (deferredly, fay the Remnants) excommunicated, deposed, and murdered; and when he usurps upon the Peoples Liberties, then he ought to be deposed by the People. The Arguments on either Side are the fame, and for the most part the Authoritie.

F. I must confess, this is the firft time that ever I knew any Man go about to prove Passive Obedience and Non-refiftance out of the Thirty Nine Articles; and indeed I should have thought you might have deduced any thing else from those Articles, as well as that. But let us see, how what I have said in this Dialogue can come within the Contents of this Article, which only says, that the King or Queen of England is Supreme Governor over all Subjects, as also in all Causes, whether Ecclesiastical or Civil, and is not subject to any foreign Jurisdiction: From whence you raise this Argument. That if the Pope, who claims by a Divine Right, hath no Power over our Kings, much less have the People, who can pretend to no such Right as he does, but only that by Compact. Now pray tell me, whether this be conclusive, I allert, that the People have, by the Law of God and Nature, a Right to defend themselves against the Supreme Powers, in
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cafe they are violently assaulted in their Lives, Liberties, or Estates. Now I would very vain have you prove to me, how Restitution for Self-defence doth subject a Prince to any Jurisdiction, either foreign or domestick; and whether the People can have no Right to requite such Violence, unless they have also an authoritative Power over them?

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M. It is not worth while to dispute this any longer with you to do little purpose; and therefore I shall come to the Canons of the Church, and in particular, those of the Year 1640, which I look upon as a full Explanation of the Belief of our Church in this Point, where you may see, in the first Canon, these two plain Propositions, among others.

First, "That the most Sacred Order of Kings is of Divine Right, being the Ordinance of God himself, founded in the prime Laws of Nature, and clearly established by express Texts both of the Old and New Testaments.

Secondly, "For Subjects to bear Arms against their Kings, offensive or defensive, five, upon any pretence whatsoever, is at least to requite the Powers which are ordained of God: And tho' they do not invade, but only requit, St. Paul tells them plainly, they shall receive to themselves Damnation.

"From which you may plainly see, that this Convocation, which consisteth of so great a number, as I think, hath been for divers Ages, do clearly maintain Monarchy to be of Divine Right, and Restitution to be in no Cafe lawful.

F. I should grant the Canons of this Convocation to be a good proof of the Judgment of the Church of England, were it not for two very good Reasons I have against them: The one I will tell you presently, and the other I will keep a while to my self. In the first place therefore, I suppose you cannot but very well know, that this Convocation fate and passed the Canons, which likewise received the King's Confirmation, after the Parliament (that was summoned together with this Convocation) was dissolved: And the Writs by which they were being to the same purpose, I suppose you know, that by the Law of England the Convocation having been look'd upon as an Appendix to the Parliament, was till then always dissolved with it. For which reason all Acts and Proceedings of this Convocation were condemned, and declared null and void by the Long Parliament, that began to sit the latter End of the same Year: And which is more, was likewise condemned by the first Parliament after the Restoration of King Charles the second. And therefore, I think, I have very little Reason to own these Canons as conclusive.

M. In the first place, I might reply to what you have now said, that that very Parliament, which first condemned these Canons, afterwards ruined the Monarchy itself. In the next place, that in old time the General or Provincial Synods were not dependant upon the Assembly of the Estates at the same time. And I likewise farther anwer, that these Canons were made and confirmed in a full Convocation of both Provinces of Canterbury and York; and the making of Canons being a Work properly Ecclesiastical, these Canons were made by the Representatives of the whole Clergy of this Kingdom. 2. The Canons were confirmed by the King (which was all that was of old required in such Cases) and tho' the Convocation fate after the Dissolution of the Parliament, yet this is not without precedent, even after the hasty days of Queen Elizabeth, not to look back unto Henry VIII., or the Primitive Times. And as for your Objection, that these Canons were rebuked since the Restitution of Charles II. I say, that I quote them not as Law, but as the known Sense of the Church of England at that time.

F. Your first Answcr in behalf of these Canons is altogether invidious: For it was not this Parliament that ruined the Monarchy, but only the Rump or Fag-end of it, after it had suffered divers Violences and Executions of Members by the Army, and that the House of Lords (being by this Funto voted useless and dangerous) were shut out of doors. Nor is your second Answcr any more true; for anciently, in the Seven Time, the Writen Geneva or Great Council, and the General Synod, made one and the same Assembly, consisting both of Clergy-men and Laymen; and then all Matters of Ecclesiastical Discipline were enacted and confirmed by the King, as also the Spiritual as well as Temporal States. Nor can you shew me an Example of any General or Provincial Synod, which met independantly, and without the States of the Realm, until after the Reign of Henry I. when the Popes took upon them to encroach upon the Royal Authority, as also upon our Civil Rights, and by his Legates to call Synods, and make Ecclesiastical
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cal Constitutions, in which neither the King nor the Sates of the Kingdom had anything to do. And tho', I grant, that upon the Reformation the King was restored to those Rights, as Supreme Governor of the Church, which the Pope had before usurped; yet is not this Act of the Supremacy to be so understood, as to give the King all that Power, which the Pope unjustly took upon him to execute before; for that had been to make the Caeé little better than it was before: And therefore this Act of the Supremacy being only an Act of Reformation of the King to his prudential Rights, (of which that of calling Synods and Convocations was one of the principal) the King could not call nor continue those Assemblies in any other Form, or after any other manner, than they were held before the Pope's Uprisal, in taking upon him to call such independent Synods: And notwithstanding what you tell me, I am confident you cannot shew me any Precedent of a Convocation so called into a Synod, as this was, in all the Reigns of Henry VIII. and Queen Elizabeth.

But as for your last Reply, that you quote not thee Canon for a Law that obliges by a Civil Sanction, but as the Sence of the Church of England at that time; if they do not now oblige the Church neither in point of Belief nor Practice, as you seem to grant, it signifies no more to me what was the Sence of the greatest part of the Members of that Convocation in this matter, nor doth it any more shew me what is the true Doctrine of the Church of England, than if I should tell you, that because in the Reign of Queen Elizabeth the major part of the Bishops and Clergy of our Church were rigid Calvinists in the Interpretation of that Article about Predestination, that therefore Calvinism was then the Doctrine of the Church; nor is it now. And therefore we ought not to take that for a Doctrine of any National Church, unless the Synod or Assembly, that declares such Doctrine, be solemnly and lawfully assembled, according to the Laws and Customs of that Nation or Country wherein they are so declared.

M. Since you so much contefl the Authority of these Canons, I shall no longer P. O. p.
insist upon them, but I shall here shew you out of the Books of Homilies, to which all the Clergy in England are bound to subscribe by Act of Parliament (as well as to the Articles and Canons) as containing wholesome Doctrine, and nothing contrary to the Word of God (so that these Homilies do indeed thereby become a part of the known Laws of the Land) that in these very Homilies there are divers Passages so very full and plain against all Resistance of the Supreme Powers for any Cause whatsoever, that if you are a true Church of England Man, as I hope you are, you can have no just Reason to deny their Authority.

The Homily, et Exhortation to Obedience, was made An. 1547. in the Reign of King Edward the sixth; in the second Part of which Sermon of Obedience we are told in their Words (which I desire you to read along with me):

"That it is the Calling of God's People to be patient, and on the suffering Side, and to render obedience to Governors, also be Wicked and Wrong-doers, and in no case to resist and stand against them. Subjects are bound to obey them (i.e. Governors) as God's Ministers, altho' they be evil, not only for fear, but also for Conscience sake. And here, Good People, let us mark diligently, that it is not lawful for Inferiors and Subjects in any Cafe to resist and stand against the Superior Powers; for St. Paul's Words are plain, that who so withstandeth shall get to themselves Damnation. Our Saviour Christ, and his Apostles, received many and divers Injuries of the unfaithful and wicked Men in Authority; yet we never read that they, or any of them, caused any Sedition, or Resistance against Authority. We read often, that they patiently suffer all Troubles, Veracions, Slander, Pangs, Pains, and Death itself, obediently, without Tumult or Restitude. Christ taught us plainly, that even the wicked Rulers have their Power and Authority from God; and therefore it is not lawful for their Subjects to withstand them, altho' they abuse their Power.

Let us believe undoubtedly (good Christian People) that we may not obey Kings, if they command us any thing contrary to God's Commandments: In such a case we ought to say as the Apostle, We must rather obey God than Man. But even in the, in that case we must not in any wise withstand violently, or rebel against Rulers, or make any Insurrection, Sedition, or Tumults, either by force of Arms or otherwise, against the Anointed of the Lord, or any of his appointed Officers; but we must in such a case patiently suffer all Wrongs and Inju-
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"Injuries, referring the Judgment of our Caue only to God." And fee Part the Third of the same Homily: "Ye have heard before of this Sermon of good Order and Obedience, manifestly proved both by Scriptures and Examples, That all Subjects are bound to obey their Magistrates, and for no cause to resist, or withholding, or rebel, or make any Sedition against them, yea alloth' they be wicked Men."

I could find many more such Places in our Homilies, but I shall trouble you here with one other Passage out of the second Book of Homilies, compiled in the Reign of Queen Elizabeth, in which Book the Homily against Wifful Rebellion is full to this purpose.

"In reading the Holy Scriptures we shall find in very many, and almost infinite Places, as well of the Old Testament as of the New, that Kings and Princes, as well the Evil as the Good, do reign by God's Ordinance, and that Subjects are bound to obey them. The farther and farther any Earthly Prince doth ferve from the Example of the Heavenly Government, the greater Plague he is of God's Wrath and Punishment, by God's Justice, unto the Country and People over whom God for their Sins hath placed such a Prince and Governor. What shall Subjects do then? What a perilous thing were it to commit to Subjects the Judgment, which Prince is wife and godly, and his Government good, and which other wife? As tho' the Foot muft judge of the Head; an Enterprise very heinous, and which muft needs breed Rebellion; and is not Rebellion the greatest of all Mischiefs? A Rebel is worse than the worst Prince, and Rebellion worse than the worst Government of the world. Prince, that hitherto hath been. If we will have an evil Prince (when God our Saviour one) taken away, and a good one in his place, let us take away our Wickedness, which provoketh God to place such a one over us. Shall the Subjects both by their Wickedness provoke God for their deferred Punishment to give them an undiscree and evil Prince, and allo rebel against him, and virtual against God, who for the Punishment of their Sins did give them such a Prince? And this Doctrine is more strictly enforced in the second Part of that Homily, from the Example of King David, in his Carriage towards Saul; from which it will appear, that they did not suppose David to have used so much as defensive Arms against him, as you may fee by this Passage in it: 'That when for his most painful, true and faithful Service, King Saul yet rewarded him not only with great Unkindnes, but also bought his Deftruction and Death by all means possible, David was fain to fave his Life, not by Rebellion or any Refilience, but by Flight, and hiding himfelf from the King's fight.'"

From all which Passages out of the Homilies, I think, we may draw these plain Conclusions: 1. That as well evil as good Governments are to be obeyed as God's Ordinance. 2. That therefore they are not to be refited for any caufe, tho' they abuse their Power never fo tyrannically. 3. That the People are not to judge when the Prince thus abuses this Power, fo as thereby to make any disturbance. 4. That not only offensive, but also defensive Arms, if made use of against him, are utterly unlawful, and allo against God's express Command.

F. I grant, these Homilies seem to be very strictly penned against all Refilience, and ought to be (like all Discourses of this nature) positive and general; and perhaps if I were to preach a Sermon to the Common People on this Subject, it should be much to the same purpose; and yet for all that I might not believe, that it was absolutely unlawful for a whole Nation to defend themselves, in case of such extreme Violence or Oppreifion as I have already suppos'd; For when Preachers speake to Vulgar Auditors, they are not bound, like Cautians, to tell them all the referved Cales in which they may be ippened with in their Duty, left they might fife this Christian Liberty for a Cloak of Malicieus (as the Apostle tells us.) Thus if a good Preacher makes a Sermon againft Stealing or Murder, he may very juiftly tell the People (as the Authors of these Homilies do) that they ought not in any caufe, or for any Caufe, to commit Theft or Murder; without telling them all thefe Cales of meer Necellicity, in which it may be lawful to make use of the Goods of another, and allo to commit Homicide; as, when a Man is forced to take Violent' tho' without the Owner's Consent, for meer Preservation of Life, or to kill a Thief, or any other Man that affaults him, to save his own Life. So tho' the Authors of these Books of Homilies do lay, that that we may not
not in any wife, and for no cause, withstanding violently, or refiit, the Supreme Powers; but that we must suffer patiently all Wrongs and Injuries, referring the Judgment only to God. Yet since they have not particularly put the Cafe, as I have now done, viz. what is to be done in case a whole Nation or People are about to be destroyed, ruined or enslaved, and made Heathens or Papists, by the unjust, nay illegal Violence of the Supreme Powers; we may rationally suppose, that since they were good Men, and never intended to urge these things further than what the Scripture and Fathers have already done, that they never really intended, that a whole People or Nation, together with the Religion establisht, should be thus ruined and destroyed, rather than such Restraint should be made.

M. But pray tell me, can there be any thing more express against your Interpretation, or more plainly oblige us to a patient Suffering, without Restraint of the cruellest and most intolerable Tyranny, than these words I left read. 'The farther and farther any earthly Prince hath recourse from the Example of the heavenly Governor, the greater Plague be it of God's Wrath and Punishment, by God's Justice, upon the Country and People, over whom God, for their Sin, hath placed such a Prince and Governor. And by what there follows, you will see that tho' such a Prince be to great a Plague to them; yet they cannot without Sin judge such a Prince, or rebel against him, but must patiently wait God's leisure to remove him.'

If I consider this is the first and first Passage of any in this House, wherein doth not this expressly reach the Cafe here put; or if it had, do I think myself, or any Body else, obliged, because of one or two unawary Passages in this Homily, of which perhaps neither the Parliament nor Convocation closely considered the evil Consequence, or so much as knew they were there; things of this kind usually putting such great Assemblies by the Lump, as relying upon the Testimony of some leading Bishops or Clergy-men, without considering the Book of Homilies strictly, or reading over the whole. So that the Parliament might very well declare, that they contained found Doctrine, and nothing contrary to the Word of God, without affording the literal Truth of every particular Passage in them, much less, that all that is contained therein, is to be believed upon pain of Damnation; and therefore I must beg your pardon, if I cannot suppose that all Restraint whatsoever, though in the most necessary Cases of Self-defence which I have now put, is absolutely unlawful and rebellions; or that the Fathers of our Church ever intended to lay so hard a Yoke upon the Neck of this Nation, which neither they nor their Fathers were ever able to bear; much less, that there is hereby taken away from this Nation, defending those fundamental Rights and Privileges, which are essential to the Nature of the Government, and which, as it dillinguished it from a Dopolitical Monarchy, so it doth the Subjects likewise from those of other Nations: For if the Scriptures themselves were never intended to alter Civil Constitutions, much less certainly can either our Canons or Homilies do it. And therefore to deal freely with you, if the Canons and Homilies had been never so express on your side; yet, as long as no such Consequence can be drawn from the Holy Scriptures, I should not much value what they say, unless you can prove the Church of England to be infallible. And for this I have the Sixteenth and Twenty-Fifth Article of the Church of England (made in the Year 1563.) to bear me out. The former of which, concerning the Sufficiency of the Holy Scriptures for Salvation, runs thus: 'The Holy Scripture contains all things necessary to Salvation: So that whatsoever is not read therein, nor may be proved thereby, is not to be required of any Man, that it should be believed as an Article of Faith, or be thought necessary to be requisite to Salvation. Therefore if I have plainly proved, by sufficient Authority, that your Doctrines of Passive Obedience and Non-restraint are not expressly found in Scripture, nor by necessary consequence may be rationally deduced from thence, they cannot be required of any Man to be believed or practised as necessary to Salvation. And therefore, if either this Church, or any other, imposes such a burden upon me, I am not obliged to bear it: And this the latter of the Twenty-First Articles of the Authority of the Church expressly affords in these Words: It is not lawful for the Church to ordain any thing contrary to God's Word written, &c. After which it follows thus: So that besides the same, it ought not to enforce any thing to be believed for necessity of Salvation. Wherefore, that by besides the same, is to be understood any thing that is not found there may be proved thereby by necessary Consequence, as was laid before; and if the whole Church itself cannot do this, certainly no particular Church can.

And
And that divers of the most eminent Divines of our Church have used the same freedom with several other Doctrines contained in these Homilies, may appear from Dr. Hammond's, Dr. Hylin's, and Dr. Taylor's, with several other eminent Writers expressly denying, that the Church of Rome is guilty of Idolatry, or that the Pope is Antichrist; tho' both these Doctrines are as plainly laid down in the Homilies, as the Doctrine of Non-reistance: And yet none of these Men are ever taxed by those of the Church of England, for quitting her ancient Orthodox Doctrines. And I desire you to give me a good Reaon (if you can) why it is more lawful and excusable to part with the former of these Doctrines than the latter?

The like I may say also for the Doctrine of Predestination; which tho' expressly alfered in the 3d Articles of the Church of England, as interpreted by all the Bishops and Writers in the Reign of Queen Elizabeth and King James, as also the Bishops and Divines sent as Delegates from our Church to the Synod of Dort, who joined in the Interpretation of that Article, in the strict Calvinistical sense, you find, in all the Determinations of that Synod against the Doctrines of the Arminians, which then began to prevail; yet since the time that Archbishop Laud had the nominating of what Persons he thought fit to be made Bishops, Deans, &c. not one in ten of them but have been Arminians in all those Points, wherein they wholly differ from the Doctrine of Calvin, which is but the same with that of ourse Articles so interpreted; yet none of the Divines of our present Church, who hold these Opinions, are branded with Apostacy from its ancient Doctrine; but if any well meaning Divine, out of love to his Country, and to prevent Popery and Slavery from breaking in upon us, have but preached or publish'd any thing in derogation to these darling Doctrines of Passive Obedience and Non-reistance, he is first branded with Apostacy from the Church, in quitting its main distinguishing Character; and we have lately seen degrading, nay the most cruel Whipping and Imprisonment, thought too little for such a Man. But one may say of some Men, with truth enough,

\[\text{Das veniam Corvis, vetas confusa Columb.}\

M. Methinks, Sir, it is a great Presumption in you, and those of your Party, to make yourselves the fole Interpreters of those Places of Scripture which you expressly forbid all Refitance of the Supreme Powers; and then, when you have wrested the Scriptures to your own Mind, to cry out, that you are not bound to believe these Christian Doctrines, because you supposse they are contrary to Man's humane Reason, and the too great Love they have to their own Concerns; which is but the same way of reasoning which the Socinians and Arians make use of against our Saviour's God-head, because their narrow Understanding cannot comprehend it: But besides all this, I could shew you out of the best Writers of the Reformed Religion, both in this and other Protestant Churches, who interpret these Places of Scripture against all Refitance, in the same sense as our honest Homilies have done; but I find it grows late, and I have not time now to shew you them; or if I had, do I believe you would be much edified by them, since you make so high of the Authority of our Homilies. F. You are very much in the right of it, and indeed I do not desire you should put yourfelf that trouble, for the Papists themselves will not own any thing but this 3d Doctrines of our Church, which is not expressly found in the Council of Trèden, or the Council of Trent, or the Council of Rome, according to its Decrees, and therefore will not be concluded by the Sermons or Theological Treatises of any of the Divines of their own Church, as to any Thing or Matter in debate between us. And, I think, that am a Protestant, may certainly claim a like Christian Liberty; especially, since I am very sensible upon what Account too many Men have carried these Doctrines of Passive Obedience and Non-reistance so great a height as they have done of late Years: But since you tell me that so many learned Writers, both of this and other Protestant Churches, have been of your Mind; So I could also (if I had a mind to cap Quotations with you) produce a sufficient number of Places out of Luther, Calvin, Zuingius, and other first Reformers, as also of our own Writers at home, who have in many places of their Works allowed Refitance for Self-defence, in case of intolerable Violence and Oppression, to be lawful; and of these I can give you a large Catalogue, whenever you please to command me.
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But since they will convince you, as little as I suppose your Writers would do me, I shall forbear mentioning them any further.

M. I value not much what Luther, Calvin, or any other violent Men of that sort, may out of Passion or Inadvertency have written on this Matter; and yet I can shew you a Passage out of Calvin's Institutions, which expressly forbids Subjects or private Persons to take up Arms against the Supreme Powers, as you may see by his own Words in the fourth Book, cap. xx. Nemo enim est hic Domini effe armatus Dominicionis coronatus, ido proximo demandatum volo arbitratus; quibus nullum aliud quam parere & patiendi datum est mandatum. De privatis Hominibus fenerique.

And though I grant some Divines of our Church have allowed Resistance in some Cases, where the People, by the Laws and Constitutions of their Country, might lawfully have made such a defence of their Liberties, yet have they denied it in all other Cases, and particularly in our own Government; which is sufficient to shew, that whatever your Thoughts may be of it, yet that they thought it absolutely unlawful for the Subjects of this Realm to take up Arms against the King, or who acted by his Authority, upon any Account whatsoever; and therefore I must needs tell you, that I look upon these Doctrines of Passive Obedience and Non-resistance, as the distinguishing Characters of the Church of England from all other Churches.

F. That I do not much value the Opinion of Divines in matter of Politicks, since most of them that I have met with have been very unhappy, when they have undertaken to meddle with that Trade; yet I doubt not but I can shew you, that some learned Men of our Church have not thought all Resistance to be unlawful, in case the main and fundamental Constitutions of our Government shall happen to be affronted, or our selves, in respect of our Liberties and Estates, shall be reduced to absolute Vassalage and Slavery. And therefore, if your Divines will own Resistance, where, by the Constitutions of the Government, it is allowed to be lawful, I think I can also prove, that it is not only lawful, but necessary, in some Cases in our own, for the Preservation of the Original Constitution; and if this should prove so, I know not what your distinguishing Character of the Church of England will signify, unless you will make it necessary for particular Churches to have other distinguishing Characters than the Scripture requires, or the Constitution of the Government will allow of; and if so, I doubt the Church of England would get as much Credit by such distinguishing Characters, as the Calvinist Churches abroad do by making absolute Predestination one of the Terms of their Communions, the Scriptures (without their rigid Interpretation) teaching no such Doctrine. But as for your Quotation out of Calvin, it amounts to no more than what I have all along granted, That there are private Subjects ought never to take up Arms or resist that in Power, but when the good of the whole Commonwealth requires it. And therefore he, in the same Book, places a Power of Resistance in subordinate popular Magistrates, whereby you may see he grants the Thing lawful, but will not leave the Power of judging only to the common People, or Mobile; and so far I confess he is in the right, tho' I grant those Magistrates are, in respect of the Monarch, as much subject as the People.

M. I shall be glad to know what is the Divines of our Church they are, who have granted Resistance of the Subjects of this Kingdom to be in any Case lawful; for if there are any such, I confess they are Authors unknown to me; nor do I know any, but one, who was seemingly in the Communion of the Church of England, who hath addressed this Doctrine in his Book of Julian the Apostate; but you fee he was preferment confuted by those leathen Men of our own Church, who undertook him, and I think, have so well performed it, that I cannot tell whether it hath been more for their Glory or his Disgrace.

But as for what you say against making Passive Obedience the distinguishing Character of our Church, I confess indeed, it is very bad for a Church to hold evil or indifferent distinguishing Doctrines; but it is as certain, that it is very convenient for a Church to have distinguishing Doctrines, provided they be good ones, unless a Church can be obliged to err for Company, and to avoid distinction, which will not very well agree with the Text, that forbids us to follow a Multitude de Evit, nor with the Practice of the Primitive Christians, when the Orthodox were so few, in comparison, that bad there not been some Names of Note among them, they would hardly have been reckoned a number. But it
agrees admirably well with the Principles of Popery, thus to avoid Distinction, which hath its Numbers to boast of, when nothing else is to be said.

But there is one Lord, one Faith, one Baptism; and St. Paul reproves the Corruptions, because one cry'd he was of Paul, and another of Apollo, a third of Cephas, and the fourth of Christ: And must not then those that hold one Lord, one Faith, one Baptism, necessarily distinguish themselves from all that held more than one? And if some would say they were of Paul, and some of Apollo, and some of Cephas, might not others distinguish themselves from them, by saying they were of Christ?

But by this Doctrine, you pretend, we distinguish ourselves from all other Churches in the World, and so from the Catholic Church; and therefore you cannot comprehend, why any one should value a Doctrine so much on that score: but you may comprehend, if you please, that it was never pretended that this Doctrine is taught nowhere but in our Church; and, as I hope, I have proved that it was taught in the Primitive Church, and is taught in other Protestant Churches at this Day: But this is evident, by that Experience, that Passive Obedience is the distinguishing Character of the Church of England by Law established; whereby it is distinguished from the separate Congregations among us, both of Papists and Papists; and to justify this Distinction, we have the express Testimony of several of our Princes since the Reformation, and of the Laws themselves, too, that are still in force; which abundantly shew how dangerous the Principles of other Persecutions are to the State, as well as to the Church: Yet if other Churches have not so well preferred this Doctrine in its Purity, as ours hath done, as we would not provoke them to a Comparison, so we have no reason to be ashamed of it. But that many among them have taught this Doctrine, might be proved from the Writings of many of the most learned and pious foreign Divines; and particularly from a Book of a French Protestant lately written, who in the midst of Persecutions writes in defence of Passive Obedience, when he at the same time suffered what we feared.

F. Tho,' I confess, at a time when it was made criminal for any man publickly to maintain, that it was lawful to reft it, in case the King should go about to introduce Popery and arbitrary Government among us by Force; and that whoever went about to assert the Laws of such Resistance, was sure to meet (if not with Punishment) at least with loss of Preferment, and Disgrace; when the Doctrine of Passive Obedience ran so high both in the Presby and Pulpits; it was no wonder if any of our Church, who confided their own Safety, durst item so violent a Current; and yet even in those Times, the learned Dr. Fulcher, in his Treatise of Christian Loyalty, ch. 5. §. 2. doth, tho' cautiously, allow Resistence in such great Cases, as of a Prince's alienating his Kingdom, or of destroying his People in a hostile manner, to be lawful, if ever it should happen: But out of a needless fear, left this Doctrine of Resistence may be made use of as a Pretence for Rebellion, will allow it can scarce seem possible ever to happen in a King, Compos mentis, towards his whole Dominions. But I think I have already proved the possibility of it, and why they may not do the same in an absolute Empire, where the Prince would make them Slaves and Beggars, by invading their Liberties and Properties, I can see no Reason, but think I have given very good ones for it.

But as for the other Person you mention, who did openly in Print oppose this Doctrine of Resistence, whether he, or his Opponent, had the better in this Dispute, I leave to the indifferent Readers, who, I believe, will acknowledge that the Author of that Treatise did not so much forfeit his Reputation, by asserting a Right of Defence, where the Religion and Liberty are established by Law, and become a part of the Civil Constitution, as his Opponent did by introducing an arbitrary Imperial Power in this Nation, unknown to our Laws, whereby a few mercenary Red-coats, either of this, or of a Foreign Nation, should have, by the King's Commission, an irresistible Power over the Lives, Liberties and Estates of all Protestant. But since he went about to make us all Slaves by his Imperial Law, I do not at all envy him to generate a Performance; and yet for all that, I had much rather have that Man's Reputation, whom I opposed, tho' with all his Suffering, than this Gentleman's, tho' attended with all his Learning and Preferments.

But
Dialogue the Fourth.

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But as for what you say in Vindication of the Doctrine of Passive Obedience and Non-resistance in all Cases whatsoever, it signifies little, since it is grounded upon a wrong Supposition; for you fully take that for granted which is the Question yet to be proved, that because the Primitive Christians were against Resistance, in case of Persecution, therefore this must needs extend to whole Nations and Commonwealths, in all States and Conditions whatsoever; which, whether you have well proved or not, I leave it to your own Conscience to judge; for my own part, I cannot say you have convinced me with what you have laid on this Subject: So that if these Doctrines, as you have put them, are neither good in themselves, nor necessary to be believed or practised in all Cases, I doubt God may justly ask those who either practise or impose them on others, Who hath required these things at your Hands? And as for those Divines of foreign Churches, who, you say, have writ for these Doctrines as well as ours; as I know not who they are, or in what manner they have defended them; so do I not much value their Opinion, since they are more men one another as Leaped and Plungers as they, who have held the contrary. Nor are all Divines who maintain Passive Obedience and Non-resistance of your side, who write (which I also allow) that for particular private Subjects to resist Princes in revenge of private Injuries, and rebel against the Supreme Power for not being of their own Religion, or to take upon them to call Princes to an Account, or pass judgement upon them, or punish them for their Actions, altogether wicked and un lawful: Yet doth it not therefore follow that they do maintain all Resistance to be unlawful, in any Case whatever; 'tis per se impossible, if you were to make use of their Authority, you would produce them of your own side.

To conclude, I own myself for Non-resistance, in that limited sense I have now given; as far as it extends to particular private Men; yet that this Rule doth not extend to the whole Civil Society or People; and therefore, 'tis in my own private Capacity. I ought to submit to, and suffer the greatest Injuries, rather than resist a lawful and lawful Government; yet when the main Foundations thereof are once begun to be pulled up, as I am an Englishman, I think I am more obliged by all that both Sacred and Civil, to defend and maintain the Government in Constitution, of which I am a Member, than I am to obey the King's personal Commands; and that being the primary Obligation, ought to be discharged in the first place.

I shall no longer compare, whether the Divines that write for, or those that write against Resistance, are the wiser or more learned, since you yourself, it seems, allow, are join'd to own a limited Non-resistance, which you will have extend to private Persons, but not to the whole Civil Society or People: But I think it was quite false to maintain, that the Supreme Power, where ever it is placed, must be Infallible; and that a whole Civil Society, or People, who are not united, and not united by one government, can have no more Right to resist than single Englishmen. For to say that whole Societies have a Power to resist, and that particular private Persons, as Members thereof, have it also, is such a diminution of Supreme Power, as can never be consistent with it, for all Insurrections, whether private Persons or whole Societies, can have no Power, but what is derived from the Supreme; and therefore, if they have a Right to resist, even that must be derived from the Supreme Power, and so that Power must destroy itself.

But as for what you allege in your Justification, that Resistance may be lawful, without Subversion of the Government: To this I may reply, that if Subjects be no longer bound to Passive Obedience to the Supreme Power, the Government is hereby destroyed, for what more manifest Subversion can there be than this, That Subjects are now no longer in Subjection, nor Governments can be no longer able to govern? So that these arguments tend only to prove, that Subjects may subvert the Government, rather than suffer the Sovereign Power to do it. So that upon the whole Matter, if the Government must be subverted, you would have no Body have the doing of it but yourself.

However false your Premises are, and however weak the Proofs that you have brought for them, yet I see you are resolved to blacken the Consequences. For all Supreme Powers are absolutely Infallible. In which Dispute, whether you or I have been in the wrong, I dare appeal to any indifferent Judge; for I think I have sufficiently made out, that Resistance by the whole People, or
major part of it, against a general and intolerable Tyranny, is no diminution of Supreme Civil Power, nor inconsistent with it: Nor is your Reason for your Opinion any truer than the rest, that private Persons, whether taken single or in a whole Civil Society, can have no Power but what is derived from the Supreme, which is by no means so; for every private Man of the Society shall act by a Power precedent to it, viz. the natural Power of Self-preservation and Defence, which no Man ever absolutely gave up, neither for himself nor his Children, when he became a Member of that Commonwealth, tho' he was obliged for the Peace of the Government or Civil Society, to suspend that Right in order to a greater Good, which once falling, upon the Dissolution of the Government, every Man's original Right takes place.

As for what you say against my Notion, that Resistance is lawful, when it may prevent the Subversion of the Government, your Reply to this is really equivocal, and consists in that false or wrong Notion you have made the nature of our English Government, which you suppose only consists in the Preservation of the King's Personal Power, without any respect to the Laws or fundamental Constitutions of the Kingdom; and that as long as the People are in Subjected whether to legal Government or illegal Force, it is all one, the Government is still preserved; which is a great mistake: For the King receiving his Power from the Law, and having no Authority but what that gives him, when he overlooks the fundamental Constitutions of the Kingdom, he doth himself destroy the Government. And therefore, when in that Case the People do resist it is either to maintain it, or else to restore it to the State that was in before, so that it is not the People, in this Case, who have subverted it, but the King himself.

If it now grows late, and it is high time to give over; but if you please to give me another Meeting, I doubt not but to shew you, that by the original Constitution of this Government, the King not only hath the sole Supreme Power, but that by several Acts of Parliament all Resistance of the King, or those committed by him, are absolutely against the Laws and fundamental Constitutions of this Kingdom; and that they are all, by our Laws, Rebels, that dare presume to make any such unlawful Resistance: And I desire that you would give me a patient hearing in this Matter, because I have so great a kindness for you, that I would not have you lie under so dangerous an Error, which may happen to prove fatal to your Happiness, not only in the World to come, but also to the Safety of yourself and Family in this Life, if you should offer to put in practice what you have been taught.

F. Sir, I give you many thanks for your kind Intention towards me, since I do believe it proceeds from that real Friendship you have for me; tho' as for the former of those Judgments you mention, I hope I shall have no reason to be afraid, of it, for any thing I can yet see from those Arguments you have hitherto urged: But as for what may happen to me in this Life, I hope I have as little reason to fear it, since I believe this great Revolution will not only justify, but for the future defend those Arms, that have been taken up for the reuniting the union ancient Government of the Kingdom.

At I confess, Sir, that you have now too much the advantage of me, during these Times of Anarchy and Confusion; but yet I hope one Day to see this unhappy Nation again recovered from this fad Apotheosis; into which, I confess, too many have lapsed; and then I doubt not but these Primitive and Loyal Doctrines of Passive Obedience and Non-resistance will be again refused to their former Integrity and Vigour.

F. Well, Sir, all I can say to you is, that I see you are not only in love with Slavery, but also with those that would bring it in upon us; yet however, I think I may give you this good Advice, that if you are not pleased with what hath been already done, since you have had no hand in the doing of it, you would be contented enough to fit full and enjoy those Benefits that may thereby accrue to the whole Church and Nation; since I thereupon Setlement of the Protestant Religion, as also of our Civil Liberties, then we ever yet enjoyed.
Dialogue the Fourth.

M. I thank you for your Advice, and you know, as my Humor is not to be troublesome or clamorous against that which is not in my Power to help; so on the other side, I heartily wish that the Prince may now agree with his Majesty upon such Terms as may prove for the good of the Church and Security of the State. But pray tell me when I may be so happy as to see you here again, that we may fully resolve this last Question?

F. To Morrow I shall be engaged, but the Day after being one of the Christmas Holy-days, I shall not fail to wait on you at the same Hour, and am very well pleased to wait on you here, since I foresee a great part of our next Conversation will depend upon Matters out of Books, but yet very well furnished, and my Town are not in Town.

M. I shall expect your coming with impatience, and in the mean time I am your humble Servant.

F. Sir, I am yours.
DIALOGUE V.

Whether the King be the sole Supreme Legislative Power of the Kingdom; and whether our Great Councils, or Parliaments, be a Fundamental Part of the Government, or else proceeded from the Favour and Concessions of former Kings.

M. Sir, I am welcome. I was just down by the Fire. I was thinking before you came in, of the best Method of managing this important Question, whether by the Laws and Constitutions of this Kingdom, it can in any Case whatsoever be lawful to reft the King, or thofe that act by vertue of his Commissions. I shall therefore proceed in the next place, to the Proof of the second Propofition, in the Argument I at first propofed; or, to speake logically, the Minor in the Sylogism, viz. That the King of England is the sole Supreme, or Sovereign Power in this Kingdom, and therefore is irrefiftible, and that not only as to his own Perfon, but also with refpeft to all fuch who act by his Orders or Commissions, though the things commanded be in themfelves illegal.

F. I do not dislike your Method, though if you could never fo plainly make out to me the Truth of this Minor Propofition, yet it will come too late to prove, that all Refiftance of Supreme Powers is unlawful in all Cases whatsoever, since I think you have failed in the Proof of that firft Propofition. But since I do not deny the Truth of this fecd Propofition in fome Sense, I pray be as short as you can in the Proof of it.

M. I shall obferve your Defire; and shall briefly recite fome Authorities, as well ancient as modern, as also Acts of Parliament, which declare an abolish

...
Emperors, or absolute Civil Sovereigns. So likewit after that time we had W. Rufus dates his Charter to the Monastery of Shaftesbury, Secundo anno Imperii mei: And though the Title of Emperor hath been diffused, yet we shall find the Substance of it sufficiently challenged in that Letter of W. Rufus to Archbishop Anjelm, telling him, That he had all the Liberty in his Kingdom, which the Emperor Vol.Mc: Pa-challenged in the Empire: And the like was challenged by Henry the Fifth in all his Disputes with the Pope concerning the Investiture of Bishops and Abbes; and in all the Statutes of Premonstrance made by Edward the Third, the King’s Sovereignty, independent from the See of Rome, is expressly ascertained: And the Statue of the 15th of Richard the Second declares, That the Crown of England hath ever been so free, that it is under no earthly Subjection; but immediately subject to God in all things, touching the Regality of the Crown, and to no other. And the Statutes of the 24th and 25th of Henry the Eighth set forth, That this Realm of England is an Empire governed by one Supreme Head and King; and the Crown or Royal Authority is also thereby declared Imperial; and the Kings of England areเทarge-kings or Emperors of this Realm. So that I think, no Man need to doubt where the Supreme or Sovereign Power of this Kingdom refites.

319: I will not deny any of these Authorities you have now made use of: Yet Titles alas are no Proofs of Power; for it is very well known, that the German Emperor, notwithstanding that great Title, is not therefore unaccountable or irreifiable; since the College of the Princes Electors may depose him for Male-administration, or for violating any of the fundamental Constitutions of the Empire. And Mr. Selshus hath very well observed, in his Titules de Honneur, that this Supremacy, or Freedom from all Subjection, is not only challenged by our English Sovereigns; but also by the Kings of Denmark, Sweden, and Poland. The former of which yet was so far from being an absolute Monarch, that before the Reign of this King’s Father he might have been deposed for Tyranny, or Misgovernment, by the Electors of the Kingdom, as the King of Poland may at this day. And therefore these Titles may indeed prove a Freedom from all foreign Jurisdiction; but do not prove that the Kings are endued with an absolute Sovereign Power within the Kingdom, as you may see in these Examples I have now given you.

43: If you are not satisfied with these Proofs, I doubt not but to give you other Authorities, both out of ancient and modern Lawyers, as also Acts of Parliament, which sufficiently declare where the Supreme or Sovereign Power refites. In the first place, I suppose you will not deny, that it hath been the Prerogative of the Kings of England, time out of Mind, to coin Money, dispense with all Offices, and create new Dignities, as he should think fit; and by to make War and Peace, to make Laws; and in short, to do all things whatsoever that are essential to a Monarch. And that he alone is the sole Sovereign Power in this Kingdom, exclusive of all others, our ancient Lawyers, Glanvil and Fonsem, plainly declare; the formers of which says thus: Rex sibi hanc habeat potestatem, nisi turma sine Rege, qui ipse non potest habere delictum. The latter is also Tit. 7. a. 10. repeated by Bradlaun, and a very good Reason given for it, in these Words: Omni qui sumus habet Dei & ipse sub specie, nisi tumus sin Dei, potest non habere in regno suo, quia non potest habere delictum. Tit. 3. c. 9. sic absim forte praesidentis. Cum par in eorum non habet imperium: item nec multo fortior, ita. His subscript or potestatem habere delictum, quia sic et inferior sibi subjicte, & inferioris pars Power of Commanding.

61: But pray read what immediately follows: Ipsa autem Rex non debet esse sub Homine: sed sub Deo & sub Legi, quia Lex facit Regem; aut habet ipsum, quia Lex autem est Dominator, & non Lex. And though I grant, the King is subject or inferior to no particular private Man; yet that he hath a Superior or Master within the Kingdom, beside God and the Law (and he is not the sole Supreme Power) appears by a Passaige out of the famous Author, in the second Book: Rex habet superiorem Deum, item Le. C. 16. gen., per quam fuerunt off Rex; item Curiam sium, etc. Comites & Baronem, quia Comites duxerunt quasi Socii Regni, & qui habet Socium habet Mogisfrum: & idem si Rex fuerit sine frame, etc, Lege, debet et sium potest. From which Words it seems apparent to me, that this Author thought the King was not only inferior to the Law, but also to his Court of Parliament, called here curia Barmini, who might bridge or restrain him, if he trespassed on the Laws, which are here called the King’s Bridge. Nor can I conceive how this could be done, without some kind of Force or Constraint, if he refuse to receive this Bridge they would lay upon him.
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M. I do not desire at this time to enter upon this Question, concerning that Power, which I know some Parliaments have pretended to, of 
calling and raising Power, the King by force, if they supposed he invaded the fundamental Rights and Liberties (as they call them) of the Nation; and that for two Reasons: First, because it is not pertinent to our present purpose, of proving that the King is not the sole Supreme Power: As also because you very well know, that both Houasses died, in 13 Car. 2. by an Act of Parliament concerning the Misme, solemnly 
noticing all coercive Power over the King, or any Right in either, or both of the Two Houasses, of making Offensive or Defensive War against him. But if you have a 
mind hereafter to discourse further on this Subject, I doubt not but to prove to you 
other passages out of Bacon, and that old Trettell called Eira, that it was no Political Superiority in the Curia Baronna, but only a direct Power, or 
Moral Superiority, which they had of advertising the King of any unrighteous 
Acting or Injustice he should happen to do; and by Complaint, Admonition, 
and Entertainment, to impose upon him to amend the same, according to his Oath; 
but not by Coaction or Constraint. And in this sense they may be said (in a soler 
way) to put the Bride of the Law upon him, which may be called Oral Re 
straint; but as for Military Restraint against an unjust King, it is as inconsistent with 
our English Government, as with any other Monarchy in the World.

But you very much mislike, if you suppose that the King of England is not Supreme, because he is limited by Law; which really is no Objection, because in 
the Sovereignty, without any Diminution to his Sovereignty, may be limited in the 
Exercise of his Sovereign Power, either by his own Acts or Condecensions, or 
called by those of his Predecessors, under whom he claims. This is so certain, that 
there is no Supreme Power in Heaven or in Earth, which is not limited and confound 
ished in the Exercise thereof. Thus the Oligarchic Power of God himself is 
limited by his own Wisdom, Goodness and Justice, which are himself. So likewise 
the Powers of all Absolute and Unlimited Monarchs are only so comparatively, 
with respect to positive Laws; but as for the Laws of God and Nature, which bind their Consciences as firmly as any Civil Laws, they are bound to observe them 
and exercise their Sovereign Power within those Limits which they have and profess. 
But whether they have their Supreme Power from God, as we say, or from the 
People, as you allege, it is all one as to this matter; for they can have no Rights, 
neither from God nor the People, to make unjust and tyrannical Laws. And thus 
Political Limitation of their Power, in the Exercise of it, doth no more destroy 
the Essence thereof, than its flowing in Pipes or Channels destroys the Essence of 
Spring; since it is still the same, whether it runs confined through Pipes, or 
flows free and unconfin'd through the open Field. The Application is obvious.

But as for the precedent Words in this Place of Bacon, which seem to imply 
that the King owes his Authority to Law; he there only means the King 
in opposition or contradiction to a Tyrant, who makes his Will his Law, according 
to that of Chancellor Fortescue: Rex est qui bene regit, Tyrannus, dum populumibi 
credere non omittit dominacionem; quod hoc fecerit Lex bonam, quod Laps: ignam 
summum laevem. Where you may observe, that this Author makes a King's governing 
well, i.e. according to Law, a Mark of Distinction from a Tyrant, who opprises his Subjects by a violent Domination over them. And though he here 
supposes the King to be obliged by the Laws, yet that this Obligation is only 
Moral, appears by what immediately follows, when he says, the Laws do oblig 
their Legislae. Now if the King be the sole Legislator (as he here seems to inti 
mate) he must dissolve the sole Supreme Power; and if so, cannot be accountable to, 
or under the Coercion of any Superior Power; for then he would not be Super 
preme, as you said have granted long since.

F. Since you are not willing to enter upon that ancient Power, which you can 
not deny but the Great Council formerly had, of putting a Bridge upon the King, 
and restraining his Actions, in case he invaded the Rights or Liberties of the Peo 
ples; I shall not insist farther upon it now, for the Reasons you have given; only I must make bold to tell you thus much, that if they have not a Power of defending 
their just Rights, if forcibly invaded by the King, it would be all one as if they 
had none at all. Tho' I grant, that what you have said concerning the Limita 
tion of the Exercise of Sovereign Power, that it doth not derogate from the Abso 
luteness of the Power itself, is very true in all such Limitations which proceed from
the intrinick Nature and Perfection of the Being in which it resides; as in your Example of the God's infinite Power, being limited by his other Attributes. So likewise all humane Power (I own) are limited by the Revealed Laws of God; or theofe of Nature: But as to positive Laws you yourself assert, that absolute Monarchs are only obliged by them as long as they please; and consequently, that they may alter them, or derogate from them, as oft as they think good; as the Roman Emperors could revoke any Privileges or Immunities they had formerly granted to particular Persons, Cities, nay to Tributary Kings, or Commonwealths; and all this very justly, because as all such Grants were made only for the publick Good of the Empire, so they being the sole Judges thereof, when ever they found such Concessions to prove prejudicial to it, they might justly alter or revoke them. Now if the Power of our Kings be as absolutely Sovereign as that of the Roman Emperors; and only limited by their own free Grant or Condescension to the People, and not from any Power ab extra; such Grants or Condescensions, though never so solemnly palt into Laws in the Parliament, or Assembly of the States, are still no more than positive Laws: And then if the King is the sole Sovereign Power (unlimited by any thing ab extra) how he can so tie up his own Hands, as that he may not break or refund all those Concessions he had made; and thofe Limitations which he had put upon himself, if he think or declare it for the better benefit of the Commonwealth fo to do; I am not competent to the Law-maker and Judge of what is for the publick Good: Much less can I understand how he can obligate his Successors (who must still be supposed as absolute Monarchs as himself) to observe them. And therefore if all our Civil Rights and Liberties, were no other than what you would have them (the free Condescension or Self-limitations of Sovereign Power) I defire you would shew me what Security we can have for the Enjoyments of them longer than the King pleases: For it seems plain to me, that whenever he shall fancy the Liberties and Properties of the Subjects (both which you suppose were derived from him) to be injurious to, or inconsistent with his Prerogative, or Sovereign Power, he may lawfully disannul or revoke them: And in what Case we then should be (con sidering how things had like to have gone lately) I leave any indifferent Man to judge.

Nor is your Interpretation of Bracton's Words, Lex facti Regem, &c. any more than an absolute wrighting of them from their true Meaning, which is not (as you would have it) to dilinguish a King that governs by Law, from a Tyrant that makes his Will his Law: For every absolute Monarch that doth so is not a Tyrant, provided he direct his Actions according to the Laws of God and Nature, as you yourself assert; and a Prince may as well govern thus as the great Turks, Care of Muscovy, and all the Eastern Monarchies do at this Day, who are not countred Tyrants in so doing; but certainly you will say, that he would make a very curious English King, who would observe no other Rule. Nor do you less write Fortescue's Words, when you render them, Rex est ubi bene regit, Tyrannus, &c. Supposing the meaning of it to be, that this Author makes a King's governing (that is, pay you) according to Law, the only thing to dilinguish him from a Tyrant, &c. Whereas he says no such matter; but only Rex est, ubi bene regit, without any let Laws, as well as with them; as the first Kings you supposo did before they were limited by Laws.

But as for Fortescue's supposing the King to be the sole Legislator, that Word sole is of your own addition; for if he had said so, he would have contradicted himself, as I shall shew you presently. It is true, the King hath a great share in the Legislatire; yet hath he two other Bodies to join with him by a concurrent of co-operative Power in it; and I think I have all the antient Lawyers of England on my side. To begin therefore with Ranulph de Glanville, who was Chief Judicary in the Reign of Henry the Second: He gives us, in his Prologue to his Treatise of the Laws of England, this Testimony: Leges quamque Anglicanas, licet nec scire, Leges appellant non videtur absurdam (cum hab. iudicat Lex fi, quod Principi placit, & Legis habet vigorem) eas feliciter, quae, super additum in consilio definirent, Preces trium quidem confilii, & Principis accedens autoritatem, confilias eft praevalens. So likewise Bracton, in his very first Chapter, speaks much to the same purpose: Cum Legis vigorem habet, quae subdita de consilio & de consensu Magnatuum, & Reipublicae communis judicibus, autoritate

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torici Principis procedente, justa fuerit definitionem & approbationem. And also in his third Book, Chap. 2. when he speaks of the ancient manner of making Laws in England, he says: Quæ quidem fuerint approbati confessa Uteniam, & sacramento Regum confirmata, non passum mutati nec defrindi sine communis confessa Uteniam, & confilia eorum, quovum conficio & confensa fuerint promulgata. Where you may fee the ancient Authors plainly declare, that nothing hath the force of a Law in this Kingdom, but what is approved of and consented to by all Orders of Men, either by themselves or their Representatives: And, which is very remarkable, Brasian fupposeth the King's Authority, or Royal Sanction of a Law, may precede the Confect of the Great Council; which quite destroys that Notion, that it is the King's giving his last Assent, which gives it the Esteem and Viguour of a Law.

And with these more ancient Sages of the Law Fortunio also agrees in his 5th Chapter De Laudibus Legum Anglica, where he lays: Rex Anglia populam gubernat, non mere profite regia, sed politica: populus eadem ut legibus gubernatur quam ipsa fera. For, what follows is word for word the same with what Brasian had before in his first Chapter, and therefore needs not to be repeated: So likewise in the 16th Chapter, speaking of the Agriculte Legislative Power of Kings in some other Kingdoms, he thus proceeds: Sed non se Anglia statuus est passus, dum nedum Principes voluntatis sed & totius regni essentia confessa, quae Populi iuramentis, vel non eorum commodum procuaret. But if they after prove inconvenient, he immediately adds: Concito reformarse ipsa passus, sed non sine Communitates & Praeceptum regni illius est essentia, quae ipsa primus emanatur. To which you may also add an Authority out of that Learned Author St. German, in his Dialogue called the Doctar & Student, written in Latin, in the 10th Chapter, entitled, De fesso fundamento Legis Anglica. The Student thus speaks: Secundum fundamentum Legis Anglica stat in diversis Statuibus per Dominum Regem, & Praepotentes suis; & per Dominos Spirituales & Temporales, & per Communitates totius regni in Parliament, editis; ubi Lex ventionis, Lex divina, Con-structurum, Maxima foveat sive fundamentum Legis Anglica primus sufficiente maxime videtur, where you fee the Legislative Power is here attributed to the Lords and Commons jointly with the King. And therefore my Lord Coke, in his Notes upon the Statute of Woffinster, calls it a Complect Parliament, as consisting of all the Estates necessary thereto: For, says he, a Parliament making or enacting Laws consists of the King, the Lords Spiritual and Temporal, and Commons; and is no Act of Parliament, unless it be made by the King, Lords and Commons.

M. I shall not much concern myself with what your Common Lawyers, either ancient or modern, have writ upon this matter; much less what Sir Edward Coke, a noted Enemy to the King's Prerogative, doth maintain: Since I have as good or a better Authority than he, viz. that of the Year-Book of 23 Ed. 3. wherein it is expressly declared by divers Earls and Barons, and by all the Judges, in the Case of one Headlow and his Wife, who had a Suit with the King, That the King makes the Laws by the Assent of the Lords and Commons, and not the Lords and Commons; and that he could have no Peer in his own Land, and that the King ought not to be judged by them. So that it is, I think, evident, that the Law was primary and properly made by the King, and that the two Houses may have a co-ordinate, but no co-ordinate Power with him. And though at this Day I grant, that Custom hath made the Assent of the Lords and Commons necessary to the passing of all Laws, yet it is still the King's Word, or le Roy le veu, that makes them so: And I much doubt, whether even this were part of the ancient Constitution of this Kingdom or not, or proceeded at first from the gracious Favour and Permission of former Kings, as I could shew by a Series of Councils in the Saxo Times, if it were not too tedious to mention them particularly; therefore I shall only note some of the most remarkable.

For though I confess, the English Saxo Kings performed all great and considerable things by the Council and Advice of their Bishops and Noblemen, comprehended under the general Names of Wits; yet you will find by the Titles of allmost all the Councils in Spelman, Lambert, &c. that these Kings alone made their Laws, though by the Advice and Council of their Witenam Genera; which was then no other than the King's Greater Council, since he called what Great Men, and Bishops he pleased to it, and omitted the reft: And it is never mentioned, that they were made by their Consent, as necessary thereunto. Nay, sometimes we find that some of the ancient Saxo Kings made Laws without the Assent of their Great
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Great Council. Thus Office, King of the Mercians, being at Rome, out of his Royal Will, set Monifirce, gave to the Support of the People of his Kingdom, that should come to the cither, a Penny to be paid Yearly for ever out of every Family, whose Goods in the Fields exceeded the Value of Thirty Pence. And this he made a personal Constitution throughout all his Dominions, excepting the Lands conferred upon the Monastery of St. Albans. This Imposition and Law continued a long while in force, though we find it not confirmed by any Great Councils in the Time of his Successors; only in the Laws of King Edgar and King Edward it is enjoined to be paid as the King's Altar; which implies it was the King's Gift, and soley his, without the Confent of a Great Council.

But to give you a more particular Proof of the Supreme and Absolute Power of 7. E. M. G. our Saxon Kings, as well during the Heptarchy as afterwards, in making and enacting Laws; the Right is, that the first we have extant, which are those of Ine, King of the West-Saxons, who began his Reign An. 712. In the Preface to his Laws we find it thus express'd, which I shall rend out of the Saxon Copy, published by Mr. Lombard: I miss: by or with God's Gift, King of the West-Saxons, with hard. Archibald, the Advice or Council of Centred my Father, and Heddes my Bishop, and Ercenwoald my Bishop, and with my Aldermen, and else Wite, or Wife Men of my Kingdom, do command, &c.

Then in the first Chapter the King speaks in the first Person Plural: We bid or command, that all our People shall after hold fast or observe these Laws and Edoms. From this Preface you may observe, 1. That Kings are the Gift of God, and that God's Gift signifies the name with Dei Gratia; they are not the Creature of the People. 2. That Princes, for the better Government of their People, in the settling of Laws in Church and State, did then Confiit, Deliberate, and Advise with their Bishops, Noblemen, and eminently Wife Men of their Kingdoms, whose for the Widoemen they honour'd with publick Employments in their Dominions. 3. That after such Consulitation, Deliberation, and Advice, the Sovereign established and makes the Laws.

The next Inflation I shall make use of, is out of the same Author, in the Laws 112 on of King Alfred, where, in the Conclusion of his Laws about Religion, and preface to the Secular Laws, he faith, I Alfred, King, have gathered these (Sancti ongs) together, and caused them to be written; and then recites, that totho he liked not, with the Council of his Wite, he had rejected; and thoro he liked, he bad or commanded to be holden. And we may observe, that the King here speaks in the single Person, that He himself collect ed or chose, and also rejected, what laws he pleas'd. The next material Illustration where the Legislative Power then refi ded, may be found in the Laws of King Edward the Elder, where, after the Charge given to the Judges, the first Law begins, I WILL; and so in others. In the 4th it is thus exprest: Edward the King, with his Wite, that were at Exeter, firstly enquiring by what means it might be better provided for Peace and Tranquility, &c. In the 2d and 3d Chapter it is: I WILL also Declare, Procounce, or Sentence: And in the 7th, And I WILL. In which Laws we have none mentioned with the King, but his Wite, and his Commanding, Willing, or Pronouncing in the Imperative Mood, is observabte.

The next Laws I find are those of King Athelstan, which begin thus: I Athelstan, I command or bid all my Rieves (i.e. Prefects) of what Degree forever, to pay Tythes, &c. P. 396.

And this he commanded his Bishops, his Aldermen, and Prefects (who were the Judges in the Country Courts) to do the fame. In these Laws, We, Consort, is used, which, I suppose, is something more than Sommer understandings by his Vicire, a Saying, Speech, or Sentence, and property is, We will. But the Absolutee of the King appears mol't in the 26th Chapter, where it is express't, That if any of the Graves (i.e. Judges) do not perform these Commande, or be remiss in the Execution of these they be hath enjoined, he shall be punished for his Excess of Commendation, according to the Fines they use doen.

King Edmund is the next of our Kings, whose Laws are transferred to us, and Spei. Consil, the Proem tells us, that King Edmund assembled a Great Synod (or Council) to London, at the Holy Easter Tide: And the Perfons summoned are fill'd Godkind and Worldkind, i.e. Clergy and Laics. After the first six Chapters of Laws, in the Proem to the second Part of them, The King signifies to all Men, Old and Young, that he had writ Advice to the Assembly of his Wite, both Eloquencists and Laics: And in the
the Laws it is often said, Thessus cusanum. These we pronounce or appoint; and sometimes the single Person is used; and in other places, Us between us holden. It is held between us. Here we find the Great Council summoned by the King, and the constituent Parts of it to be the Clergy and Laity; yet still we find the Legislative Power in the King alone.

So likewise in the Title to King Edgar's Ecclesiastical Laws, it is thus: The Laws, which King Edgar, in a frequent Assembly or Council of the Servants of God, had ordained. Whether you may see, that the Enacting Part relates wholly to himself. The same King Edgar, in his Charter to Glastonbury Abbey, concludes it thus: Hanc privilegii populam Rex Edwardus, annvs 13 regni fuit, sive scripto apud Londoniain: communem Concilium optimatum suorum confirmavit. So that though it appears this was in the Presence of a Great Council; yet the Granting and Enacting Part proceeded wholly from Himself.

Concil. 352. The Preface to the Laws of King Canute, in Sir Henry Spelman, runs thus: These are the Worldly Conjunctions, that I Will or Command, with my Wives Advocta, that Men hold all over England. In most of the Chapters it is said, We teach, We bid, or Command, We forbid: And in the Conclusion, it is in the single Person of the King, Now I command all, and bid every Man in God's Name. And the Preface to the Latin Version of them faith, Hoc sunt instituta Canali Regis Anglorum, Ducarum, Norwegarum, venerate sapientium concilii ejus, ad laudem et glorio dei, & suam Re- galitatem, &c. Of this Canute, William of Malmesbury faith, that he commanded to be observed for ever all the Laws of antient Kings, especially those made by King Ethelred his Predecessor, under the Penalty of the King's Fine, to the observing of which, faith, that in his own time they were inworn, under the Name of King Edward's Laws; not that he had appointed them, but he had observed them. So that I think, upon the whole matter, nothing is more plain, than that our English, Saxon, and Danish Kings, did not only call Councils, and preside in them, but that the Legislative Power was lodged solely in themselves.

F. I perceive the Authority of our ancient Lawyers is a little too hard for you to answr with your usual Differences; and therefore you seemingly deny their Authority, though in effect you grant it, as I shall shew you by and by: But as for your Quotation out of the Year-Book, which you think sufficient to counterbalance all the Authorities I have brought, I think I may much better question the Judgement of tho' that gave that Opinion, since I can shew you that you yourself cannot allow it in all Points for Law: For in the first place, it is not there said, that it was so judged by all the Lords and Judges who were appointed to hear the Cause there mentioned; but only Fuit dis, que le Roy, &c. By which it seems to have been the private Opinion only of some one or more of the Lords or Judges there present: For it is not said, Faut adjudge. And if you will have it to have been the Opinion of them all, pray read what follows after: Fuit dis quem tempus le Roy Henry, & decora, le Roy fuit imploide comme seroit autre homme de Peuple. Mos Edward Roy fuit sit ordinum que homme fuirait vers Roy per Pension; Mos seules Roy fuit lor adjugez; sit seules per eux membris et lor Sutes. This is the Law, if the former part of it be Law, the latter must be so too; and then it will directly contradict what you have quoted before out of Brocas: That in the time of Henry III. (in which he liv'd) there lay no Remedy against the King, but only by Petition: Whereas this Opinion makes him, & before the time of Edward I. to have been liable to the same legal Proces with other Men. But notwithstanding, this Passage in the Year-Book may very well bear a legal Interpretation, only by supplying what is indeed to be understood after the Words, non pas les Pieris, le Com- mune, [viz. Sans affems du Roy] which as it was then true, so I hope it will ever be so.

But I think I can give you a much better Authority than this Year-Book, to prove where the Power of Making and Disposing with Laws doth truly reside, viz. The Solemn Declaration of the King, Lords and Commons, in the 25th of H.8. (a Prince as jealous of his Prerogative as any of his Predecessors) where in the Preamble, read these Words: It flanthe therefore with Natural Equity and "good Reason, that in all and every such Humane Laws made within this "Realm, or induced into this Realm by the said Sufferance, Content and Cuf- "tom, your Royal Majesty, and your Lords Spiritual and Temporal, and Com- "mons, representing the whole State of your Realm, in this your High Court of "Parliament, have full Power and Authority not only to dispose with these, "and
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and all other Humane Laws of this your Realm, as the Quality of the Perfons
and Matter shall require: Also the said Laws, and every of them, to abrogate,
or annul, amplify and diminifh, as it shall feem to your Majesty, and the Nobles
and Commons of your Realm, prefent in your Parliament, meet and conveni-
et for the Wealth of your Realm, &. 9. Whereby you may plainly fee, that
the Power of Making, Abrogating, and allo Difpenfing with Laws, is by this Act
affioked jointly to the King, and the Two Houles of Parliament ; and not to the
King alone.

But though I do not affirm, that they have a Co-ordinate Power with the King
in making Laws, yet they have a Co-operative Power therein, as yourself have
granted; for what is Co-operation, but a Power of working together ? and how
can three diftinct Bodies work together, without each contribute their fhare to pro-
duce the intended Effect?

M. Perhaps I may have been too unway in my Expreflion : But pray anfwer,
the Authorities I have brought from our ancient English Saxen Laws, wherein it
feems plain to me, that the King had then the Sole Legislative Power.

F. I grant, he had a chief Share in the Legislative Power; but not the Sole
Power, that is, He could make no Laws but in the Great Council, and by their
Content: And this you might have feen as well, if you had not iliily paft by
what made againft you; and therefore, in the firft place, to begin with your In-
flance of Oafia’s giving that Boon to the Roman School, I think the Authority you
bring for it is very flight: For though I own that Matthew Paris, who writes his
Life, relates this Donation to have been made at Rome, without mentioning any
Conent or Confirmation of his Great Council: Yet this feems but an imperfect
Account of the Matter; and according to the formal Way of the Monifh Writ-
ters of thofe Times, who are not fo exact in fuch Matters as they fhould be:
And therefore, though Oafia did give, or vow thefe Pence at Rome; yet the Gift
might receive its force from the Conent of his Great Council, after he came
home: Since all his Laws, and the Acts of his Councils are loif, unless it be one,
which Sir H. Spelman hath given us from fuch Remains as have been faved out of
the Libraries of feveral Monaftries at their Diflofution: And this contains no
lefs than the Conent and Confirmation of his Great Council assembled at Calcuth,
Ann. 840. for the Foundation and Endowment of the Abby of St. Adam, as allo
that of another Council at Verulam, for the conorning of divers other Lands of his
own to that Monaftry. Now I leave it to any indifferent Man to judge, whether
that King who could not beflow his own Demesnes upon the Church, without the
Conent of the Common-Council of the Kingdom, could give away at once the
30th Penny of all his Subjects Eftates for ever, without their Conents: I am fure
the Donation of the fame fort of Pence by King Edward the Confefior, which is
now to be found among the Laws of King William the Firft, is faid to be granted
Comnui Concilio Regis, and that the Saxen Kings could not beflow their Lands
is an evident Example; who, though he had given the Manor of Maling in Vol. ii. p. 546.
Suffex to Chrift-Church, Canterbury; yet becaufe his Principles, or Great Men, that
is, his Great Council confented not thereto, it was revoked, until King Egbert,
and his Son Ethewulf did afterwards renew the faid Grant, with the Conent of his.
A Great Council held at Kingfon, An. 840. as you may fee in the fame Volume,
lifted at. And I am fure after the Heptarchy, when our Kings were more powerful,
the fame King Ethewulf could not by his meer Prerogative grant the Tythes
of his Subjects Eftates to the Clergy, without the Conent of a Great Council of
his Bifhops and principal Men, held at Wincheffer, An. Gratia 855, and incruited
thus; Odonis illa domini Ethewulf Regis decima monaftrum & omnium honorum per ter-
Vol. iv. 

M. I grant, that perhaps these Kings could not dispose of their own Lands, or
the Eftates of their Subjects, without the Conent of their Great Council, any
more than the Kings of France could formerly; yet I hope they were absolute Mo-
narchs for all that.

F. I beg your Pardon if I have been somewhat long in anfwerling your Example
of King Ofa: But I will now fhow you, that they could make no more Laws,
than dispose of their own, or their Subjects Eftates, without their Conent; and
which you yourfelf might eafily have feen, if you had pleafed to have confuld

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Sir Henry Spelman as diligently as you have done Mr. Lambard: For there you might have found, that about the Year 712 King Ioo assembled a Great Council or Parliament, wherein he made Ecclesiastical Laws concerning Marriages, &c. and did other things, ad concordiam publicam promovendum per commune Consilium, &c. &c. addens: Vid. Chronic. Bremp. Col. tom Episcoporum, Principum, Procerum, Comitum, &c. amoris Sanitatem, &c. 843. linn. 14. Populorum tutam Regni. So likewise, if you will please to look into the Decem-Scriptores, you will find how Alberic's Laws were made by the Title of them, which runs thus: Hoc sunt judicia quae Sapientes Exeunt Cl本次 Adilign Regin indifferentam, &c. terram apud Periculum, &c. terrae apud Thamarisfeldium, ubi hoc definitum est & confirmatum est. So also King Ethelred held at London a Great Council, and made Laws, Consilis judiciv Regis Anglorum Esteliuredi, Procerumque suorum de rea Anglia, &c. Look also into the Title of King Ethelred's Laws in Brempson's Chronicle, where you will read these Words; Hoc est Concilium quod Esteliuredi Rex &c. sap. Col. 893. Sapientes sui consensu ad Emendationem &c. augmentationem pacis omni populari apud Wodestercam in Mercena Landa, id est in terra Mercenorum, &c. Whereby he Concilium, must be understood Law or Decree. To instance in one more out of the same Author: Vid. Col. 893. full, from the Title to another Set of Laws made by the same King: Hoc sunt Leges quae est Etheleden Rex &c. Sapientes sui consensu apud Venerem ad Emendationem pacis & felicitatis incrementum. See likewise in Monachism Anglicanum, the 1st Volume, Anno Dom. 1024. Canatur, Rex Anglia cum Consilii & Dcreti Archipresbyterorum, Episcoporum, & Primate suorum expulsit Clericos inhonesti vicentes ab Ecclesia. Sancti Edmundi, &c. monachos in villa consiliavit. And the same King Cnut bestowed divers Lands, and other Privileges, on the Monastery then called Briadiusworth (afterwards St. Edmundsbury) cum Consilii & Dcreti Archipresbyterorum, Episcoporum, Abbatum, Comitum aliorumque omnium Fideibus. The like we find in a Charter of King Edward the Conqueror: by which he granted divers Lands and Privileges to the Abby of Waltham; Cum Consilii & Dcreti Archipresbyterorum, Episcoporum, Comitum aliorumque Optimatum.

From all which it manifestly appears, that under the English Saxon Kings the Legislative, or Enacting Power, was in the Council of the Sapientes or Wits, conjunctly with the King; and that none of these Saxon Kings could pass any Laws, or make any considerable Alteration in the State, without not only the Advice, but Consent of their Great Council; which then confided of their Bishops, Great Lords, Principal Freeholders, and the Representatives of Cities and Towns, as I shall prove another time, and was not left to the King, ad libitum, to call whom he pleased thereunto. And as the Word Dcretum signifies Dcret or Order; so likewise may the Word Consilium here signify something more than bare Advice, vid. Agreement, or Appointment; which if you please to perfuge any ordinary Dictionary, you may presently satisfy yourself in.

But before I dismiss this Argument, I cannot but remark upon your Inference of King Edmund's making Laws alone, because he there speaks in the first Person plural; whereas if you will but confute the Prem to those Laws once again, you will, I doubt not, be satisfied of the contrary, for the Words are: That having asked Advice of the Council or Assembly of Clergy and Laicks, that is seemed good to them all, as well as to the King, and therefore we thus ordain: By which it appears, that the last Words, wherein the Ordaining part resides, refer as well to the whole Assembly, as to the King.

M. The Government of our English Saxon Kings, is, I confess, very dark and obscure; though, according to our ancient Historians, they seem to have been very absolute; though when we come to look into the Laws themselves, I confess they seem rather to have been limited Kings, than absolute Monarchs; though whether that Limitation proceeded from the original Constitution of the Government, or their own free Consent and Concessions, is a very great Question; though I rather incline to the former, and shall give you my Reasons for it when we come to discourse on that Subject: But in the mean time, I must tell you in your Reply to what you have said, that if we consider the Times not long after the Conquest, you will find the Supreme Legislative Power to have been then wholly in the King (as it is so full) notwithstanding some ambiguous Expressions to the contrary; or else our Kings would not be, what I think they really are, absolute Monarchs. But so here, as to Times less obscure, it is certain, that when the Norman Conqueror first came in, as he won the Kingdom by the Sword, so did
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it given it by his Sole Power: His Sword was then the Scepter, and his Will the Law: There was no need on his part of an Act of Parliament, much less of calling all the Estates together to know of them after what Form, and by what Laws they would be governed. It might as well be said of him, as in the flourishing and belted Times of the Roman Emperors: Quod Princi prae se, Invi habet Papam; that whatsoever the King willed, did pass for Law, and was the same of his Successors, being then Papae s, and having a Despotical Power over the Lives and Fortunes of their Subjects, which they disposed of for the Benefit of their Friends and Followers, Normans, French and Flemings, as to them seemed best: But as the Subjects found the Yoke to be too heavy and insupportable; so they addressed themselves in their Petitions to the Kings their Sovereigns, to have that Yoke made easier, and their Burden lighter, especially in such Particulars of which they were most sensible at the present time. By this means they obtained, first to have the Laws of Edward the Confessor, and by the same (that is to say) by pouring out their Prayers and Defiles unto them) did they obtain most of the Laws and Statutes which are now remaining of King Henry the Third and King Edward the First. From whom, as also from Henry I and King John, we may derive all those Privileges we now enjoy; most of which, as they were issued as the fist, either in form of Charters under the Great Seal, or else as Proclamations of Grace and Favour; so they carried still this Mark of their first procuring by those Expressions, The King wills that, the King commandeth, the King ordaineth, the King preserveth, the King grants, &c. And when the Kings were pleased to call their Estates together, it was not out of an opinion that they could not part with their Power, or dispense their Favourites as they thought good, or abate any thing of the Severity of their former Government without the Approbation and Consent of their People; but out of a just Fear, lest any one of the Three Estates (I mean the Clergy, Nobility, and the Commons) should infringe on any thing which might be prejudicial to the other two. The Commons being always on the craving Part, and suffering as much perhaps from their immediate Lords, as from their King, might possibly have asked some things which were as much derogatory to the Power they had from them (as their Sovereigns) and the King, the chief Lord of all. In this respect the Council and Content, as well of the Prelates as the Temporal Lords, was accounted necessary in passing of all Acts of Grace and Favour to the People: Because that having many Royalties, and large Immunities for themselves, with a more bare relation to the Person, and a greater Interest in the Honour of their Lord the King; nothing should pass unto the Prejudice and Diminution of their own Estates, or the Disabling of the King to support his Sovereignty.

F: I confess you have given a plausible Account concerning the Government of William I. whom you call the Conqueror. Whereas if it be more exactly look'd into, it will be found that he had no more Power of making Laws without the Consent of his Great Council, than any of his Predecessors; neither had he any such Despotical Power as you imagine, over the Lives and Fortunes of all his Subjects; for whether we consider them as Norman, French or Flemings, or whether as English, it will be all one: For if, as Dr. Brady supposeth, their latter were quite turned out of their Estates, and that they were by him wholly given to the former; then these French and Norman, being Conquerors together with him, would never have submitted to any other Government than what they enjoyed in their own Countries, each of which was then governed by Kings or Dukes, together with a Great Council, or Assemblly of the Estates: And we find, that when succeeding Kings would have oppressed and tyrannized over their Heirs and Defendants, they, together with the old English, took up Arms, and defended their Liberties, and never laid them down until they had obtained their just Rights and Liberties contain'd in the Great Charters of King John, and Henry the Third, And which (as Man. Paris himself tells us in the Reign of King John) contained for these two years, the greatest part of the ancient Laws and Customs of the Kingdom: And therefore by the Statutes, called Conformities Charterum, 25 Edw I, it is adjudged in full Parliament, That the Great Charter, and Charter of the Forest, shall be taken as Common Law. So that they were not any new Grants, but rather Confirmations of their ancient Rights and Liberties, as my Lord Coke very well observes in his excellent Preface to his ad Infinitorum; where he tells us, Then Magna Charta is for the most part p. 320.

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claratory of the principal Grounds of the Fundamental Laws of England; and for the
Regard, is Additional to supply some Defects of the Common Law: With whom like-
wise agrees one of his learned Successors, the late Earl of Clarendon, in his survey
of the Leviathan, when he tells us, That those Laws and Customs which were before
the Conquest, are the same which this Nation or Kingdom have been ever since govern'd by
to this Day.

And as for the Laws of Edward the Confessor, though it is true, that William the
Conqueror regnated and confirmed them; yet was it no more than what he was
oblig'd in Conscience and Honour to perform and observe, since he was admitted
to the Crown by the general Consent of the Clergy, Nobility and People; and
at his Coronation (as well as afterward) swore to observe the Laws of King Ed-
ward: And by the way, though these Laws are called the Laws of King Edward,
yet William of Malmbury long since observ'd, That they were called his Laws: Nam
qua satis, sed qua observaret; that is, he had only collected them into one body,
and ratified them with the Assent of his Great Council. And that these Laws
were more than once sworn to, and confirmed by King William himself, appears
by the Story of Frederick Abbot of St. Albans, who frightened him into a Confession
of them by Oath, for fear of a general Insurrection of the People: So that
if he, or his Son Rufus, made any Breaches upon their Liberties, they were, in
postliminis, referred to them by the Magna Charta’s of Henry I. King Stephen,
King Henry II. King John, and King Henry the Third. And those Opinions,
contrary thereunto, are branded by all Historians as notorious Perjuries and Wrongs
to the Subjects.

But that King William the First altered nothing material in the Fundamental
Constitutions of the Governments, whatever he might do in some less material
Customs or Laws, which he brought with him out of his own Country, appears
plainly by this, which you cannot deny, that he often assembled his Great Coun-
icil, (as his English Predecessors had done) and that in them were dispatched all
the great Causes and Complaints of the Kingdom. And for this, I will give you
the Telfimony of two very ancient Historians: The first is Rudolphus
de Diciro, who in Anno 1071, tells us, That the Plain of Wulian Bishop of Wor-
certer, was heard and ended in Confilio celebrato in loco qui vocatur Pedredda, oram Regis,
& Dobternbia Archipiscopi, & Primatibus tuis Regn. The next is Geronas Do-
beronenss, who thus relates it of Laurence Archiphsop of Canterbury; Eligebamus
eum Sanius eujusdem Ecclesie, & Episcopii, ac Principulis, Chiro, & Populo Anglia,
in Curia Regis, in Augusta Semita Maria. Here the Bishops & Principes, Bish-
ops and Princes, the Cleri & Populus, the Clergy and People, or Latiis, were the
same Persons, and only expressive of one another, and all had Voices in this
Election.

M. I pray give me leave to interrupt you a little: I will not deny but that
the Conqueror often assembled Great Councils of his Bishops, and Great Lords,
commonly called in Historians, Principes or Primates; yet I think I may boldly af-
firm, that there were no Englishmen in those Councils, or that they made any Laws
for the Benefit of Englishmen, who were kept under by those Normans, who then
enjoyed their Estates; much less was there any such thing as Commons either by
themselves, or their Representatives in those Assemblies, which then consisted
wholly of the King’s Feudal Tenants in Capite, and of no other, as Dr. B hath
very plainly shown us: And when King William made Laws, it is much to be
doubted whether he made them so much as with the Consent of his Great Coun-
icil, or not; for the Title to the French and Latin Copies of his Laws, runs thus,
put into English. These are the Laws and Customs which William the King granted to all
his People of England after the Conquest, or Subduing of the Land. They are the same which
Edward the King, his Kinman, before him observed. In this Preface we have only
to note, that the Laws are expressly said to be the King’s Grant, and the Supple-
mental Laws writ in the Red Book of the Exchequer, are by way of Charter, or
Grant, thus: Wilhelmus Rex Anglorum, &c. Omnibus dominibus sui Franci, & Anglii,
salutem; and all along the Authoritative Parts are expressed by Statuum, volumus,
terdecimns, problemns, praeceptns. So that by these Expressions in his Laws, the
absolute Sovereignty of the Conqueror in the point of Law-giving is manifested.
I shall content myself with a very few Authorities, because the matter is so plain;
Ordinariv Vitalis faith thus, Esamque (i.e. England) Wilhelmus Rex just Legibus con-
made
Dialogue the Fifth.

made subject. And Eadmer, Contemporary with the Conqueror, in his History,
thus: Ut sit aequus, quae pater salus & vita in Normannia fidelis, in Anglia feriase Et. 6.
seems to be, that all Matters, as well Spiritual as Temporal, depended upon his sole
Will. And though we have no particular Account of what Laws his Son William Rufus
made, yet we may presume, according to the Testimony of Hilbertian, that he was
altogether as absolute in those Councils as he call'd, as his Father; as may be seen in
Eadmer's Life of the Bishops of Winchester. So that in Eadmer, Bp.
certain he governed by his absolute Authority, raising what Money he pleas'd upon his Subjects. 'Tis true, that in the Reign of his Successor Henry the First, the
People found some little Relaxation, by reason of the Councils he made them, and
compromises between the Normans and the Saxons, and the Councils of 1139 and 1141, of which
we shall speak. And when he was dead, the Kings who followed were not much better.

So likewise Henry the Second, in a Great or General Council held at London, 1176, Sp. 337,
confirmed the Great Charter granted by King Henry the First, his Grandfather; Est. tom. 2.
of its being attested to either by the Bishops or Nobles; And as for the Conclu-
sions made at the Great Council of Clarendon, though that King made the Arch-
bishops, Bishops, and all the Clergy, Earl, Baron and Nobility, all swear to observe them; yet this Part proceeded only from the King, as
appears by their very Title thus, Affectis... And this... and the others of Henry's Councils with them, are
not in the same line. From whence it appears, that he was the King alone that decreed and confirmed the
Laws.

1. I shall not say much of the Great Councils in Richard the First's Time, since he in E. Horae,
did not reign long enough to call many, but in that held at Northampton, we find, Est. 1149.
that he had brought Bishops, and others; and that he was appointed to be given just into Shipings on every Carucate of Land throughout England,
Est. From whence I shall observe that the Words Res praecepta, confirmunt, &c. as they
are in the Historian, show, that the King had had the authenticative Power
Money was levied by the Bishops, and that Law was made of their
judge. But to come to the more General and publick Reign of King John,
where there were many Great Councils held, yet I shall instance but in some
ever of them mentioned in Mat. Pist., that of St. Albans, held by
the Bishop of Ely, in this King's Absence, where Res pecus Regis
was highly enforced, and whereby little of land and Limbs, the Laws of King
bom, his Grandfather, shou'd be kept by all in his Kingdom. From whence
we may observe, that the Laws had their Force only from the King's Authority

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may conclude, that the Petitions of the People were drawn into the Form of a Charter, and paied under the King's Seal as his meer voluntary free Grants and Concessions, without their Votes, Suffrages and Authority. And sometimes such Rights of Liberties have been bellowed and declared by our Kings, by way of Anfwer to the Petitions of the Lords and Commons; and that this Culfom is not yet discontinued, appears by the Anfwer of King Charles the Firft to the Petition of Rights, when no other Anfwer would pleafe the Commons but the King's express Affent to their Petition, in thefe Words, Sui Droiti faitil comme ef drofe. But to return to the Reign of King Henry the Third.

F. I befeech you, Sir, give me leave now to anfwer what you have already allledged out of our Historians for the Supreme and Absolute Power of our Kings, before we proceed further to less obfcore Times. And therefore I muft tell you, that you have in this long Speech of yours made ufe of all the Artifice of an Advocate for a Party, even in urging all that can any way make for you, and filly paufing whatever may make againft you. And to begin with the Story of King William the Firft, I shall not now difpute whether there were any Engliwife in thofe Great Councils, or whether they confifted only of Tenants in Capite,因而 I shall defert that Queflion till anon. But as for the English you have put upon the French Title of the Laws of this King, it is not fairly rendered; for in the French it is, Apres le Cœufect de la terre, which doth not always signify a Subduing by Force, but by any other ways of Acquisition different from that of Hereditary Succeffion; which Maff. Paris was long since aware of, when, writing of this King, he fays, Real Anglica ex Conquefciis dicitur, tamen quod hanc Edwardum, ac quod hanc curator, Regnum hic adhuc luctant, in quo habuiffe laetitia, & auctorem eam, de unam quod fiuefit. And the learned Sir John Sken, in his Book.England, and other Countries, writes thus, Conquefcius feguiferi Laundi quilibet omnis Perfonae appellation, qui rationem vel poftulat, private juste, vel finguari titulus, vel donatione, vel finguari aliisque contrahet. And therefore I very much doubt, whether or no the Latin Version of thofe Words, Apres le Conquefct de la terre, poft hubam terram, be as antient as the French Original, and be not rather the Version of some Clerk or Monk who lived long after.

But whether these Laws were not intended as well for the benefit of the English as Norman Subjects, I appeal to this Title itself, tho' you have omitted part of it.

V. Legis, Habitantur Lex et Confequefat dies quas Gallienses Reis concessit Universo Populo Angliæ poft Juftiam terram. So that unless the English were none of the People of England, these Laws were as well intended for the one as the other: And I appeal to that Charter of King William you have now quoted, whether or no it doth not begin, Omnibus hominibus fui Francis & Anglia; by which Words certainly the English, as well as Norman, had an interest in those Laws and Privileges therein granted. I mention this only by the way, in anfwer to what you have faid.

But to return to what I am chiefly concerned to speak of, the King's Sole Legislative Power. In the firft place, I shall not deny, but as this Kingdom is a limited Monarchy, so it is fuitable to the Honour and Dignity of the Monarch, that all Laws and Conftitutions fould run in his Name, and are often faid to be made by him, tho' in a Political or Legal Sense, they could not be made without the Advice and Conent of his Great Council or Parliament. And that this was the Culfom in the Time of William the Firft, as of all others his Succeffors, I need quote only the 35th Law of this King, in these Words, Præt Stannum de vico (felli Lider hominibus), qui hic habeatdatum & ejus suis juris præstend, et eum ut Confequeft. And the Common Concilium totius Regni subject præfidi. From whence you may obferve, that this King could not then make Laws without the Conent of the Common Council of his whole Kingdom: And tho' he might do many arbitrary and illegal Things to the prejudice of the old English Liberties, yet this was no more his Right, nor any more to be quoted as a precedent, than his feizing upon the Bishops and Abbeys Lands, and violentl taking away the Plate out of Church and Monaftries (as Historians tell us he did) could give him a Right to them. I have not much to obferve upon the Reign of William Rufus, since we have none of his Laws left us, if ever he made any. But that much we plainly find from the Historians, and especially Eadmer, that he called divers Great Councils of all the Nobility of the Kingdom; especially about his difference with Archbishop, whom,
Dialogue the Fifth.

whom, it is plain, he could not condemn without the Consent of this Great Council. But to come to the Reign of King Henry the First, it appears plainly by W. Malmsbury and Matt. Paris, that he was elected and crowned King by the common Suffrages and Favour of the Clergy and People; and certainly that Council, whose Votes could make a King, was also necessary to all such Laws as he was to make: And you yourself have granted, that this Charter of his was made in a Great Council; and it appears in Matt. Paris, as also in the Laws of this King, published by Mr. Lambard, That the Archbishops, Bishops, Barons, Earls, Wives, or, et alii, or p. 61. Sheriffs, Optimates & totius Regni Angliae, were Witnesses to this Charter. And I can tell you of a very antient Charter of King John, which recites that those Laws were made de Communi Consilio, & Assensu Baronom Regni Angliae. It being usual in succeeding Ages, at the Coronations of our English Kings, to confirm, make, and ordain Laws, de Assensu Baronom Regni, vel per Commune Concilium Regni, i.e. the Parliament, as it was afterwards called.

As for Henry the Second's Reign, it is apparent by the Laws of this King, in Spelmann's Councils, that he granted his Charter in a Great or General Council, and consequently they must likewise give their Assents to it, as well as to that of his Grandfather Henry the First. And tho' in the Constitutions of Clarendon, the King alone is said to have made or decreed them; yet nothing is plainer than that the King could not make them without the Advice and Consent of his Great Council; or else to what purpose were they to be called? and if their Assent was necessary, certainly they had also a hand in making those Constitutions.

But that the King could not condemn any Peer or Great Man of the Kingdom in their Days, without a legal Tryal in the Great Council of the Kingdom, I need go no further than a Council summoned by Hubert Archbishops of Canterbury, as King Richard's J u l i c i a r y in his Absence; where Roger Hepdten tells us, that having showed the Letters of Earl John to the Bishops, Earls and Barons, per Commune Concilium Regni dehisceunte eis, quod Comes Johannes dejacenturus; which interprets that Paillage you have quoted out of the same Author, that the King, in a Great Council, difized Gerard Cantwille and others; that is, by the Authority and Sentence of the said Council. And so likewise in the same Sene is to be understood those Words you mentioned, The King appointed to be given him, conventus fuit datus, two Shillings on every Plough-land; that is, he defined it to be given him by them: For if he could have taken it without their Consent, to what purpose did he propoce it in that Council? if he could have absolutely demanded it, why should he only requit or desire it of them?

So likewise for the Great Council in King John's Time, nothing is more plain than that they were Parties to all the Laws that were made in his Time; and that even the Great Charter was a Statute to which their Assent was likewise necessary, I shall shew you by and by, when I come to speak of the Great Charter of King Henry the Third, and the several Confirmations of it by his Successors. But if either William Rufus, King John, or any other King, ever levied any Taxes upon the People, without Consent of the Great Council or Parliament, it was contrary to our ancient Laws and the Liberties of the Subjects; and particularly to the 55th Law of William the First (part of which I have already cited) It begins thus: Volumus essiam et firmiter praemunere & concedimus, ut omnis liberii homines notiss Monarchia Regni nostri praedicti habeant, & servant terras suis, & possidere possint, bene & in pace libere ab omnibus excitationibus &c., & ab omnibus Translationibus; &c., quod nihil ab eis exigiatur, vel capitur, nisi Servitutem solum liberam, quod de jure nobis facere debemus, & facere incurramus, & preter statutum eis eit, &c. So that whatsoever was done at any time contrary to this Statute was illegal, and consequently ought not to be quoted as any part of the King's Prerogative.

But that the Nobility and People of England had divers Rights and Liberties before the Time of John, and of his granting that Charter, appears by its Conclusion in these Words: Sabuh Archepiscopius, Abbahsis, Prioribus, Templariis, In Matt. Hospitallaris, Comitisbus, Baronibus, Missibus, & omnibus aliis eis Eccleciasticis, Perfunq quam secularesbasis libertatis, quod prius habeaverunt. And as for the rest of the Liberties granted by this Charter, tho' they are said to have been granted from the King's mere good Will, yet that is recited only to make it more strong against himself, since the Nobility and People of England claimed those Liberties as their ancient undisputed Right. And the same Author (as I have already hinted) Iudae 554. expressly

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expressly tells us, that this Charter contained: *Maxima ex parte legis antiquitatis.*

And a little lower he relates where those Liberties were to be found: *Capitula quaeque legum & libertatum quos hic Magnates confirmaverunt parietem in Charta Regis Edwardi superim scripta sunt, partimque ex Legibus Regii Edwardi antiqui excepta.* So that they were not only the effect of the King's mere Grace and Favour, as you suppose. But if you please now to descend to the Reign of Henry the Third, and go downward, from which Time our eldest printed Statutes are dated, let us see if I cannot answer all those Arguments which the Gentlemen of your Opinion have thence brought for the King's sole legislative Power.

M. Tho! I do not allow of your Notion of the Conqueror's not being properly and really so, as I shall show you another Time, when I shall more particularly consider that Argument of the Right of Conquest in William and all his Successors; therefore I do at present readily assent to your Proposal, and it was the very thing I was coming to: And therefore I shall begin with the *Magna Charta of Henry the Third,* which begins thus, *Rex noster, that we of our free Will have given these Liberties.* The *Statuta de Scaccario,* anno 11 Hen. 3. begins thus: *The King commanded that all manner of Assizes, &c.* The *Statute de Diffritione Scaccario* made the same Year, runs thus: *It is provided and ordained.* The King walked: *The Statuta de Malbrige 12 Hen. 6th in. I. c. the King hath appointed all these Acts, Ordinances and Statutes to be observed of all his Subjects.* If we come to the Reign of his Son Edward the First, and begin with the Statute of *Welfinmüller,* it is there said in the Preamble, *These are the Acts of King Edward the First,* made at his first Parliament by his Council, and by the *Affent of the Archbishop, Bishops, &c.* And in the first Chapter it is said, *The King hath ordained and established these Acts.* And tho' I grant that in divers Statutes of this King, as in this of Welfinmüller, it is recited that the King, by the Advice of his Council, or *Affent of the Archbishop, Bishops, Earls, Barons, &c.* have made, provided, ordained and established such Laws; yet it is plain, that the enacting or declaratory part is wholly ascribed to the King, in all those Statutes wherein such Words are found, as I shall make it appear more plainly by the Statute of *Alfon Burnel,* made in 13 Edw. I. where it is said, *The King by himself, and all his Council hath ordained and established.* And in the Statute of *Welfinmüller,* anno 12 Edw. I. chap. 1. *Our Lord the King, in his Parliament at Welfinmüller, at the Influence of the great Men of the Realm, hath granted, provided and ordained.* In the Statute of *De iis qui ponendi sunt in Afficis,* anno 21 Edw. I. *Our Lord the King in his Parliament holden, &c.* hath ordained, thus, *&c.* The Statute of *Warren,* anno 14 Edw. I. runs thus: *Our Lord the King, at his Parliament holden at Welfinmüller, of his special Grace, and for the Affent he bound unto his Prelates, Earls and Barons, hath granted, that, &c.* 1 Edw. II. begins thus: *Our Lord the King hath granted.* The Statute of *Gower,* anno 10 Edw. II. begins thus: *It is provided by our Lord the King, and his Justices.* The Statute of *Carrigle,* anno 15 Edw. II. begins thus: *The King was the Justices of his Bench sented greying.* Whereas of late we have ordained, &c.

But if we come to the Reign of his Son Edward the Third, the Prefaces to most of the Statutes made in his Reign run thus: *Our Lord the King, by the Affent of the Prelates, Earls, &c. and as the Request of his People, hath granted and established; or else as the Request of the Community, hath ordained, &c.* The like Stile continued during the Reigns of Richard the Second, Henry the Fourth and Henry the Fifth, with very little Alteration only it ran thus commonly: *As the Request of the Prelates, Dukes, Earls and Barons, and as the Influence and special Request of the Commons, the King hath ordained, &c.* Whereby we see a plain difference in the Phrases of the Statutes of those Times; for it is the Lords that give their Affent, whereas the Commons only Petitioned; but it is the King alone who ordains and establishes.

I confesse indeed, that under some Princes of bad Titles, as in particular, under the Minority of Henry the Sixth, there began some Alteration in the form of penning the enacting part of most Statutes that were then made, and that unto those usual Words, which were inferred ordinarily into the Body of the Acts, from the beginning of the Reign of that King, viz. by the Affent and Affent of the Lords Spiritual and Temporal, and as the special Influence and Request of the Commons, there was added, by the Affent of the said Parliament. But it is not to be observed, that tho' these Words were added to the former Clause, yet the Power of granting and ordaining was still acknowledged to belong to the King alone, as appears by these Acts
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Acts of Parliament of that King, viz. 3 Hen. VI. ch. 2. 8 Hen. VI. ch. 2. Where it is said, Our Lord the King, by the Advice and Assent, and at the Request aforesaid, hath ordained and granted, or ordained and established by the Authority of this Parliament. And thus it generally hold (tho' a general Rule may have some Exceptions) till the beginning of the Reign of Henry the Seventh, about which time, that usual Clause at the special Instance or Request of the Commons, began by little and little to be laid aside, and that of their Advice or Assent, to be inferred in the place thereof: For which I do refer you to the Statute Book at large; which Form, I confess, continues to this Day; yet even in Henry the Seventh's Time, in the sixt of that King and the seventh Chapter it runs in this Stile, The King our Sovereign Lord, of his noble and abundant Grace, by the Advice and Assent of the Lords Spiritual and Temporal, at the Supplication of the Commons in the said Parliament assembled, and by Authority of the same, ordained. And th'o' the Statutes of Henry the Eighth do generally agree in their Stile with those of his Father; yet in his Time also many Acts were drawn up in Form of Petitions; as 3 Hen. VIII. ch. 14. Praying your Highness, the Commons in this present Parliament assembled. And 5 Hen. VIII. ch. 4. Praying the Commons in this present Parliament. And in the Reign of his Son Edward the Sixth, tho' I grant that most of his Acts do run in the usual Form; yet this one is very remarkable, 3 Edu. VI. ch. 4. Wherefore the King our Sovereign Lord, &c. at the humble Position and Suit of the Lords and Commons in this present Parliament assembled, doth Declare, Ordain and Enact, by the Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same: which last Words, tho' they may seem to refer to the Parliament, and may make Men think that the Lords and Commons did then pretend some Title unto the Power of making Laws: Yet neither Advising nor Assenting are so operative in the present Case, as to transfer the Power of making Laws to such as do advise about them, or assent unto them. Nor can the Alteration of the Forms and Stiles used in ancient Times import an Alteration of the Form of Government, unless it can be shewn (as I think it cannot) that any of our Kings did renounce that Power which properly and solely did belong unto them, or did by any solemn Act of Communication confer the same upon the Lords and Commons convened in Parliament: And therefore upon the whole Matter, since in almost all our most antient Statutes, it is preciously express'd that they were made by the King himself; the meaning of 41. F. F. G. J. these general Words used in later Times, that the Statutes are made by Authority of Parliament, are particularly explained in former Statutes, viz. That the King Ordained, the Lords Advised, the Commons Content, as by comparing the Writs with the Statutes that expound the Writs will evidently appear.

F. In answer to those Authorityes you have now brought, I doubt not but I shall give you others of as great weight, that prove the direct contrary to what you now affirm. To begin with your Instance of Magna Charta, I shall thew that those Charters that were granted and confirmed by Henry the Third, were not his Acts or Grants alone, but the Acts also of the whole Kingdom reprefented in Parliament. We have two express Declarations for the one, in the 25th of Mem. 58. King Edward the First; where is to be found in the Parliament Roll of that Year, a Confirmation of the great Charter of Liberties and Forefts, in these Words, which I shall render to you in English, out of the old French, for your better understanding. Know ye, that the Honour of God and Holy Church, and for the profite of our whole Realm; We have granted for us and to our Heirs, that the Great Charter of Franchizes and Forefts, which were made by the common Assent of the whole Realm, in the Time of King Henry our Father, should be held in all Points without any Blemishement. So like. N. 10. Doc., we find another Confirmation of those Charters in the Parliament Rolls of the 15th Year of Edward the Third, which being in old French I shall render it into English. It is accored and attested, that the Franchise of Holy Church and the Great Charter of Forefts, and the other Statutes made by our said Lord the King, and his Progenitors the Princes and the Commons of the Land, for the common profite of the People, shall be firmly kept and maintained in all Points. So that you may hence plainly see, that the King himself, with the whole Parliament, declare, and that in two several Kings Reigns, that the Great Charters were not only the free Grants of King Henry, but also the joint Acts of the Common Council of the whole Kingdom; and why King John's Charter should not be made by the like Authority, being one of his Progenitors, I see no reason, especially if we consider that that Charter was first drawn
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drawn up by the Barons in the Form in which we find it, and was pass'd by that King, under his Great Seal, in that vast General Council or Assembly at Runnymede. And certainly, whoever can draw up a Law, and can offer it to a Prince to confirm, and without whose Consent and Acceptance it would not be good, must needs have a share in the making of it.

As for your other Infiances of those old Statutes made in the Reign of Henry the Third, though I grant they begin, as you say, in the King's Name: Yet if you would but have read a little further, you would have found that in divers of them the Bishops, Earls and Barons gave their Consent to them: And for the Proof of this I shall begin with one of the antientest Statutes we have left us, viz. that of Merton, in the Preamble of which it is recited, "Prosseus est in Curia Domini Regis apud Meram," where after the Parties that were present at the making of the Laws it concludes thus in the Latin Copies, "ita prosseius est et concessum tam a prelatis Archidioecesis Episcopis, Comitibus, Baronebus, quum ab 190 Regis, et aliis, et ubi tu fee the providing and enacting part is ascribed to the Bishops, Earls and Barons, as well as to the King, who is here mentioned almost last of all. And the commonfeels that there was then no set Form of penning of Statutes in that honest and plain Age, when Parliaments did not last so many Days as they do now Weeks; and that the King's Judges and Council drew up the Acts, after the Parliament was up, in what Form they pleased, sometimes leaving out any mention of the Bishops, sometimcs of the Temporal Lords, and most commonly of the Commons; yet that they did all give their Consents to such Acts, appears by the Statute of Westminster 1, which you have already cited, where the Assent of the Archbishops, Bishops, Earls, Counts, Earls, Barons, and all the Commonalty of the Land, is expressly mentioned. So likewise the Statute of the 5th Year of King Henry the Third, concerning Mcafures, begins thus: "Per ordinarium tenens Regni Angliae juris memfum Domini Regis comitum.

But farther to convince you, that in the Opinion of the Lord Chancellor, and thence learned Judges who framed the Writs that were issued out upon any of these antient Statutes, you will find that they who lived in those very Times, believed those Statutes were made not by the King alone, but by him and the Common Council of the Kingdom; which Writs, as you may fee in the Regillus 2, 3, Writs, run thus: "Rei Victoriae, &c. Sunbat. Si A secretis, &c. tune summanea, &c. Bib. Bro. p. 314, quod si curam fujiciat, &c. Ofienfum quaere, cum de Commissis Concilio Regni Niger, &c. per Art. Angliae prosseius fiet, &c. as you may fee in the Writs granted upon the Statutes of Magna Charta, Maribridge, Merton, Glastonbury, &c. which have all of them this or the like Recitals, cum de Statu, or fucca forma Statuti, de Commissi Concilio Regni Angli, inde prosseius. The like Infiances I could give you upon the Statute of Mis de idio, and divers other old Statutes, in which the King, by the Statute itself, seems only to have enacted it; and yet you may fee that our Sages of the Law were very well convinced that those Statutes were made not by the King alone, but by the whole Common Council of England: So that there is no avoiding the Conclusion, that the Great Council, or Parliament, had then a great Share in the Legislative Power; unless you can suppose the King alone to have been the whole Common Council of the Kingdom, mentioned in these antient Writs.

But as for the rest of your Infiances of Edward the Second's and Edward the Third's Times, I think I can shew you that there is no general Rule to be drawn, from some few Examples: for though it is very true that the first of Edward the Second begins thus: "Our Lord the King hath granted, &c. Yet it is plain, by the Statute itself, that it was made in and with the Assent of Parliament. The like I may say of the rest of the Statutes of this King's Reign, though they do not all agree in Form, as you may see by the Statute of Sheriff's, 9Edw. II. Our Lord the King, by the Assent of the Prelates, Lords, Earls, and other great Earles, hath ordained and established. And though you would fain draw some mighty Consequence from those Phrases in the Statutes of Edward the Third, and many of his Successors, by the Assent of the Lords, and in the Regnus of the Commons; as if the Consent of the latter were not as necessary as the former: Yet indeed it is a mere difference in Form, and proceeds only from hence, that that Elate which found itself grieved, always Petitioned the King for Redress, and which amounted to as much as a Consent; for you shall always find that the Assenting Parfill refers to that Body which was then oppressed, without their giving any other Assent; for certainly their requesting to have an

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Dialogue the Fifth.

Reader made, doth necessarily express their Consent. And to prove what I have now said by Examples, pray see the 8th of Hen. VI. c. 1, where it is recited in the Preamble, "That our Sovereign Lord the King, willing gravely to provide for the Security and Quiet of the said Prelates and Clergy, at the Supply of the said Prelates, &c. and of the Affairs of the Great Men and Commons aforesaid, hath Ordained and Enacted," Where you may see, that the Ancent of the Prelates is not here at all mentioned, because it was needless, as being made at their Request. And if Praying and Requesting should destroy the Legislative Power, I doubt whether Edward III. did not give away his, in his 14th Year, in a Statute concerning the Subsidy of Wools. The Preamble runs thus: "Nevertheles the King prayeth the Earls, Barons, and all the Commons, for the great Bufines which he hath in hand, &c. that they would grant him some Aid upon Wools, Leather, &c. Whereupon Deliberation being had, the said Prelates, Barons, and Commons of the Kingdom, have granted him 4o Shillings to be taken on every Sack of Wool."

But to convince you, that in the Reigns of Edward III. and Richard II. the Three Eashts had a concurrent Authority with the King in the Legislative, I shall give you two Precedents more out of our unprinted Parliament Rolls: The first is 31 Ed. III. m. 13, which, being a Title to certain Statutes, begins thus: Quadam Ordinationi; & Statuta, falsa pro communs utilitate Regni, per Regem, Pra- latus, Duces, Comites, Barones, & Communitates Regni Anglia. So likewise in Stat. Roll of 5 Rich. II. m. 21, the Title is, Quadam Constitutio, five Ordinationes, falsa de communi offensa Regis, Procerum, Magnaturn, & Communitate Regni Anglia. Where no Man can doubt but that the Word Communitates, in these Records, must mean the Commons, all the other Eashts having been already mentioned. But to return to the matter, to let you see that not only the Commons, but also the Lords, have been oftentimes Petitioners, pray see thefe Authoritative. The 27 Ed. 3. runs thus: "Our Sovereign Lord the King, with the Ancent and Prayers of the Great Men, and the Commons of the Realm of England, hath Ordained, &c." And in the 4th of Edw. IV. it is recited thus: "The King, by the Ancent, Advice, Request, and Authority, of his Lords Spiritual, Temporal, and Commons, &c. hath Ordained and Enacted." In the Preamble of the Statute of 1 Edw. VI. c. 4, it is thus: Wherefore the King, our Sovereign Lord, minding and entirely desiring at the humble Petition and Suit of the Lords and Commons in this present Parliament assembled, doth Declare, Ordain and Enact, by the Ancent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the fame. And that the Ancent of the Commons was always necessary to the making of Laws, not as bare Petitioners, but as Ancents too, as well as the Lords, appears by this Petition or Declaration of the Commons to Ed. III. which is full to be found in the Brown's Roll of 5 Rich. II. of that King, which I shall read to you in English, out of the Laws French, which perhaps you are not used to: "Alfo the said Commons do petition our Lord the King, that no Statute or Ordinance may be made or granted at the Petition of the Clergy, unlefs it be by the Ancent of the Commons; neither that the said Commons should be by any Constution, which they may make for their Advantage, without the Ancent of the said Commons: For they will not be obliged to any of your (viz. the King's) Statutes or Ordinances made without their Ancent."

M. I do not deny, but that the Ancent of the Commons, as well as Lords, hath been allowed as necessary for a long time; but whether the Consent of either as first was so, is a great doubt, since we find the first ancient Statutes (as I have already observed) to have been made wholly by the King alone. And I think the most ancient Laws are the best Interpreters of the Original Legislative Power; F. E. G. 7, and thence it appears, that many Provisions, Ordinances and Proclamations, made Post-herefore out of Parliament, have been always acknowledged for Laws and Statutes. We have among the printed Statutes, to this purpose, one called the Statute of Ireland, dated at Westminster the 9th of February, 14 Hen. III. which is nothing but the second letter of the King to Gerard Fitz-Maurice, Judges of Ireland. The Explanations of the Statute of Gloucester, made by the King and his Justices only, were received always for Statutes, and are still printed with them. Also the Statute
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ute made for the Correction of the 12th Chap. of the Statute of Gloucster, was
signed under the Great Seal, and sent to the Justices of the Bench, after the manner
of a Writ Patent, with a certain Writ closed, dated by the King's Hand at
Wriftminister, 2 Mai 9 Ed. I. requiring, "That they should do and execute all and
"everything contained in it, though the same doth not accord with the Statute
"of Gloucster In all things." 19 Hen. III. a Provision was made de Affixa Prorenv-
timis, which was continued and allowed for a Law until the Statute of Wift-
minster II. which provides the contrary in express Words. So that in the old Sta-
tutes it is hard to distinguish what Laws were made by Kings in Parliament, and
what out of Parliament, especially when Kings called the Peers only to Parlia-
ment, and of those how many, or whom they pleased (as it appears antiently
they did) it was no easy matter to put a Difference between a Council Table and
a Parliament, or between a Proclamation and a Statute. Nor but that I own,
in old Times there was a Distinction between the King's Special or Privy Coun-
cil, and the Common Council of the Kingdom; and yet his Special Council did
fit with the Peers in Parliament, and were as Part thereof, and were of great and
extraordinary Authority there, as may appear by divers Acts of Parliament, some
of which I have already recited, as the Statute of Wistminster I. where it is said:
These are the Acts of Edward, made at his 11 Parliament, by his Council. The Sta-
tute of Aled Bariel, 13 Ed. I. hath the Words: The King for himself, and by his
Council, hath Ordained and Established. And in Articulis super Chaffas there are theft
Provisions: Nevertheless, the King and his Council do not intend: And, Both the
King and his Council, and all they that were present, Will and Swear, that the Rights and
Privileges of his Crown shall be saved to him in all things. And before the Com-
1 Ed. 3. Stat. meas often petitioned the King; as 1 Edw. III. where Magna Charta was con-
firm'd, the Preamble is thus: At the Request of the Commonalty, by their Petition made
before the King and his Council in Parliament, by the Ancient of the Prelates, Earls and
Barons, &c. I could give you many more Examples of this kind, but that it is
needlest; only these may suffice to let you see, that the King's Council had a
Great Authority in those Times, and perhaps was as antient as the Great Coun-
cil it self.

Yet I cannot forbear to give you one or two Antithories more, to prove that the
King, with the Advice and Consent of a Council of his Earls, Barons, and other
Wife Men, hath sometimes taken upon him to repeal all the Statutes made in a
precedent Parliament, as contrary to the Laws and Customs of this Realm, and
to his Prerogatives and Rights Royal, the' granted by him in manner of a Statute.
And for this you may fee the Statute of 15 Ed. III. at large in Pulten's Collection,
So likewise the Preface of the Statute of Wristminster, 20 Ed. III. runs thus: That
"We (viz. the King) by the Ancient of our Great Men, and other Wife Men of
"our Council, have ordained, &c." Where you may observe, that here is no
mention either of Lords Temporal or Commons. I could give you more Exampl-
es, which are not too tedious. From which Statutes it seems plain to
me, that this King did sometimes exercise a Prerogative of making and repealing
Laws without Consent of Parliament.

In the next place, I desire you to take notice, that these Words you so much
rely upon, viz. By the Authority of this present Parliament, and, Be it Enacted by
the King, Lords and Commons, as if they were three co-ordinate Estates, was never in
use till the Reign of Hen. VI. and Hen. VII. two notorious Ufurers. And that
the King's Single Answer to the Lords and Commons Request is a Sufficient Act of
Parliament, without any mention of the concurrent Authority of the Lords and
Commons enacting the same, the Precedent I gave you of K. Charles's Answer to the
Petition of Right may suffice, though you have not vouchsafed to give me any Re-
turn to it. So that I think these Influences may serve, instead of many Arguments
for the proof of this Truth, That the Legislative Power (as we phraze it now) is
wholly and solely in the King, although restrained in the Exercise and Use thereof, by con-
stant Custom, unto the Council and Consent of the Lords and Commons: For Le le Roy youti,
or the King will have it so, is the Imperial Phrase, by which the Propositive
Phrases of the Lords and Commons are made Acts of Parliament. And let the Lords and
Commons agitate and propose what Laws they please for their Eafe and Benefit
(as generally all Laws and Statutes are more for the Eafe and Benefit of the
Subject, than the Advantages of the King) yet as well now, as formerly, in the

time of the Roman Emperors, only quod Principii placet, legis habeas vigorem; nothing but that which the King pleases to allow of, is to pass for Law: The Laws not taking their coercive Force (as Judicious Holker well observes) from the Quality of such as devile them, but from the Power that giveth them the Strength of H.D.L. p. Laws. So that, to determine the Matter logically, the Legislative Power is either Largely and Improperly, or Strictly and Properly taken: Largely taken, it signifies any Power, which hath the Authority to provide the Materials of a Law, and to judge what is just, convenient, or necessary to be enacted; and to declare when any Matters, duly prepared, are made and granted into a Law: And this Ministerial sort of Legislative Power, improperly so called, the two Houses have and exercise, yet by Authority from the Crown. But then the Legislative Power is Strictly and Properly taken for the Power of Sanction, or for that Commanding, Ordaining Power, which gives Life and Being to the Law, and Force to oblige the Confidence of the Subject; and this is radically and incommunica in the King, as Sovereign. And therefore (as I have already said) all the antient Acts ran in the King's Name alone: and from the Legislative Power, thus properly taken, the Laws are properly called the King's Laws, and the Violation of them is punishable as such.

F. You have made a very long Speech, and taken a great deal of pains to perplex a Question in it, felt very easy to be resolved; and to which I need return you no other Answer than what Bracton tells us, in his third Book, Chap. 9. De Actionibus. Nihil aliud posse Rex in terris suis, cum sit Dei ministri & vicarius, nisi id solus quod de jure potest: Nec oblatan quod dictatur, Quod Principii placet, legis habeas vigorem: quia sequitur in se ipsi, Cum legis regius, quod de imperio ejus lata est; i.e. ne quisque suos Consumus legis nomina profanemus ut, fed quod confitemur Magistratum juratum, Regis auctoritatem profanem, & habita super his deliberationes. So that you see, in the time when this Author wrote, the King could do no more by his Prerogative, than the Law allowed him to do; And tho' it is true, it is his Will and Authority that gives Vigour to the Law; yet this only, as it is declared in Parliament, and in those Acts which had before received the Consent of his Great Council, here called the King's Magistrates: And therefore you have done what you can, to confound the difference between the King's Declaration, or Writs explaining and enforcing the Common Laws of England, or else interpreting former Acts of Parliament already made; which was a Prerogative often exercised by the King and his Council in Parliament, which then consisted of all or most of the Judges, and Great Officers of the Kingdom, of which I shall speak more at large by and by. And I confess, we are much in the dark, because our antient Parliament Rolls are all lost, and consequently the Statutes therein contained: So that we have almost nothing left of them, but such Copies or Remaints, as were preserved by Judges and Lawyers in those and succeeding Times, whilst they were still in being.

Therefore I think I may at present boldly affirm, that if that, which you call the Statute of Ireland, was so far from being founded upon some former Statute not more in being, as was the Custom of Parliament at all, by only the King, as it is done to the Chief Justices of Ireland, commanding and enforcing the Common Law of England, in the Case of Coparceners, to be observed in Ireland. The like I may say to the Explanation of the Statute of Clauses, which might be no more than the Interpretation of the King and his Justices, of the Sense of some Articles in that Statute; and this for its greater Authority was exemplified under the Great Seal, and so lent to all the Courts at Westminster, and often to the Sheriffs of all the Countries in England; yet without altering the Statute in some Points, as you would have it. The like I may say of that Statute of Allen Burnet: and therefore it is very rashly done, to conclude, that tho' we have not the Original Acts and Records of Parliament of that time, that therefore such Statutes were made by the King alone, in his Privy Council. So that I must still continue of the same Opinion with the Great Selden in this Point, who in his More Clauses tells us: "It is most certain, that according to antient Custom, no Answer is given either by the King, or in the King's Name, to any Parliamentary Bill, before that Bill, whether it be brought in first by the Lords, or by the Commons, hath passed both Houses, as is known to all that are versed in Parliament-a-ry Affairs." Which if it hath been the antient Custom of this Kingdom, it signifies very little in what Form the Law is expressed, whether in the
King's Name only, as giving the last Affent thereto, or else as his Concession to the Lords and Commons Petition, as long as you grant that their Affent was necessary: For sure, whoever petitions another to do a thing, which he cannot impose upon him without his Request, must give his Consent to the doing it, unless you can prove, that it could be done whether the Petitioner would or not. And this, by the way, will serve to answer an Objection, which, tho' you insist much upon it, is scarce worth it, viz. the King's Answer to the Lords and Commons Petition of Right, which was indeed no Grant or Concession of any new Rights or Privileges from the King to the People; but only a Declaration of several antient Rights and Liberties of the Subjects, which had been very much broken and infringed of late; and therefore the King's Answer was very proper, Sunt Dreicta facta comme omitt defire: But that there is a Right plainly acknowledged, I suppose you will not deny.

The next Mistake you fall into proceeds from your confounding the King's Extraordinary Council in Parliament with the King's Special or Privy Council, and in a manner making this a fourth Estate; by whom (as you suppose) as well as by the Lords and Commons, Laws were often made; whereas indeed neither the one nor the other is true. For tho' I grant that there is often mention made, in our antient Statutes or Records, of the King's Council in Parliament; yet this is not to be understood of his Privy Council, but of a Special Council, with whom our Kings formerly sat during the Time of Parliament, and before whom and to whom, we find, by divers Records, that both the Lords and Commons did of petition, as you yourself do truly affirm; but that this was not the King's Privy Council, but another quite different from it: And to which it seems to me that Fleta refers, in his 2d Book, Cap. 2. Habet enim Rex Curiam fiam in Concilio fuo in Par- liamentio fuis; prestetnum Presidit, Comitibus, &c. And this Council consisted of all the great Officers of the Kingdom, viz. the Lord Treasurer, Chancellor, and Keeper of the Privy Seal, Master of the Wardrobe, the Judges of the King's Bench, Common Pleas, Baronets of the Exchequer, Justices Itinerant, and Justices of Assizes, with such of the dignified Clergy, as it pleased the King to call: Which that they were altogether distinct from the King's Privy Council, appears plainly by this, that the latter never included all the Judges, nor did the Privy Council ever exercise any Judicial Authority in Parliament, as this Council did in those days; but that this Council consisted of the Parties above mentioned, see the Statute of Esecurators, made 29 Edw. I. And in the Placita Parliamentaria of that Year, the Statute runs thus: Per Concilium Regis concordationem eft coram Domino Rege &e conferent; But in the Clofe Roll of this Year it is clearly explain'd who were of this Council, their Names being there particularly recited, viz. all the Great Officers above mentioned, together with the Judges of the King's Courts, and Justices Itinerant, &c. Which is likewise explained by the Parliament Roll, 9 Ed.II. Rex voluit quod Dominum Cancellarum, Theofaurarium, Baronem, Scaccarii, Jucifcifici; & aliis de Conflitio Dominri Regis Landi, exeltente, convenient. I could give you many more Examples of this kind, but I shall give you but two more, to prove that this Council in Parliament could not be the King's ordinary Privy Council. The first is in Plac. Parliament. 2 Ed.III. in a Caufe betwixt Thomas Ecz-Peter and Alice Woman of John de Merivel, coram Rege. The Record is long, but concludes thus, directed to the Justices: Et si diffidius subsequatur suae fuerit, quare præmissa facta moriente, tunc Placitum ibidem augeatur per præs. Parliamentum: si nondum adj urat, ex ibidem tunc inde fieri valueat quod de Conflito nostro fuerit fuscindum.

By which we may see, that this was none of the King's Ordinary or Privy Council, or else to what purpose was this Caufe adjourned to the View of the next Parliament; since, if it had been determined by the Privy Council, it might have been heard forthwith.

I shall give you but one Instance more, out of the Clofe Roll of the 41st of the King, wherein a Caufe between Elizabeth Wife of Nicholas D'Andley, and James D'Andley, in a Controversy between them (touching certain Lands contained in the Covenants of her Marriage) is said to have been adjudged deavant son Conseil, c'est a savoir, Chancellor, Treasurier, Jucifcici, & autres Suget, assemblees en la Chambre des Ecoles; i.e. before his Council, viz. the Chancellor, Treasurer, Justices, and other Women, assembled in the Star-Chamber. So that when any thing in our old Statutes is said to be ordained by the King and his Council, it is always
always to be understood, nor as if this Council were a fourth Estate, whose Ad
tent or Advice was necessary to the making of Laws, for then they would have
had the same Power full; but only according to the Custom of those Times,
when most Acts of Parliament were drawn by them, and that the King pass'd none
without their Advice: It was then said to be done by the King and his Council
(though in Parliament) and I conceive the Power of this Council continued till the
Beginning of the Reign of Henry the seventh, when this Court was by Act of Par
liament annexed to that of the Star-Chamber, where also this Council of the King
used to meet before (as appears by the Case I have last cited) and had afterwards
only to do with Criminal-Causes, and that as well out of as in Parliament:
And that King Henry the seventh not having to execute his Judicial Power in pri
vate Causes as his Predecessors had done, or to make use of their Advice either
in the drawing or passing of Bills, which now began to be drawn by Committees
in either House where those Bills were preferred, this Council came by degrees
to grow quite out of use; as it is as this day. I hope you will pardon this long
Digression, which I have been drawn into, to rectify a common Mistake of the
Gentlemen of your Opinion, who, when they find any thing in our ancient Sta
tures or Records, wherein the King's Council is mentioned, presently entertain
strange Fancies of the Antiquity and Authority of the Privy Council.

I am so as from thinking this Digression you have now made to be at all re
dundant; that I give you many thanks for it, since it gives me a light into many
things which I did not now before; and I shall better consider the Author
ship of what you have now given me, and if I find they will hold good, shall come
over to your Opinion in that point, tho' I am not as yet satisfied as to the Legis
lative Power of the two Houses; and therefore pray proceed to answer the rest of
the Precedents I have brought on that Subject.

1. It shall readily comply with your Commands; and therefore to come to those
Statutes of the 15th and 20th of Ed. III. which you suppose to have been repealed
by that King without the Consent of the Lords and Commons. I grant indeed,
that the Statutes you mention were intended to be repealed by the King, without
Assent of Parliament: Yet this was not done by himself and his Council alone, as
you suppose; but by a Great Council of Earls and Barons, which the Kings of Eng
land in those Days were wont to call upon on urgent Occasions, and for the doing of
that which they thought Parliaments could not, or would not so readily perform;

as in this pretended Repeal of the Statute you mention. And tho', I grant, this was
a great Breach upon the fundamental Constitutions of the Kingdom, yet that it was
done in such a Great Council as I have now mentioned, I refer you to this pre
tended Statute toсуд, and to your Recital of it. And that the King often called
such Great Councils, appears by an Agreement of Exchange made for the Ca
cle of Berwick, between King Henry IV. in the fifth Year of his Reign, and the Earl
of Nottingham, where the King promised to deliver the said Earl, Lands and
Tenements to the value of the Calle, by thefe Words (which I shall render out
of French from the Original which remains in the Tower): By the Advice and As
sent of the Eflates of this Realm, and of his Parliament (so that the Parliament happen before
the said Earl of St. Lucie) whereby the Eflates of his Great Council, and other Eflates of his
said Realm, which the King wold cause to be assembled before the said Earl, in case the Par
liament do not happen, &c.

And yet notwithstanding this high Strain of Prerogative, neither King Ed. III.
himself, nor the Parliament, were satisfied with this Repeal of those Statutes you
have mentioned; but in the next Parliament, held in his 17th Year, passed a for
mal and legal Repeal of them, as by the Parliament Rolls of that Year, remaining
in the Tower, doth plainly appear; and which I could give you at large, did I not
fear to be too tedious. But I think it fit to let you know this, because most ordi
nary Readers seeing no more appears in our Statute Books, are apt to
imagine, that the Kings of England in those Days did often take upon them, with
out Authority of Parliament, to make and repeal Laws. But as for your next
Inference of the Statute of 20 Ed. III. it is much weaker; since tho' I confess that
in the Preface to those Acts there is only mention of the Great Men, or
Graves. (as it is in our old French) and other Wise Men of our Council; yet I shall prove
at another time, that under this Word Graves were meant the Lords in Par
liament, as by the Wise Men of our Council are understood the Commons. And it
Hh 2 ap
appears by the Writs of Summons and Parliament, of the 20th of Edward III. that the Commons were present at this Parliament; therefore it seems most reasonable to interpret the Sense of many ancient Statutes, wherein the King alone is said to make and ordain Laws, by those later or more modern ones, wherein the King by the Consent of the Lords and Commons, or by Authority of Parliament, is said to have ordained them: Since the true Sense and Meaning of ancient Laws, which were penned with the greatest Civility, ought to be still interpreted by the modern ones, and not the modern ones by the ancient. So that I am of the Learned Mr. Lombard's Opinion, who in his Architaumen, or Difficult upon the High Courts of Justice in England, expressly tells us, "That whether the Lawes are said to be made by the King, and his Wife, or by the King and his Council, or by the Common Council; or by the King, his Earls, Barons, and other Wife Men, or after such other like Phrares, whereof you meet with in the Volumes of Parliaments: It comes all to this one Point, namely, That the King, his Nobility and Commons, did ordain and enact the same. And which is more, if you shall find any Act of Parliament seeming to pass under the Name and Authority of the King only, as there be some that have that shew indeed; yet you must not by and by judge, that it was established without the Assent of the other Estates.

As for the rest of your Infinations, rather than Arguments against the Antiquity of those Expressions, be it exerted by Authority of Parliament, or, be it exerted by the King, Lords and Commons; which bear so hard upon you, to prove that these last have a share in the Legislative, that they were introduced in the Reigns of Henry VI. and Edward III. two Uffurpers, and but in the Nonage of the former: I think it shall be able to shew you, that you are very much out in your account; for there are much ancientser Authorities, wherein the same Words, or others equivalent, have been used in our Statutes: And first, pray call to mind the Statutes of Mesalevel already recited; where it is said, That by the Consent of the whole Realm of England, the Authority of our Sovereign Lord the King was then made, etc. which certainly must mean the Assent of all the Estates assembled in Parliament. And my Lord Coke tells us in his 3d Infinitum, of an ancient Record that he had seen of the 7th of this King, wherein it was said to be Established by the King, the Lords Spiritual, Temporal, and Commons. But since I have given you Precedents enough of Statutes, which are said to be made or ordained by the King, with the Assent of Lords Spiritual and Temporal, and Commons; I will shew you one where the King is not at all mentioned; and that is in Raffles's Statutes, 4 Hen. 4. cap. 34. concerning Annulage of Cloth, which runs thus; Be it ordained and accorded by the said Parliament, without any mention at all of the King. And to let you see that these fatal Words you except against, were in use before the Reign of Henry 6. pray see 9 Hen. 5. cap. 4. concerning the Right of Clerks to writing, which runs thus; The King hath now declared, and ordained by Authority of this present Parliament, that the Juries, etc. which must certainly refer to the Lords and Commons, unless you shall shew that the whole Parliament was one Person. If that Phrares had began from Ulperation, it would have been still found in the Statutes of Henry the 4th. But to let you see that Edward the 4th, though no Uffurper, yet did not think that these Words did abate any thing of his Royal Prerogative, pray see the Statute Book in the 4th of that King, Cap. 2. wherein it is recited, That the King, by the Advice, Assent, Request and Authority of the Lords Spiritual and Temporal, and Commons in Parliament assembled, hath ordained and established; And that by Assent of Parliament, and by Authority of Parliament, is all one and the same, since the Assent of Parliament makes its Authority; Pray see the proceed Judgment in this Point of the late Chief Justice Crew and Justice Dodderidge, given in the great Case of the Earlom of Oxford, reported in Judge Jenere's Reports.

To conclude; Though I do not deny His Majesty's Negative Vote to all Acts of Parliament, yet this Prerogative can be concluded only from his giving his assent to a Law; for when a Bill begins from himself, the Two Houses have likewise Negative upon him; which is evident in an Act of Parlia, which proceeds originally from the King, and being laid down to the Parliament, though neither the Lords nor Commons can add or alter one tittle to, yet may they be withstanding his prior Assent, refuse the whole Bill if they please, though already passed under the Great Seal. And though I likewise grant, that it is the Le Roy a Votre,
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Thus, that by yielding the highest and last Affent, gives the ensuing Force to the Law; and thus, I grant, the King may in a Logical Sense be said thereby to make the Law, according to that known Maxim, Quod Legem Fecit, Sibi Rei: Yet this does not hinder but that legally the Two Houses of Parliament have also their share not only in framing, but enacting all Bills that shall pass; for otherwise they would dignify no more than the Committee of Articles in Scotland, or the King and Council of England in relation to Ireland; the former of which draws up all Bills that are to pass in the Parliament of that Kingdom, and the latter must approve or reject all Bills that shall pass in the Parliament of Ireland: Whereas the Authority of our Parliament confines in their conferring to, and enacting together with the King all Statutes whatsoever. And this Dilution I think may very well reconcile Brusilia with Fortesse; the former of which says, Quod Legem Iguam Sumi Legem (meaning the King) and the latter (in the place I have alreadied) says that the People are governed by the Laws, not by the Law, which they themselves make: And this I think is to ascribe to the King as much Power as is requisite to a Civil Sovereign, and yet to leave a sufficient share to the People to secure themselves from Tyranny.

M. I must beg your pardon if I cannot be satisfied with your Division of the Legislative Power, between the King and the Two Houses of Parliament, since it is against the Sense of our old Lawgivers Brusilia and Brusilia, who, as you yourself acknowledge, make the King the Sole Legislator. And though I confess Fortesse gives the People a share in it, yet he is to a modern Author in comparison of the other two, and seem to support the usurped Title of Henry the Sixth. So that I cannot comprehend how the Two Houses can have any share (properly speaking) in the Legislative Power, without falling into that old Error of making the King one of the Three Estates, and to co-ordinate with the other Two; Whereas if the King be a Monarch, that signifies in Greek the Government of one Person, whereas by giving the Two Houses a part in the Legislative, you divide it into three several shares. But indeed there is to cleave a Conjuncture between all the Parts of Sovereign Power, that the one cannot be separated from the other, but it will destroy the Form of the Government, and only set up an irregular Commonwealth in its place, which will scarce be able to hold long together, without falling into perpetual Quarrels and Disputes about the Encroachments upon each other's Power and Privileges.

And it appears as well by the whole Tenor of our Laws, as also by divers express Statutes, that the King is the Sole Supreme, and consequently the Sole Legislative Power: The first of these I shall prove from the common Indictments of Treason, Murder, Felony, &c. Which are always, Enemus in Curn, &c. In the Digest de Roy; and the Proceeds against such Offences are called the Flus of the Crown, because they are against the Crown and Dignity of the King. So that it is not the Dignity and Authority of the Lords and Commons which is violated, but the Dignity and Authority of the King.

In the next place, this Opinion is contrary to the express Declaration of divers of those very Parliaments which you pretend have exercised a share in the Legislative: For you cannot deny, that many of our ancient, as well as modern Statutes, were made and drawn up in the Form of a Petition from the Lords and Commons, or both of them, to the King: And it is very strange, that one Fellow in the Supreme Power should so humbly petition the other. But, as though Time hath altered this Form of Petitioning into Bills, yet both Laws and Commons have been often used to call the King, God, Dread Sovereign, Our Sovereign Lord, Our Lady Lord, and the like; and to file themselves, We your Majesty's most humble and Faithful Subjects, or most Dutiful and Obedient Subjects; and in that humble Style, to address him to enact such and such things; which sure they could have done alone, had they been co-ordinate with him in Law-making. Lastly, if they were Copartners with him in the Supreme Power, how came they to declare (as they did in the Preamble)
to the Statute of the 24th of Henry VIII. which you yourself have quoted) that the
Realm of England is an Empire, governed by one Supreme Head and King, unto
whom the Body Politick of the Nation, composed of several Sorts and Degrees of
People, divided in Terms of Temporality and Spirituality, owe and bear, next
unto God, a Natural and Humble Obedience? Now how came they here farther
to declare this Supreme Head of the Clergy and Laity, to be furnished with Ple-
nary, Whole and entire Power by the Goodness and Sufferance of Almighty God? Cer-
tainly they can have no thare in it if it be plenary, wholly and entirely in him:
Or how came they in the 1st Statute of Queen Edw. c. 7. (being a Recognition
of the Queen's Supremacy) to acknowledge, that all Power, Temporal and SPI-
rital, was deduced from her, as the Supreme Head, and that they were her moat
Faithful and Obedient Subjects; and that though they did in Parliament represent
the Three Estates of this Realm, yet that She was the only Supreme Governor thereof:
Which was pursuant to a Statute to the same purpose, in the 2d of Edu. VI. c.x.
wherein it is declared, That all Authority of Jurisdiction, Spiritual and Temporal, is
divided and deduced from the King's Majesty, as Supreme Head of these Churches and
Realms. Not to mention the Oath of Supremacy itself, That the King or Queen's
Highness is the only Supreme Governor of this Realm: Which these Statutes would ne-
ever have acknowledged, had it not been consonant to our ancient Common Law;
by which it is expressly declared in that old Law Book, (written as it is supposed
by Bishop Breton) in the very first Leaf thereof, in the Name of King Edu. I. himself: We will, that our Jurisdiction be above all other Jurisdictions: which had
been spoken in vain, if all other Powers had not been derived from, and to obey
ordinate to, the King's. Besides, I could prove this farther from History and Mat-
ter of Fact.

F. I thank you, Sir, and I desire I may answer what you have now said, be-
fore you pass to another Head; for I doubt the time will not give us leave to dis-
course much further on this Subject to Night. In the first place therefore, I must
tell you, that the main Foundation of your last Arguments is founded upon a
Supposition which I altogether disallow. viz. Co-ordination or Division of the So-
vereign Power between the King, and the Two Houses: For I have always sup-
pposed, that the King continues till Supreme, and that (as the Moderns resolve) Par-
liamentus declares. He is Principium, Caput &nexit Parlament; that is, he can
call and dissolve Parliaments when he pleases; and likewise, that the Executive
Part of the Government rells solely in him, as also the Power of making War and
Peace: And even in the Legislative itself, that the King hath more eminently
(though together with the Parliament) a Supreme Enabling Power, without which
it cannot be a Law. All this being considered, you will find that here is no Divi-
ision of the Legislative Power; since neither the King, nor the Two Houses, have
it solely and compleatly in themselves; but it is jointly executed by them all
Three, as the Body Politick Body or Person. So that even can they make
any Law without him, nor be enact any without their Consent; and he, by giving
his Consent last, gives it the Force and Sanction of a Law, and he is therein the
Supreme, i.e. the last or ultimate Power, (in the true Sense of that Word) nay,
the only Supreme Power, unless you could suppose two Supremes, that is, two
Highest Powers at once in the same Kingdom: But that for all this, the Two
Houses are not subject to the King in Matters relating to Legislature, may fal-
thet appear, in that the King cannot command them to give him what Money, or to
pass what Laws he pleaseth. Since if he should go about to do so, they might (as I
suppose you yourself will grant) lawfully disobey him; which they could not do
without apparent Disloyalty, and high Disobedience, were they in this, as they are
in other things, relating to the Peace and Defence of the Kingdom, subject to
his Commands, when legally issuing.

But to return you a more particular Answer to what you have said, to prove
the King to have the sole Legislative Power: As to what you pretended I have quoted
out of Grotius, if you please better to consider of it, you will not find that he
gives the King any more than an enabling Power, together with his Great
Council: For though he tells us, Quad Principis placent, Lex haud Spiritus, yet what
follows, capellane quasi super dubius in confliuo definendi: Procorum quidem confillo,
& Principis antecedente Authorisate comitari esse primusname. Where, by the last confilio,
is meant somewhat more than mere Advice; as I have already proved. But as for Bracton,
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Bracon, though he agrees with Glanville in making the King's Authority necessary to the Essence of a Law: Yet he is more express than the other in making the Advice and Consent of the Great Council, or Commonwealth, also necessary to its being, as you may remember by the words; Cun Legis vigorem habeat, quicquid de Confite & de comferfini Magnatum, & Inipublica communis Spontane, Authoritate Principis procedente, jusse fuerit definitum.

But further, to let you see how much you are out in your Argument, whereby you would prove from the Form of our Indictments of Treason, &c. That the King hath the Sole Legislative Power of the Kingdom; I shall shew you, that all our ancient Laws, as well Common as Statute, do declare the contrary: Since divers Acts of Parliament have expressly affirmed, that such and such Offences were Treason, not only against the King, but against the King and the whole Realm too: Pray take these Instances; see the Statute 1 Edw. 3. c. 1, Wherein Hugh de Spencer, both the Father and Son, are by the King and Parliament declared Traitors and Enemies of the King, and of his Realm; See likewise 28 Hen. 8. c. 7. Wherein the Crown is fettered by Act of Parliament on the Heirs of his Body, begotten on Queen Jane, or by any other after Marriage; and that the Offenders thus shall interpose such Heirs in their patentable Succession, shall mix with their Ancestors, shall be declared and adjudged High Traitors to the Realm. And therefore divers ancient Indictments in Scarburgh's Pleas of the Crown, are laid contra pacem Regis & Regni. And that the Parliament hath referred to itself a Power by the Statute of the 25th of Edw. 3. to determine what Crime shall be adjudged Treason, besides conspiring to kill the King, and those other Offences specified in the same Statute, you may consult the Statute at large. But that these Offences may be no other than an Endeavour to alter the Government, or Fundamental Laws of the Kingdom. I think is evident, since all Offences relating to the Lives, or Honour of the King, Queen, and their eldest Son, are there particularly specified; and it was by Virtue of this Statute, that the late unfortunate Earl of Strafford was first impeached by the Commons, and afterwards attainted by Act of Parliament in the Year 1641. but whether justly or not, it is not my Business now to determine: It is sufficient that it was then granted by the King himself; that if the Earl had been really guilty of Destroying the Government, and Introducing an Arbitrary Power, he might have been deservedly condemned.

But that the Power of Making and Disposing with Laws, is particularly applied not only to the King, but to the Lords Spiritual, Temporal, and Commons; pray remember the Preamble of the Statute I have already cited of the 25th of Hen. 8. c. 21, wherein it is so expressly declared, as also by the 24th of this King, chap. 12, the Preface of which Statue runs thus: "And whereas the King's most Noble Progenitors, and the Nobility and Commons of the said Realm, at divers and sundry Parliaments, as well in the Time of King Edward 1st. Edward 3d. Richard 2d. Henry 4th. &c. made sundry Ordinances, Laws, Statutes and Provisions, for the entire and sure Conservation of the Prerogatives, Liberties and Preeminences of the said Imperial Crown of this Realm, &c." We pray note, that the making of such Statutes, is ascribed to the Lords and Commons, as well as to the King; Which is also farther acknowledged by the said King Henry, when in a fret Speech to the Parliament, reported by Cromwell (in the Cafe of Errors) he said these Words; "We being informed by our Judges, that We at no time did so highly in our Estate Royal, as in the time of Parliament, wherein, We as Head, and you as Members, are conjoinet and knit together into one Body Politick." And sure then, if the King's Sinners be true, whatsoever Functions are performed by the whole Body, shall be done by the Members as well as by the Head. I shall sum up all that I have said into this Syllogism, That Power which cannot make or enforce new Law without the Advice and Consent of two other Bodies, is not the Sole Legislative Power: But the King is that Power which cannot, &c. Ego, The King is not the Sole Legislative Power.

M. I shall not longer dispute this Question with you, since I own the Two Houses have claimed, for some Ages past, a share in the Legislative, though in a large and improper Sense, as you yourself do partly grant: And though for the more just and equal Course, our Kings have for a long time admitted the Three Elites, viz. the Lords Spiritual, Temporal, and Commons, into a seating share of the legislative
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gulative Power: Yet this was not by Contra\m, not by any Fundamental Con\stitution of the Government, as you suppo\se; but only from their own meer
Grace and Favour, to make Laws by the Consent of the whole Realm, because
that no one part thereof should have any caufe to complain of Partiality: And
though I grant the King is bound to observe these Laws when made, by ver\me of his Coronation-Oath, so as that he cannot alter them without their Consent;
yet is he fill above the Law, by virtue of his absolute Monarchical Power, and
is not subordinate to it, or so bound by it as to be responsible to the People for
any Breach committed by him upon it; for that were derogatory to the Sove\reign Power, and inconfident with the Nature of Monarchy, and were to set up
the Law (which is but a Creature of the Prince’s making) above his Sovereign
Authority: And this would make our Monarchy a kind of Government which
would neither be Monarchical, nor yet a Republick, but some mungrel thing made
up of both. So that I take the Notion of a Mix’d Monarchy, to be a Contra\diction in \textit{adjecta}: A Limited Monarchy, I confess, there may be, either by the
Monarch’s own voluntary Grant or Consent, as in this Kingdom; or else on Con\ditions imposed upon a Prince by others, either by a Foreign Power, as in Tri\butary and Pendatory Kingdoms; or else by the Natives of the same Country, as
in some Elective Kingdoms and Principalities: But then such Limitations of
Monarchical Power represent a Prince as it were fetter’d, and who cannot act as
he would, and ought, for the Advantage and Welfare of his People, if he had his
Liberty, and the full Exercise of his Sovereign Power: And therefore in most Gov\ernments limited after this manner, the Sovereignty still remains in the Senate or
People that elected the King: Which makes me think it a Solecism in Politicks to
affirm, that a Monarch (properly so called, and still continuing so) could be thus
limited by Laws, or Fundamental Constitutions, as you call them at the first Ini\tition of the Government: For if he were thus limited, that Power that could
thus limit him, must be either Superior or Inferior to him. Superior it could not
be, because the People that could put those Conditions or Limitations upon him,
could not be his Superiors in the State of Nature, before they made him
King; neither could they be his Inferiors, because an Inferior Power can never
limit a Superior: And since all our Laws, (as well as the Oath of Allegiance and
Supremacy, we take to the King) do own him to be the Sole Supreme Gover\nor of this Realm, I cannot understand how this Limitation \textit{ad extra}, can con\flict with the King’s Supremacy; for if he be thus limited and restrained, how is
he Supreme? and if restrained by some Law, is not the Power of that Law, and
of them that made that Law, above his Supreme Power? And if by the Direction
of such Law only he must govern, where is his Supreme Power? So that then the
Law must rule and govern the Monarch as a Superior, and not the Monarch the
Law; and he hath at best but a Gubernative and Executive Power.

Lastly; If this Power of the Prince were limited at the Original Con\stitution,
there must be a Power appointed in some Council or Senate (call it a \textit{Parliament},
or \textit{Assembly} of the States, or by what Name you pleaseth) whose business it must
be to see them exactly kept and performed? Now these Men must either have a
Power of advising the Monarch, and persuading him to do it; or of revising
Fundamental Limitations; or else they must also have a Power of forcing or com\pelling him, if he will not hearken to their Advice and Remonstrances: If they
have no more than the former Power, that you’ll fail signifies little, since the
King may refuse to hearken to them if he pleaseth, and may do what he will not\withstanding; but if they have also a coercive Power over him, and may re\buff or punish him for his Transgressions, he will then cease to be a Monarch; since
he cannot be so, who is accountable to any Power, either equal or superior to
himself: And this our late Parliaments have been well aware of, when they re\nounced all Coercive Power over the Person of the King, and any Right of mak\ing War, either Offensive or Defensive, against him: So that besides the History of
Matter of Fact, which I can further give you, to prove our Kings to have been
at first absolute Monarchs; I think the very Hypothesi of a Mix’d, or Limited
Monarchy, labours under such insuperable Difficulties and Absurdities, that I
cannot conceive how those Limitations by which we find the King’s Prerogative
now restrained, could ever proceed from any higher Cause than the free Grants and
Concessions of the King’s Predecessors, confirmed by his own Coronation-Oath:
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Which though I acknowledge he is bound to observe, and that if he breaks it, he commits a great Sin against God; yet it is only he that must punish him for so doing, since the Oath is not made to the People, but to God alone.

F. Norwithstanding what you have now said, I hope I am able to shew you, that all your Arguments against a Mix'd, or Limited Monarchy, are more subtile than true. For as to your first Argument from the Word Monarch, I grant indeed, that strictly speaking, the Word Monarch and Monarchy signify a single Ruler, and the Government of one alone: Yet in common Acceptation, or according to the Laws and Constitutions of several other Kingdoms, besides England, as in the Empire, in Denmark, and Sweden, the Emperor, and those Kings, have been called Monarchs, and those Kingdoms Monarchies: And though by the Original Constitution of those Governments, those Princes have not been invested with a pure Imperial Authority, such as that of the Roman Emperors of old; yet since they had the Executive and Gubernative Part of the Government committed to them, and that they were look'd upon as the Heads of those Kingdoms, and that the Government did therein partake more of Monarchy than of any other Form, those Princes have been always called Monarchs, notwithstanding there was a very great Mixture of Monarchy in the Empire, and in Denmark, and of Democracy in Sweden. The like may be said of England, France, and those Kingdoms in Spain, that were instituted by the Goths and Vandals, the Franks and Saxons, after the ancient Gothic Model of Government. And though I grant this sort of mix'd Monarchy is not to be reduced to any of the three distinct Kinds of Government laid down by Aristotle, yet are they not for all that to be condemned; but rather the more approved of, since by this Mixture they were capable of divers Benefits, and free from several Mischief, which are incident to any of those Forms of Monarchy, Aristocracy, or Democracy, when exercised purely and without any such Mixture: And that this, as to England itself, is no Invention of the Commonwealth-Men, (as you call them) you may read King Charles the First's Answer to the 19 Propositions sent him by the Parliament, for the Words are remarkable: This Kingdom, says he, is mix'd of Monarchical, Aristocratical, and Democratical Government; and that so wisely, that we have all the Convenience, and none of the Inconveniences of any of those Forms taken single.

Nor doth this at all derogate from the Nature of the Monarchy, nor make any Division between the necessary Functions of Sovereign Power: For I have already granted, that the Executive and Gubernative Part is wholly in him, as also the Power of making War and Peace. And as for the Legislative, as long as the King hath a Negative Vote in all Laws that pass, and that they cannot be made without his Royal Sanction, the Legislative Power is not divided, as I have already proved.

But as for your other Argument against a Prince's being limited by the Original Constitution of Government, though as I yield it is more subtile, so it is also more sophistical and fallacious than the former. For your Dilemma, by which you would prove the Absurdity of that Notion, when you say, because a Prince, at the Institution of the Government, may be limited by those who are neither superior, nor inferior to himself; but only equal in the State of Nature, as I suppose the People to be with the King before he was made fo by them: And that Equals may thus limit each other, you yourself will not (I suppose) deny in the Case of Princes, who are Equals in the State of Nature: As Queen Mary (for Example) made such Conditions with King Philip of Spain, before she married him, that if he offered to meddle with the Government of this Kingdom without her Consent, it should be lawful for her to part her self from him, and to send him Home into his own Kingdom: And might he not with a safe Confidence have done so upon the Breach of the Conditions on his side? Apply this to the People in the State of Nature, and the Person they are about to make King before the Politick Marriage of a Coronation or Admission to the Crown, and see if they do not agree; or whether the People can be blam'd, if they repudiate their Politick Husband for invading that part of the Government which they had referred to them.
themselves? Nor doth this argue any more Superiority in the People over the King in the State of Nature, than it doth for a Creditor, in the like State, to compel by Force his Debtor to pay him a Sum of Money which he owed him, in case there were no Civil Jurisdiction for him to appeal to. And let us farther suppose a Council or Parliament appointed, who may remonstrate to the King his Transgressions or Violations of the Law: Yet this may be without any Coercive Power over his Person, or of making War upon him; since the King may, if he please, remedy all these Disorders, by redressing their Grievances, and punishing the Authors of them: So if he will willfully perfest in such Violations as strike at the Fundamental Constitution of the Government, and do also go about to execute them upon the People by Force, this being in effect a making War upon them; I suppose they have then a just Right to defend themselves against his Tyranny. So that if these Rights or Privileges we now enjoy, were not the meer Concessions of the King's Grace and Favour, as you affirm, but reserved as part of their Birth-right at the Original Constitution of the Government, (as I shall prove all our Fundamental Laws were) the People have then as much Right to defend them (their Allegiance to him being upon that Condition, either express'd or imply'd) as any other Nation hath to defend their Lives, Liberties and Properties, against the Violence of the Supreme Powers, or any commission'd by them, as I hope I have already proved to you: So that notwithstanding all that you have faid to the contrary, I think the Notion of a Mix'd or Limited Monarchy in the very Institution, may be agreeable to Reason, and practicable too either in this or any other Kingdom: And when you can prove the contrary by History, or Matter of Fact, as you promise, I will give up the Cause.

M. You have broached a parcel of special Commonwealth Notions, in which you are every way out: As first, in making the King's Authority derived either from, or by, the People's Consent: Whereas all our ancient Lawyers call him God's Vicar, or Lieutenant on Earth, and not the People's: And in the next place, in supposing he may be refil'd by Force of Arms, whenever the People shall think themselves oppress'd, or their Fundamental Rights and Liberties (as you call them) invaded: it is contrary to the express Declaration of the Parliament, by two several Statutes in the 2d Year of the late King Charles: And tho' you disclaim all Coercive Power of the Two Houses over the King, yet it is only to place this Right of Refilance in a more fallible and ungovernable Body, viz. the whole People in their natural Capacities; which as it is more consistent with your Principles, so it is more dangerous to all Supreme Powers, as well Commonwealths as Monarchies, as I have partly shewed you already; and, I hope, may farther convince you before I have done. But since I have not now time to shew you the Faliity and Aburdity of these Notions, and to urge the Statute at large against Refilance in any Case whatsoever; I pray go on in the Method you have proposed, and let me see how you can make out, that even our Parliaments do not declare that Privilege they now enjoy of giving their Consent to Laws, as also their very Being, to the gracious Concessions of our former Monarchs.

F. That I shall do with all my Heart: But first let me tell you, that though I own the King to be God's Lieutenant in thefe his Dominions; yet I must like-wise aver, that it was only by the Consent and voluntary Submission of the People of this Nation, that the first Monarch (begin where you will) could obtain that Title. And as for those Statutes you mention against all Refilance in any Case whatsoever, I doubt not but to shew you, that it was never the Intent of that Parliament to deprive us from all necessary Refilance and Self-defence, in Cases of illegal Violence, and intolerable Oppreflion; unlefs you can suppose they were resolved to alter the Government, and to put it into the King's Power to destroy all our Laws and Liberties; and instead of a lawful King, to set up for a lawless Tyrant whenever he pleased.

But to come to the Matter in hand, I shall shew you, that it is nor at all im-
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fary to the King as Supreme, that he might for all that have been limited as to the Legislative at the first Institution of the Government, which I shall thus make out.

I do therefore in the first place suppose, that the English Saxons being a free People, after their Conquest of this Island, as well Nobles as Commons, did agree by their free Confents, and publick Compacts, to set over themselves a Prince or Sovereign, and to resign up themselves to him, to be governed by such and such Fundamental Laws. Here is a Supremacy of Power set up, tho' limited as to the manner of its Exercise.

2. Then because in all Governments after Cafes will arise, requiring an Addition of Laws, suppose them concurring with their Sovereign, that if there be any Caufe to constitute any new Law, he shall not by his sole Power perform that Work; but that they will referee in themselves a concurrent or co-operative Power: So that they will be bound by no Laws, but what they join with him in the making of.

3. I suppose, that tho' the Nobles may personally convene; yet since the Commons being so numerous, cannot meet together in Person; therefore, for the doing of this Work, it be agreed, that every City or considerable Town should have Power to depute one or more, to act for the whole Body in the Legislature. That the Nobles by themselves in Person, and the Commons by their Deputies assembling there, may be representatively the whole Body of the Kingdom, with Power to execute that Authority reserved for establishing new Laws.

4. Since the occasion, and need of making such Laws, and expounding the old ones, could not be constant and perpetual; therefore we may further suppose, for the avoiding of the Inconvenience of three standing co-ordinate Powers, they did not establish these Estates to be constantly existent, but occasionally, as the Causes for which they were ordained should require.

5. Because a Monarchy was intended, and therefore a Supremacy of Power (as far as was necessary) must be referred in one, it was concluded, that these Estates should be full Assemblies of his Subjects, and swearing Allegiance to him; and that all new Laws, which by Agreement of these Powers should be enacted, should run in his Name, and be called his Laws, and they all bound to obey him in them, when thus established.

6. And lastly, it being supposed, that he who thus was to govern by Law, and for the Furtherance of whole Government such new Laws were to be made, should be well understand when there was need of them; and that the convening and dissolving of the Assembly of the Estates, was a Power of great Trust; it was put into the Prince's Hands, by Writ to Convene, as also to Prorogue or Dis-found such Meetings. But in process of Time, some Princes, not caring much to have their Government look'd into, or to have any Power in being but their own, taking Advantage of this Power of assembling these Estates, did, more seldom than need required, make use of it: Whereupon Provision was made, and a Time set by new Statutes, within which an Assembly of Parliament was to be held. Now when you have made these true Suppositions in your Mind, you have the very Model and History of this Monarchy; and we shall easily find what to answer to the Arguments before produced on either Side. For first, it is his Parliament: because an Assembly of his Subjects convocated by his Writ to be his Council, and to assist him in making Laws for him to govern by; yet not his, as other Courts are, as deriving their whole Authority from the King. So likewise his Power of assembling and dissolving them, proves him thus far above them; because, though as to the Time of their Meeting, it depends on him; yet their Power and Authority, qua Judicium, i.e. the Being, Kind, and Exercise of it, is from the Original Constitution. For as to that, they expect no Commission and Authority from him, but only to their Meeting, to proceed
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to act; but when met, they act according to the Original Rights of their Constitution; and those Acts proceed from their conjured Authority with, not from their Subordination to the King in the Legislative; as also in laying of Taxes, &c. on the People. The Oath of Allegiance indeed binds them, as his Subjects, to obey him, governing according to established Laws: But yet it supposes them to be built upon the Foundations of his legal Government, and must not be interpreted to undermine and destroy it. He is hereby acknowledged to be Supreme, so far as to rule them by Laws already made, or to be made, but not without them. So that this is no Derogation to the Legislative Power of Parliament: And I believe of these things no prejudiced Man can make any question. And herein conflits the accurate Judgment of the Commissioners of this Form, that they have given so much into the Hands of the Sovereign, as to make him a Monarch; yet have referred so much in the Hands of the People, as to enable them to preserve their Laws and Liberties.

M. I confess you have given a long and plausible Account of the Original and Form of our Government, though if come to be examined, I doubt it will prove a mere Romance, and not at all agreeable to true History, or Matter of Fact: Since if we look to the olden Times, either after the Saxons or Norman Conquests, we shall find the Power of our Kings to have been still more absolute than they are now. And I think I could easily trace the Steps by which the People have attained to all the Power and Privileges they now enjoy; which, as I do not grudge the Nobility and People of this Nation, yet they ought to exercise it with a due Respect and Subordination to that Power from which they were all at first derived; lest if they should abuse them to themselves, the King should be tempted to destroy those great Privileges, and taking away the very Being of Parliaments, to make Laws without them.

But to show you farther, that this Notion of an independent Power in the two Houses by the Original Constitution of the Government, is altogether inconsistent with the King's Prerogative, appears from clear Matter of Fact, even as you yourself have put it. For when Kings thought fit not to have their Power controlled, you acknowledge they called Parliaments less frequently than usual; and that thenceupon there were divers Laws made, appointing certain times for their Meeting; from whence it appears, that before the times of their Meeting were wholly left to his Discretion. Nay farther, that the King's Prerogative of assembling them, or omitting it when he pleases, cannot be limited by any Act himself can make, appears from hence, that notwithstanding all those Laws that have been made for Annual and Triennial Parliaments, our Kings have never thought themselves obliged to call Parliaments oftener than they saw their own Occasions, or the Necessities of the People (which they themselves were sole Judges of) required. Nor did any Parliaments ever find Fault with this, till that rebellion one in 1641, which had the Confidence to present to the King a Bill to be passed, whereby it was not only enabled, that there should be a Parliament every third Year; but that upon the King's omitting to issue forth Writs of Summons, the Sheriffs, nay Commons might summon the Freeholders, and proceed to Election; and that the Lords might also meet without any Writs from the King; which was quite contrary to the Original Constitution, by which (as you yourself grant) there could be no Parliaments without his Summons; he being Princeptum, Caput & Fons Parliamenti. And if so, it seems wholly improbable, nay impossible to me, that your Two Houses should have, by the Original Constitution, any Power of meeting or doing any thing without his Majesty's Consent and Allowance: And we know that at this Day, the Speaker, in the Name of the House of Commons, defers of the King, Liberty of Speech. And King Henry VIII. and Queen Elizabeth did sometimes rebuke the House of Commons, and sent to them to do what they were about to pass, and that they did not approve of, or to meddle with those things which did not belong to them: Which plainly declares, that (contrary to your Assertion) neither of the Two Houses have any Power to proceed upon any Business, or to pass any Bill which the King
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King disapproves of. And though I grant that they do not ask the King's Leave for the bringing in, or passing of all Bills whatsoever in either House; or that the King can command them to give him what Money, or paes what Bills he pleases; yet this Privilege must needs proceed from his Grant or Concession: Whereby, though he hath discharged them from an active Obedience to such Commands, yet hath he not thereby divested himself of any of the essential Rights of Sovereignty, or at all discharged them from a Passive Obedience, or Submission to his Power, supposing the world that can happen, that he should take away what share he pleased of the Subjects Elates without their Consent; or make his own Edicts and Proclamations to be observed for Laws: Since the King's Authority is prior to all others, and that (as the Statutes of Edward VI. and Queen Elizabeth, which I have already quoted, expressly declare,) All Power, Authority and Jurisdiction, Spiritual and Temporal, is derived wholly from the King: So that unless you Legislative Power of Parliament be somewhat, that is, neither an Authority nor a Jurisdiction, it is by this very Body acknowledged to be wholly derived from him: Nor have you yet answered this Argument, nor I believe can you do it.

F. As for your History which you promise to give me, of the absolute Power of our fifth Saxons and Norman Kings, I desire you to define the speaking of it till another time, it being now late: Yet I do not doubt but to prove, that what I affirm concerning the limited Power of our Kings, even by the Original Constitution of the Government, is no Romance, but true History. Nor are the Reasons that you have now urged to the contrary prevalent enough with me to alter my Opinion: For I think I am able to prove somewhat more than I but now affirmed, viz. that the Writs of Demise, or Great Council, met constantly once a Year, or oftener, when Occasion was, under the Saxons Kings, without any Summons from them; as when we come to the particular History of this Matter, I shall shew you more at large. And also, that for the first hundred Years, after the Coming in of the Normans, the Great Council, or Parliament, used to meet of course at the King's Court, at two or three of the great Feasts of the Year, without any other Notice by Writ or Summons. The first mention we find of such Writs, being in King John's Magna Charta: But that when these Assemblies became less frequent, by reason of the King's discontinuance of them; and because of the Ease the Nobility and People found, in being discharged from so constant and chargeable an Attendance, they came to be so discontinued at last, that, as you yourself confess, there were few to be express Laws made for their more frequent Meetings: And though the Power of summoning them, was still left wholly in the King; and that he did very often dispense with the Calling them, according to the intent of those Statutes; yet doth not this prove any legal Prerogative in him so to do; but that it was a high Breach of Truft, and also of his Coronation Oath, when he thus omitted to call them: Since our Kings were formerly sworn to keep, and observe those Laws, quaestam elegentis, which the People either have, or should chuse, contra Rot. Clar. 1. in such a manner which you will; though I own in French it is in the Preces, as in the Latin. And as it is an old Maxim a Fide ad Fidem non vulnera committere, so it is no true way of Proof, to argue from an illegal Exercise, or Abuse of Power, to a legal Right of Prerogative. And though the Parliament might not always actually question, or find Fault with their Kings for thus neglecting to call them; because, perhaps the Publick sutfained no present Damage from it; and that they thereby escaped the giving the King those Taxes and Aids which he usually demanded of them at such times: Yet when the long Forbearance or OmIisions of Parliaments became a general Grievance, by reason of those Encroachments that the King and great Men often made upon the People's Liberties in those Intervals; and that the King look'd upon it as a piece of his Prerogative to abuse this Trust as far as he pleased: Then (and not till then) there was need of a Law, that there should be a Parliament every Year; and that in case of any Failure of Summons on the King's part, the People might proceed to Election without it, which was not so properly a new Law, as the Restoration of the old Constitution; since anciently the People met the
King at thefe great Councils, at fuch fet Times of the Year, as I fhall prove, when we come to the Hiftory of Matter of Facé, which I am not at all afraid to be judged by. And then also, I fhall fhew you, that tho' the King is now Princi- pium, Caput & Finis Parliamenti, (thaf is, the Parliament properly fo called) yet that the great Council, or Asfembly of the Eftates, had, from the firft Inftitution of the Government, a Power of afsembleing themselves, in cafes of Necel/fy, fuch as are doubtful or difputed Titles to the Crown, or the Abfence of the Success- for; and then they have ofteen met by their own inherent Authority; and have either fettled the Succeedion of the Crown, as they thought good; or else have recognized an Hereditary Right in the Abfence of the Heir; as when King Edward the firit was in his return from the Holy Land: Or elfe to depofe the King's Jufticiary, when he abufed his Power, as in the Cafe of William Longchamp, Bishop of Ely, who was left Vice-Roy by King Richard the firit, when he went into the Holy Land.

And though I own that fome high-afpir'd, and yet well-beloved Princes, might take uppon them a Power of reftabfishing the Hufle of Commons when they med- dled with the Bofinie they did not like: Yet this Submiflion proceeded from the great Reverence they had for their Perfons, and Confidence they placed in their Government. Since we find only thofe Princes that were wife and fuccessful in their Government, and fo became the Darlings of their People, fuch as Queen Elizabeth and King Edward the Third, (for as for King Henry the Eighth, I remember no Influence of it) who durft venture to act thus. As for the defire of Freedom of Speech, it is but a Compliment; for how can the Grievances of the Kingdom be redreffed without fpaking freely of them? And if one great End of Parliament was to redreff these Grievances, it were altogether in vain for them to attempt any thing in this kind, if the King could brou- beat them from it, whomever he pleafed. But Braslian doth not only tell us, Rex habeat superiorem, Legem, & Curiam fuam Baronaam, &c. in the place I have already cited: But the old Book, called The Mirror of Jufticie, also teaches us the fame Leifon in his second Section, where, speaking of the King's Power, he tells us, That though the King can have no Peer in the Land, yet nevertheless, if by his own Wrong he offends againft any of his People, none of thofe that judge for him can be both Judge and Party. It is therefore agreeable to Right, that the King should have Companions to hear and determine in Parliament, all Wrifs and Complaints concern- ing the Wrongs of the King, Queen, and their Children; and of them espe- cially whole Wrongs could not otherwife have common Right. These Companions are therefore called Counts, after the Latin Comites, &c. Nor can I think that any King would have evert a Court to have redreffed the Wrongs done by himself, or his Family, whether he would or not. But.as for your main Argument, from the Words of the Statutes of King Edward VI, and Queen Elizabeth, That all Authority and Jurifdiction, as well Spiritual as Temporal, is de- rived from the King; I do own it true; that is, if meant of all derivative Author- ity, fuch as that of all inferior Courts, as well civil as Ecclephillics. For I fuppose you yourfelf will not affirm, that the Ecclefiafitical Authority of Bifhops, as to their Right of meeting in publifh Synods or Councils, is derived from the Crown. But the Truth is, the Senfe of this Statute is no more, than that all fuch Jurifdiction is immediately derived from the King, though originally from the People, (which Fortefce calls Pofteftarem a Populo effusiunum,) and by them intrufted with him, as the Supreme Magiftrate, to distribute it to all inferior Courts, which yet he cannot at this Day create anew without an Act of Parlia- ment: So that this will not extend to the whole Asfemblie of the Eftates them- selves; fince I doubt not but to prove, by undeniable Testimony, that that Con- ftitution is as ancient as the English Nation itfelf.

M. I fee you have a mind to wretf the true Senfe of this Statute by a forced Interpretation; but I hope at our next Meeting to prove to you, that our firit Saxon and Norman Kings were absolute Monarchs; and that not only all the Li- berties and Privileges we enjoy, but alfo our Civil Properties were wholly derived from them: And if fo, it will alfo necessarily follow, that all Difference and Diffinc-
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Difinition in Honour or Power, by which the Bishops and Temporal Lords can claim to sit in Parliament, is wholly derived from those Kings. For as to the Commons, I need not go so high for their Original; since it is the Opinion of our best Antiquaries; and I think the learned Dr. Brady hath sufficiently proved it against Mr. Pepys, that they are no anteceders than the latter End of Henry the Third's, or perhaps the 18th of Edward the First's Reign. Nor do the Authors you have quoted for the independent Authority of Parliaments, (i.e. Brathen and the Mirror) mention any other than the Curia Barum, or that of Earls and Barons, as the Author of the Mirror hath worded it; by which can be meant no other than the House of Lords; For as to that of the Commons, had they been then in being, or had they had any thing to do in the Government, it is not likely these ancient Authors, as well as our Acts of Parliament of those Times, would have omitted particularly to mention them. So that the higher I go, and the more I look on the History of our ancient English Kings, the more absolute I find their Power, and the less dependant upon the People. Therefore I have very great reason to believe, that our first Kings were absolute Monarchs, not only by the Original Constitution of Parliaments, but also that our very Liberties and Properties proceeded at first from their meer Grace and Favour.

F. I know you have asserted the same things more than once: All the Difficulty lies in the Proof. And therefore I would not have you be too positive, or rely too much upon the Conclamens of Silence of the ancient monkish Writers of those first Times. For since, as I own, they have never given us any exact Account of our ancient Civil Government, nor yet of the History of their own Times; we are forced, for the most part, to pick out the Truth from other Circumstances, or such Passages as we can meet withal in ancient Laws and Customs; nay, sometimes from those of their Neighbours, who lived under the same kind of Government and Laws with our Sore Ancients, as proceeding from one common Stock or Original; as I shall shew you before we have done. But since we are already in Possession of our ancient Laws and Liberties, and of a Right to Parliaments once every Year, or other if need be, by two ancient Statutes yet in force; at farthest once every three Years, by a late Act of Parliament, it ought to be your Task to prove to me the absolute Power of our first English Monarchs; and by what Steps and Degrees they came to part with their Power, and to be thus limited as we now find them; and when you can shew me this, I do assure you I will come over to your Opinion.

M. I shall observe the Method you prescribe. And therefore, to begin with the first Entrance of the English Saxon into this Island; I suppose you are not ignorant of so common a Piece of History, that all the Title they had to this Island was by the Sword or Conquest of their first Princes or Generals; who being sent by Loz, together with the Armies that followed them out of their own Country, because it was too barrow or barren to sustain such great Multitudes, they came here hither to seek new Dwellings. Now whether these Princes were made Kings before they came over, or that they made themselves immediately after their Conquest, will be all one; since if we consider them as Military Captains or Leaders of Armies, their Power was absolute, as that of all Generals ever was, and must be by the necessary Laws of Military Discipline. If we look upon them as Kings or Princes (as it is very likely they were also before they came over) since they were certainly of the Blood Royal; all of them deriving their Pedegree from Witen their God, as well as first King; and being appointed Kings by their Fathers, or other near Relations, over those Peoples or Colonies they were to lead out and command, there is no Ground to believe they owed their Titles to the Votes or Suffages of their Followers. But after they had settled a Heptarchy, or Seven Kingdoms, in this part of Britain called England, we find them governing, and leading their People like absolute Kings and Monarchs over their little Principalities; And since each Kingdom was conquered from the Britains under their Conquests, according to the Laws
Laws of Nations, and Right of Conquest, all the Lands of each Kingdom belonged to the Conquerors, who, though they cast them out into Shares to their Captains and Soldiers, according to each Man’s Valour or Demerit, yet did this wholly proceed from their Bounty and Favour, who might have kept the Whole to themselves, if they had pleased. And hence it is, that not only since the Norman Conquest, but also long before, all the Lands of England were holden of the King, as the Supreme Lord: And if so, I suppose you will not deny, but that according to your own Principle, all our other Privileges and Liberties must have been derived from him; since you have already affirmed, that whoever is Lord of the Soil of a Country, he is also lord over the Persons of the People.

F. Before you proceed any farther, I pray give me leave to answer what you have now laid, I doubt with greater Shew and Appearance of Truth, than the Matter will justly bear when well canvassed. But since I grant our earliest Writers are very short, in giving us the true Form, or Original Constitutions of our antient Saxons Government, it is necessary we look into the Roman Authors, who treat of the Laws and Customs of the antient Greek Nations; a Strip of whom the Germans, as well as our antient English Saxons, certainly were; and in these Authors you will find, that they, as well as other Countries of the Greek Original, were never governed by absolute Monarchs; but by Kings or Princes, limited by the Laws and Common-Councils of their own Nations; as were all those that descended from this Greek Original.

In the first place therefore, see what Tacitus says, in his Book De Maribus Germaniorum, who sufficiently proves, that it was a fundamental Constitution of all the German Nations, to order all publick Affairs in General Councils or Assemblies of the whole People. Wherefore the same Author there tells us: De maribus velbus Principes consulantes, de majoribus Omnes; i.ea tamens, ut ea quaque, quamcumque Pileos arbitrium efi, apud Principes praecoxinerunt. As also that in this Council they try’d great Offenders for Capital Crimes. Lives apud Consilium accurare quoque & dierimen capitis intendere. Nor was the Power and Right of their Kings Absolute or Arbitrary, but Limited and Elective, as appears by these Passages in the same Author: Reges ex Nobilitate, Duce ex virtute seu monte. Nec Regibus infinitus, aut liberum pontifici, &c. And speaking of the manner of their holding these publick Councils, after Silence commanded by the Priests: Mox Rex (faith he) vel Principes, prae una ceptus, prae nobilitate, prae deo bellorum, prae facundia efi, endimium, auctoritate fundamentis magis quam iudicand pontifici. Si difficilium fomentum, praeceps afferentur; sed placuit, fonscece concussionem. Heno-rumofficium afferen genum efi armis laudari. So that you may here fee their Kings had no Negative Votes in their Councils, whatever they might have afterwards among the English Saxons; and that they did not so much as preside in them, but the Priests, you may fee in the same place: Silentium per Sacerdotes, quiem cum coercebant eum efi, imperatum. And therefore it is altogether unlikely, that they should have had that Absolute Power, you fancy, over the Lives and Fortunes of the People; since you plainly fee, that they could neither make Peace nor War, accuse or condemn any Man, nor raise Taxes, without the Approbation or Consent of those Councils.

Now since all the English Saxons Nations were from Germany, I leave it to the Judgment of yourself, or any indifferent Person, to consider, whether a People so free as this, who came over hither not as Subjects, but only as Volunteers under so many Captains or Generals, who went out merely to seek new Habitations, should be so fond of a Government they never knew at home, as to give thee Captains (whom they made their Kings) an Absolute Deipolick Power over their Lives and Estates, which they never could endure in their own Country. But that they were not then Kings, I thus prove: First of all, no antient Writer that I know of ever mentioned any such thing, but rather the contrary; for who will believe, that before it could be known what the Success would be, they should make meet Soldiers of Fortune, or Leaders of some Bands of Adventurers, Kings, before the Country they were to govern was conquered, or that they knew whether
there ever they should arrive there or not? and as for the two first of these Princes that came over, viz. Hengist and Horsa, our Historians make them Brothers with joint Command over those Saxons, who were sent hither as Auxiliaries to the Britains, against the Picts; nor is Hengist ever called King, or the Time of his Reign reckoned, till near eight Years after his coming over hither, viz. after the Death of Vortigern, and the driving of Vortiger into Wales. And therefore I can give no account how these Princes should become Kings, but by the Consent or Election of their Soldiers or Followers. For, as for themselves to create themselves Kings, without the Consent of their Army or People, is altogether improbable and absurd, and not at all to be relied upon your bare Word; for other Authority you yet give me none. But for the main part of your Assertion, that the first Saxon Kings were Absolute Monarchs, because all the Land was conquered for them, and to their Use, and that all Land was held of them, is altogether as precarious, our Historians being herein wholly silent. But tho' we do not certainly know which way they divided their Conquest to their Followers, since Authors mention nothing of it; yet this I think I may positively affirm, that whatever was done in this kind by the first Saxon Kings, was not as absolute Proprietors of the whole Country, but as publick Trustees, for those over whom they were sent: for since (as I have already observed) these People were utterly Strangers to a Despoticke Government at home, it is altogether unlikely, that their Followers should confer upon them an Absolute and Unlimited Power abroad, which they were never used to before: And therefore they could not be Kings by Right of Conquest over the Eillears or Persons of those who were Fellow-Conquerors with them and for them up for what they were; nor yet over the Britains, since they were either totally driven out into Wales or Cornwall, or else those few that were left; being reduced to a State of Servitude, were by degrees incorporated with the Saxons.

And tho', for want of Antient Historians, as well as Letters, among rude and barbarous a People as these were at first, we have no Records upon what expresst Conditions these Captains were by them elected to be their Kings; yet thus much we may find out by those few Remains we have left us in Bede, and other antient Historians, that they had all of them the same kind of Government and Laws, with very little difference from each other: Since we find, in all the several Kingdoms of the Heptarchy, there were the same kind of Witenagemot, or Great Councils, by whom the Kings were elected, and without whose Advice and Consent they could do nothing of moment, either in Peace or War, as any one that will but read those Laws that are left us, collected by Mr. Lambarde and Sir H. Spelman, in his Saxons Councils, may easily oberver.

M. I own indeed, that our Saxon Ancelors, when they had conquered this B. d. p. 3 Kingdom, brought in their Saxon Laws along with them; but it doth not from thence follow, that they brought their Popular Government in with them too: And those Assemblies Tacitus mentions, might be Councils of the German People in general, not of the Saxons, which Name is not to be found in all that Author. But what if it be granted, that those People, which were afterwards called Saxons, were governed by such Councils, was not this Government a Democracy? And the People so far from having a Share in those Councils, that they only had Voices in them. And if any had any more Power here than others, they were the Priests, who were the Head of the Chief-men in them, commanding Silence, and who had a coercive Power, as Tacitus says. In these Governments, no Man can doubt of the Suffrages of the People; but under such as you mention, you would, I think, scarce be contented to live, where the Priests bear so much sway; where there were no Cities or great Towns, but only scattered Houtes, and Habitations by Rivers, Fields, and Woods, made of Dirt or Clay, Arms of Trees and Stubble; where there was no Literature, especially among the common People, nor scarce Civility; where there was no Cloathing, but with Garments made of Beasts Skins; Food but Milk, Pulpfe and Fleece, without Art or Cookery; where there was no Propriety in Lands, no Money, no Work for Lawyers, as you will find, if you read Tacitus, and the 6th Book of Caesar's Commentaries.
And as for what you say concerning the Beginning of the Saxon Kingdoms in this Island; to this I reply, that Hengist and Horsa, and those other Leaders, who brought the Saxons into England, were all of them of the Royal Line of the Saxons, as appears by all our Historians; and so, if not Kings, yet well able to subsist. And it was not the manner of those Countries, to thrust out their Supernumeraries by force, but to draw them out regularly by Lot, at such a Rate and Proportion, and to give them Generals and Officers of great Birth and Degree.

Nor is it probable, if they had made Articles with their Followers, that these Princes should have had such Absolute Authority, as they had, over the Lives and Fortunes of their Subjects, in the more early Times, almost all the Privileges of the English Nation being granted long since that time; nay, most of them since the Conquest; yet, since the Saxon Wars. But as for what you say concerning the Guthick or Vandal Kingdoms, since they relate nothing to our Government, I need not pay any thing to them; nor doth it follow, that if their Kings were limited, or but upon condition, that ours must be so too.

F. I fee you would fain evade the Authority of Tacitus, concerning the People's having any share of the Government amongst the Saxons, because, forthwith, that Nation is not particularly named in his History: But tho' the Saxons are not particularly named by Tacitus, yet the Angles are there mentioned among those German Nations, who worship'd their common Goddes Hertha, which that Author interprets to be Terra, the Earth; and you very well know, that from these Angles, orAngles, the English Nation as well as Name is derived. But the Tacitus, who lived about the Beginning of the Emperor Traqian's Reign, names not the Saxons; yet Prolemus, who write within 40 Years after, expressly mentions them, placing their Country not far North of the River Albus, and near the Place where all agree the Angles were feated; so that they were either all one and the same Nation, or very little different. But Estebius Quastler, one of our anientest English Saxon Historians, in his first Book, makes this Nation of the Saxons of a far wider Extent, and that it reach'd from the River Rhine all along the Sea-Coast up to Donna, now called Denmark.

But since I fee you cannot well tell how to evade this Testimony of Tacitus, but by affirming, that the Government in Germany was a Democracy; and, that the People had the only Sway in it, is a great Mistake, since he expressly mentions their Kings and Princes, and there only speaks of the manner of transacting all publick Affairs, in which, it is true, the People (as it is very well known by our anient Historians) had formerly a greater Share than now; yet doth he not thereby exclude their Princes and Nobility from having also their Shares in it. And as for what follows in Tacitus, of the Royal Power, aututioria suadendi, magis quam subjendi potuisse; I suppose you cannot deny, but that Privilege yet remains to us, since the King cannot command the Parliament to make what Laws, or give him what Money he pleacheth: And therefore that doth not make it a Democracy, much less the Priests predicing in their Assemblies, which is no more to be wonder'd at, than that the Bishops have full Votes, and their Share of Legisitature in the Houfe of Peers; or that a Bishop, when Chancellor or Keeper, should be Speaker in the Houfe of Peers. Or supposing that their Priests had more Power amongst them, than the Christian Clergy had after they were converted, doth it therefore follow, that it was not the same Government, or that it must therefore be fo intolerable, that I would not have been willing to have lived under it? Since, I must tell you, I am not against Civil Offices, though exercised by Clergy-men, as far as the Bishops of their Function, and the Canons of the Church will permit. As for the rest which you object concerning the barbarous living of the anient Germans, it either makes nothing to the matter in hand, or else against you; since it proves plainly, that Absolute Monarchy was not the first Government amongst all Nations, as you suppose. Nor doth it therefore follow, that because these People were rude and barbarous, therefore they had not the Wit to prefer Absolute Monarchy before
fore all other Governments, since the Romans (who were a civiliz'd People) did likewise as much abhor it.

But as for what you say against Hengist, and those other Leaders, who brought the Saxons into Britain, being elected Kings by their Followers, is nothing but meer Gufts and Conjetture. For that they were not Kings at home, you your self grant; and whether they were sent to subdue the Country, or no, is nothing to the purpose. It is plain they thought they could mend their Condition, or else would never have left their Country. And 'tis

be granted, that Hengist, with his Followers, came not over as Enemies, but as Aliens to the Britains; yet it is not therefore more likely, that they were chosen by the King of their own Nation, than that their own Follow-

ers shou'd afterwards elect them, especially when the one is agreeable to our own Historians, and the other not: For Matthew Fluchtig tells us, that Min-

fas being slain, the Saxons Placem from Hengest in regnum ostiae fijuisses-

werunt; that is, they elected or advanced him to be King, if I understand

any thing by that Word; And this agrees with the Pokemnicae of Rualph

Higden, who places the Beginning of Hengist's Reign immediately after the

Death of his Brother Horsa, vol. Anna Dom. 469. eight Years after the com-
ning of the Saxons into Britain. And that the right of the Saxon, who came

hither after, had no better. Title than Election, I could farther prove, if the

Time would give me leave: For they shall 'will read the ancient Ac-
counts of the Saxon Nation, and what Government they had among them,

long after the Time of Caesar and Tacitus, will find that it was impossible that they

should be thus created Kings before they came over; since at that
time they had no such things as constant Kings amongst them: For in

those Times it was rather a Aristocracy than a Monarchy, as Johanes Fo-

marinus in his Saxa Chronicle testifieth us, for which I refer you to Verfifian

where this Passage is made use of at large. Verfifian, p. 68. So that if this

were the Government of the Saxons as low as the Time of Charles the Great,

I don't see it to be any indifferent Person to judge, whether the first Saxon

Kings in this Island were made so by their own Prisoners, or were chosen by their Followers; since no Historians mention the

former, tho' all of them agree of the latter: They continually use this

Phrase, Regne succum, or singram. And that all the first Kings of the

Heptrachy, Earl of

tards were Elective, nothing is more plain; since the Great Council of the

Nobility and People did not only elect them, but often depose them too, where

grew intolerable, through Tyranny or Mifgovernment; as may appear

by the Example of Sigbriur, King of the West Saxons, and divers others I could

go on to. Lea-

th June 1690, who we callled this Kingdom (as borough and other antiquaries

in

Chronics tell us) by the unanimous Consent and Deliberation of the Nobility and the

Notes there

People. Many like Instances I could give you in the other Kingdoms of the

Heptrachy, and that it would be too tedious.

Not doth your Reason signify anything, that it is not probable that the first

Princes were made Kings upon condition, because of the absolute Authority, they had over the Lives and Fortunes of their Subjects, for it is also.

gther falls in Matter of Fack; none of the Saxon Kings being able alone to

make Laws, or impose Taxes upon their People, without their Consent in

their Great Councils, much less to make War without it: For then the War,

though begun by the King alone, must have signified little in an Age, when there

were no Standing Armies, nor Money in the Prince's Power to pay them, there

being then but little Coin of any sort, and their Revenues being mostly paid

in Victuals.

M. Pray, Sir, give me leave to interrupt you a little. I when indeed,

that the particular Laws and Constitutions of each of the Kingdoms of the

Heptrachy are not particularly known; and perhaps some of their Kings might

be Elective, and consequently liable to be deposed by their People, whether

by Right or Wrong, I will not now dispute: But if we consider the State-
of things, after these seven Kingdoms became reduced into one, you will find them much altered; and as Egbert, our first Saxon Monarch, reduced all those Kingdoms into one, so it is to be supposed, that having no Right to them but by Conquest, and the Subdivision of their Kings, when overcome in Battle, both he and his Successors must needs have become far more absolute than they were before; and if they were Elected before that time, did now certainly become Hereditary Monarchs, the Crown descending from Father to Son for divers Descents: And so consequently these Princes granted divers Privileges and Liberties to the People of those Kingdoms they conquered. And that they were no other than the free Grants or Concessions of our former Kings, upon Petition or Request of the People, and accepted by the Clergy, Nobility, and People of the Kingdom, in their Great Councils. For this I need go no farther than the Coronation Oath taken by the Kings of England, when the Archbishop of Canterbury asks the King: Sir, will you grant and keep, and by your Oath conform to the People of England, the Laws and Customs granted to them by the ancient Kings of England your Predecessors; and namely, the Laws and Customs and Liberties granted to the Clergy and People by the Glorious King Edward your Predecessor?

From whence we may observe, that all the Bishops, Earls, Barons, and People there present, do own and confess, that their most ancient Laws, Customs, and Liberties, were granted to them by Edward the Confessor, and other ancient Kings.

F. I doubt you will prove as much out in the Account you give me of our Kings Power, after the seven Kingdoms were reduced into one, as you were before. For though I grant, that the Title of the Welf-Saxon Kings over all the real proceeded from Conquest, and the Subdivision of the Kings and People they conquered; yet were they not all actually reduced into one Kingdom or Monarchy till a good while after; the Kings of Mercia, and of the East Angles, continuing in being till the coming in of the Danes, as you will find by our Saxon Annals. And though 'tis true, the Welf-Saxon Kings made those Princes tributary to them; yet that they did not become more absolute thereby, appears from the Testimony of our ancient Historians; since we find them transacting all Affairs in their Witenagemot, or Great Councils, as well after their Conquest, as they did before. And therefore we find, in an old Register of St. Leonard's Abby in York (cited in the Monument Anglicanum, put out by Mr. Dugdale) this memorable Passage: Memorandum quod sacer Dominos 800, Egbertus, Rex trinum Britanniae, in Parliamento apud Witenagemot mutassent nomen Regni (de confessu Populi sui) & jussit illud de casero vocari Angilum. And Will of Malmesbury, that ancient and exact Historian, says expressly of this King Egbert, Lib. 11. Haec omnes Regumur variantes: Egbertus animi magnitudine compositus, et ca, uni quadrantis Imperio ad unum Dominum, firmum et inaequalis propriis Legibus, vocavit Angilum. It is therefore most evident, that upon the Subdivision of those Kingdoms he conquered, he promised and agreed to govern them according to their ancient Laws; and hence we find the Mercian Laws called Mercian Leges, to have continued in force long after that Kingdom was united to that of the Welf-Saxons.

Nor will your Inference from the Coronation-Oath prove of any greater moment: For tho' it be therein recited, that divers of the Laws, Liberties, &c. we now enjoy, were granted by King Edward the Confessor, and other Kings; yet must it not be so understood, as if the People of England had no Laws or Civil Rights before his Time; for that were to contradict plain Matter of Fact, and the Historians themselves I have already cited. But why they were called his Laws, and his Customs, William of Malmesbury hath very well observed, when speaking of the good Laws made by ancient Kings, and especially by King Ethelred, which were confirmed by King Canute, he hath this remarkable Passage: In quorum custodia situm, quia regem bonus, sub nomine Regis Edwardi juravit, non qua dot fis facturis, sed qua dot obfervatris. The like
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like I may say for the Laws of divers other Saxon Kings; which though they go under their Names, yet were made by the Assent of the Great Council of the Kingdom, as by the Titles of the Laws themselves in Mr. Leland's and Sir H. Spelman's Collection of them, you may be satisfied if you please.

But for a taste, pray see the Laws of King Alfred; which, though said to be made by him (as indeed it is true, he compiled them out of divers other Laws, formerly in force in the other Kingdoms of the Heptarchy;) yet that they were also assented to by the Wituena Gamen, pray see the Conclusion of these Laws in Sir H. Spelman's. The Words are remarkable; Ego Aelfredus, West-Saxonum Rex, offered hoc omnium Saxonum vires, & diversit places et confederi. So that the calling them the Laws of King Alfred, or King Edward, doth no more prove that they alone made them, than our now citing such or such a Statute of King Hen. 8. or King Charles I do therefore suppose, that those Kings made Laws by their own Sole Authority; such Phrases among ancient Historians, as well as ourselves at this Day, being used only for Brevity sake, and signify no more than their Confirmation of them.

Mr. I shall not deny, but that our ancient English Kings did for the most part make no Laws without the Consent of their Great Council. Yet think I can give you an unanswerable Argument to prove, that the very Being and Continuation of Parliaments, or Great Councils, did in the beginning wholly proceed from the Grace and Favour of some of our ancient Kings; though to which of them to ascribe it, is not easy to determine. But if we may believe your own Author the Flambard, he tells us almost at the very beginning; That King Alfred, for the good State of the Realm, caused to assemble the Counts or Peers; and then ordained for a perpetual Custom, that twice in the Year, or oftener, for Business in time of Peace, they should assemble at London to treat of the Government of the People of God, and how Fiefs should keep themselves from Offences, and live in Quiet; and should receive Rights by certain Uglages and Judgments. And according to this Establishment were made divers Ordinances by several Kings, until the present King (viz.) Edw. rst.

But to come to the Proof of what I affirm; it is certain, that in those first Times the Saxon Kings conferred all the Bishopricks, and principal Abbeys in England, as Eanwine and Eadwine, as Jorvig and Maldenbury expressly tell us. And as for the Earls or Aldermen of Counties, as also the Great Thanes, Judges or Noblemen of the Kingdom; they were only Officers held for Life in those Times, which the King might discharget them of at his Pleasure: And hence we find the Titles of Aldermanus Regis, and Thanus Regis, so frequently to occur in our ancient Histories and Charters: Those comprehended under the general Name of Wines, being the only constituent Parts of the Great Council of the Kingdom in those Times; for as concerning those we now call the Commons of England, we do not so much as find the least mention of them, or any Representatives for them, till the latter end of the Reign of King Henry the 3d. or the middle of Ed. 1st, as I think Dr. Brady hath learnedly and fully proved in his last Edition of his Answer to Mr. Pen's Treatise of the Rights of the Commons of England Affected. Now if it plainly appears, that every Part or Member of the Parliament did ancesently receive their very Being from the mere Grace and Conception of our ancient Monarchs; can you, or any reasonable Man, assert with any colour of Truth, that our Great Councils, or Parliaments, could be a Part of the Fundamental Constitution, and as ancient as the Government itself? And if Parliaments did thus receive all that Authority they now exercise from the King's Bounty, can any Man doubt whether all the Rights and Privileges we now enjoy, are to be ascribed to any other Original? For if the very Keepers (as you will have it) of these Liberties, did all proceed from the King, then certainly the things to be kept must down too; and when you can answer this Argument I have now brought, I think I may safely promise you to be your Professite, and to come over to your Opinion.
M. I confess, this is the most plausible Argument you have hitherto urged; and if I can't answer it, I do likewise promise you to become your Convert. But though, granting that Parliaments might have received their Being from the Favours of our Kings, I might deny your Consequence, that therefore it will follow that all the Rights and Liberties of the Subjects of England must do so too; since they might very well have referred to themselves both Hereditary Properties, as also a Right to their Lives, Liberties and Estates, which the King should not take from them without just Cause, and legal Trial; which when they found invaded by succeeding Princes, they might then, (and not till then,) find confiant Great Councils and Parliaments to be necessary for that end, and as the firmest Bulwark against the Tyranny of succeeding Princes: But the Author of the Mirror, in the Section before the place from whence you took your last Quotation, expressly tells us otherwise; that upon the first Election of a King to reign over the Reil of the Saxon Princes, they first of all made him to swear, that he would maintain the Holy Christian Faith with all his Power, and would govern his People according to Right, without regard to any Person, and should be liable to suffer Right (i.e. Judgment) as well as others of his People. And though I do not give any Credit to all the Story he there relates of 40 Sovereign Princes in this Island at once; yet the Substance of it may be true, that this Election was made of King Egbert, by the 40 Earls or Counts of those Provinces, which were afterward, by King Egbert called Shires.

But that this Author ascribes the Beginning of Great Councils, to the first Constitution of the Government, pray for, what he there farther says: And though the King can have no Peer in the Land, nevertheless, if by his own Warrant he offends against any of his People, none of those that judge for him can be both Judge and Party. It is therefore agreeable to Right, that the King should have Companions to hear and determine in Parliaments all Writs and Complaints concerning the Wrongs of the King, Queen, and their Children, of which Wrongs they could not otherwise have common Right. These Companions are therefore called Counts, after the Latin, Conciliæ. Whereby you may be, that this Author and Boethius, who were Contemporaries, were of the same Opinion in this important Point: And I cannot imagine how any Prince, who had Power sufficient in his hands to do what he pleased, (as you suppose our English Saxon Monarchs to have had at the first,) would ever, if they could have helped it, have instituted a Court, one of whose chief Bufínifles it was to examine and redress the Wrongs and Oppressions of themselves, their Wives and Children.

But besides all this, what you say, might be somewhat likely; that our Parliaments, or Great Councils, did owe their Original only to the Kings good Will and Pleasure, did we not find the like Constitution to have been in all the Neighbouring Kingdoms in Europe, which have been raised according to the Gothic Model of Government, upon the Ruins of the Roman Empire. Now let us look into Scotland, and there we shall find this Institution as ancient as any History, or Record they have. If we pass into France, we shall find their Assembly of Estates, or Great Council, to have been as ancient as their first Kings, and to have had as much Power in any where else in Europe: Since they not only frequently deposed, but also deposed their Kings of the first Race, and dispossessed of the Succession of the Crown as they thought fit. If we look into Spain, we shall find in the two greatest and most considerable Kingdoms, viz. Castile and Aragon, the like Assemblies: The Power of which was so great in the latter, that they could even depose the King himself, if he tyranniz'd over or oppressed them. If we go more Northward, we shall find in the ancient Kingdoms of Denmark and Sweden, and Norway, that their Assembly of Estates, or Diet, elected their Kings, and could likewise depose them, till those Kingdoms became Hereditary, which was but of modern Times. I shall omit Poland, because perhaps you may be of opinion, whether it is a Kingdom, or a Commonwealth. But if we pass into Hungary, which was instituted by the Hun, a Nation of Gothic Original, we shall find not only the like Assembly of Estates, as in the other Kingdoms; but also that they had a Magistrate
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...giltrate called the Palatines: who was, as it were, the Conservator of the People's Liberties, and who could reft even the King himself if he invaded them; and which is also very remarkable in all these Kingdoms, the Representatives of the Cities, or principal Towns, (which constituted the third Estate, of Commons in those Kingdoms) had always a Place in those Great Councils.

So that, to conclude, it is almost impossible to conceive how these Kingdoms I have now mentioned, could all agree to fall into the same fort of Government about the same time, unless it had proceeded from the particular Temper and Genius of the German and Gothick Nations, from which they were derived: Or who can believe, that all these Nations, and their Kings, finding the like Conveniences from these Great Councils, and Inconveniences by the want of them, should all confpire to set them up in each of these particular Kingdoms.

"M. I will not deny but that the Institution of Great Councils, or Assemblies of the Estates, might be as ancient as the Government itself, in several of those Kingdoms you mention, which were at first elective: But what is that to England, where our Monarchy hath been by Succession from the first Inflation of it, and not elective, as you suppose? Nor do I much value the Authority of the Mirror as to the great Antiquity he ascribes to this Assembly of Counts, or Omnies, (as Brasen calls them) and in which, by the way, no Commons are mentioned. And though I grant, the Judicial Power of the House of Peers, is very ancient: Yet that is wholly proceeded at first from the Indulgence of our Kings; and from hence, that there was always a Necessity of the King's \( \frac{1}{3} \) Presence in Parliament, which is very well proved by Sir Robert Cotman, in a learned Treatise written on that Subject: Whereas he proves, that in all Consultations of State, and Decisions of private Plaints, it is clear from all Times the King was not only present to advise, but also to determine. And whenever the King is present, all Power of Judging, which is derived from his, ceaseth; the Votes of the Lords may serve for matter of Advice, the final Judgment is only the King's: But indeed of late Years, Queen Mary and Queen Elizabeth, by reason of their Sex, being not so fit for publick Assemblies, have brought it out of use; by which means it is come to pass, that many things, which were in former Times acted by Kings themselves, have of late been left to the Judgment of the Peers, who, in quality of Judges extraordinary, are permitted, for the Ease of the King, and in his Absence, to determine such Matters as were ancienly brought before the King himself, sitting in Person, attended by his Great Council of Prefaeres and Peers: And the Ordinances that are made there, received their Establishment either from the King's Presence in Parliament, where his Chair of State is constantly placed, or at least from his Confirmation of them, who, in all Countries, and in all Causes, is Supreme Judge: All Judgments are by, or under him, and cannot be without, much less against, his Approbation: That King only, and none but he, if he were able, should judge in all Causes, faith Brasen. So that nothing seems plainer to me, than that the Jurisdiction which the House of Peers have hitherto exercised for the Hearing and Determining all Causes, as well Civil as Criminal, by way of Appeal, not only between Subjects, but also in all Accusations against the Lords themselves, proceeds wholly from the Conception of our Kings; which may appear by an ancient Precedent, mentioned by Abbot Bishop in his History. It is the Case between King Edward whit Confoff, and Edward Earl of Rose, whom the King accused for the Death of 15. Script. a his Brother Prince Alfred, before the House of Peers; and there you will find, Ann. 1041. that after the Earl had put himself upon the Judgments of the King's Court, the Col. 957.

King thereupon said: "You Noble Lords, Earls and Barons (i.e. Thanes) of the Land, who are my Liege-Men now gathered here together, and have heard my Appeal and Godwin's Answer; I will, that in this Appeal between us, ye decree right Judgment, and do true Justice." And upon their Judgment, that the Earl should make the King sufficient Satisfaction in Gold and Silver, for the Death of his Brother; the King being thereof informed, and not willing to contradict it, (the Historian therewith) he ratified all they had judged. I could give you many other Precedents of latter Date, were it not too tedious:

But
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But this is sufficient to shew, that what the Peers asked in this matter, was by the King's Sole Will and Permission. I shall only conclude with one precedent more, in a Case somewhat of a like Nature. It is that of Henry Spencer Bishop of Norwich, 7 Rich. II. who was accused for joining with the French: The Bishop complained what was done against him, did not pass by the Assent and Knowledge of the Peers: Whereupon it was laid in Parliament; "Thus the Cognisance and Punishment of his Offence, did of common Right, and ancient Custom of the Realm of England, solely and wholly belong to our Lord the King, and no other." From all which I infer, that the Judicial Power exercised by the House of Peers, is merely derivative from, and subservient to the Supreme Power residing in the King. From whence it also follows, that if the Peers have no Power nor Honour but what proceeds from the Prince, and that the Commons were of a much later Date, then both the Being and Privileges of both Houses had but one and the Half-same Original, viz. nothing else but the mere Grace or Favour of our Kings. I have only added this, the better to enforce my former Argument; and therefore I desire you would now answer them both together.

F. I am very glad your last Argument doth not prove fo formidable as you suppose; for to remove that out of the way, I must tell you that you now very much mistake the Question; which is not only concerning the Judicial Power of the Peers alone, but the Legislative Power of the House of Peers and Commons taken together, which is the Subject of our present Dispute: And therefore if I should grant you, that the Judicial Power of the Peers is derived wholly from the King; yet would it not at all impair the Legislative Power of either of the Houses, which no Historian or Law-Book that I know of (that is of any Credit or Antiquity) ascribes to the King's Favour, as you suppose: Nor is it true, that the House of Peers can give no Judgment, either Civil or Criminal, without the King's Consent or Approbation, which is never so much as ask'd, let the Cause be what it will; nor is his Presence at such Judgments at all necessary; but indeed you confound the King's Council in Parliament, (where I have shewed you already, he is far and dispaunched divers Causes in a Room or Chamber, distant from that of the Peers) or House of Lords.

But to come to your main Argument, that our Parliament must owe its Original to the King, because each of the Edicts of which it consists, doth so. This I hope will prove as weak, when thoroughly considered: For first of all I could shew you, that these Councils could not owe their Original to the King, since the same Kings rather owed their Original to them, by whom they were most commonly elected, as I could shew you out of our ancient Historians, if it were now a proper time for it. But as for our Bishops and Abbeys, &c. which anciently made so great a figure in our Saxan Great Councils, (which I can shew you, were then both Civil and Ecclesiastical Assemblies) I have already proved out of Tacitus, that among the ancient Germans (a part of whom our ancient English Saxons were) their Priests (who were their Clergy) had a considerable Authority in their Common Councils. And can any Body believe, that a Sort of People so powerful and subtle, as the Priests then were, would lose their Power after they came over into England? And we find in Bede, that Ethel King of Northumberland consulted with a Council of his Great Men and Priests, concerning his embracing the Christian Religion; and when it was generally received, can any Body think that the Christian Bishops and Clergy would not expect to succeed in the same Station which the Heathen Priests before held in their Councils? And that they enjoyed this Power very early, appears from hence, that in the fame Earlsbire could not endow the Church and Monastery of Canterbury, fute Aelfrafa Magnanum & Principum tant Cleri quam Populi.

But indeed you are as much mistaken in the Manner of the ancient Elections of Bishops and Abbots in England: For though I own that at the time of the Conquest, and somewhat before, there might be no such Elections of them as the ancient Canons required; yet that this was not so at the first, you may see in
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In Bish's Ecclesiastical History, and other Historians; where it is often mentioned, that Bishops were chosen, according to the Canons, by the Archbishops and Bishops of the Province, and Abbots by their Convocs: Nor was the King's investing of them, per Ambulan, & Bucbanum, and then look'd upon as any Derogation to their Canonical Election, that being do more than either a Ceremony of investing them with their Temporalties, or a Token of the King's Confirmation of the Election. And that this was so, appears by King Edgar's Charter to the Abby of Glastonbury; wherein he retains to himself, and his Heirs, trium victiui fratres Electo Bucbanum Pafforhon.

But that which so much scandalized both Ingulf and Malmesbury, was a Custom then in use, as also long before the Conquest, of Confirming the Bishop Elect in a full Synod or Parliament. And to this Custom Ingulf refers, which he tells us, "nulla est usus in Eglis, nullus est usus in Eglis Prelatiorum maius Libertas, & Convenit; sed Ingulph. Episcoporum quum Abbatum Regis Curia pra sua Convenctuvi con-ficit. Quoque perfefta. Where, by Curia Regis, you must not understand the King's Court in the Sense it is commonly taken, but for the Great Council or Mikel Synod, as it was then called, and which dispersed Ecclesiastical, as well as Civil Affairs, in the same Sense as Curia Regis is used by Bishopsh, in the Case of King Edward and Earl Godwin, which you but now cited: And in which Sense it is always used by Ingulf, when he speaks of the Great Councils under the two Williams. It will not do for us to confine ourselves to this Subject, and that, therefore, give you but one Authority on this Head; and it is that of Wulfan, who was made Bishop of Worcester in the time of Edward the Conqueror; and that, as Matt. Paris tells us, "Unanimis confentie tamen Cleve, quia totius Plebis (Regis us quem velis, et eligere personam usque) in Episcopum ejusdem loci eligiur. And then he goes on thus; Nam licet fratrum quid defserit Eccles, yet that there concurred to it, Plebis Patris, Voluntas episcoporum, Gratia Patris, Regis Authoritas: All which amounts to no more than that he was proposed by the People, chosen by the Bishops and Peers, and confirmed by the King: Yet that all this did not hinder him from being invested per Bucbanum, & Ambulan, as the Custom then was, may appear by the Speech this Bishop Wulfan made at the Tomb of Edward the Conqueror, where he went to resign his Palfonsal Staff after his being deprived of his Bishopsrick by Archbishop Lanfranc, and the Synod. And the Conclusion of this Speech is remarkable, "Tibi (ful. Eddardus) Bucbanum regem qui dedisti, Cesar omnium dedito, quos nisi commendasti. A like Example I could give you of the Election of this Archbishop Lanfranc himself in the King's Curia, or Great Council, not long after the Entrance of King William. But for this I refer you to Eadmerus, and the Reign of the King, printed at the end of Mr. Taylor's History of Great Britain.

But admitting that the King alone had in those Days control of all Bishops, does it therefore follow, that his Nomination of Bishops, in the pursuance of that Truth which the Kingdom repose in him, did likewise make them to derive all the Right they had to sit in the Great Council from the King's sole Authority? You might indeed wish as much Reacon urge, that because the Emperor Theodore (as likewise divers of his Predecessors) did nominate Bishops to See, therefore they did likewise receive from them all the Authority they had of appearing and acting in General Councils, which I am sure you are too good a Church of England Man to affirm.

'M. I must confess I never did so closely examine the ancient Form of conferring of Bishops before the Conquest, as I find you have done: And I will better examine your Authoritie;' and if 'I find this Custom to have been constant and uniform, I shall come over to your Opinion. Though I doubt it will not prove to have been so general as you would make it; since by the Authority you have now brought out of Matt. Paris it appears, that it was the King that gave leave to this Election of Bishop Wulfan in the Great Council, which I am not yet convince'd did then take upon them to meddle in Ecclesiastical Matters without the King's Consent; But since you have spoken enough concerning the Right and Antiquity of the Bishop's sitting in our Great L 1 Councils,
Councils, it is time you now speak of the Right of the Peers; or Temporal Lords, which certainly could have no place there but from the Favour and Concession of our Kings: So that whether we consider those Lords in the SAXON Time as Rulers of Counties, called in old English Earls or Aldermen, in Latin Dux, or Consulares; or else as Judges or Counsellors, called in old Saxon Wolves, or Wlfmen, in Latin Sapientes: Or lastly, as Thanes, in Latin Minifri, who were either Military Tenants, or Civil Miniflers; or else Officers of the King in his Court, or other Employments; none of them were Hereditary in those Times, but all of them either depended upon the King's Will, or else owed their Honours and Estates to his Favour.

I hope, notwithstanding the Confidence you put in this part of the Argument, that it hath no more weight in it than the former. For though I grant there was no such thing as Hereditary Ealdoms before the coming in of the Normans: So that though both the Earls and Aldermen might have Places in VI. Dugdale's the Great Councils, Ratios Officii (as the Earl Marshal of England has at this Day) and not by Tenure, as they did after that time; yet I very much doubt whether they sat there only Ratios Officii, and not as Thanes; or by Reason of their great Lordships, or Estates in Lands; but if they sat there as Earls or Aldermen, yet might they not be the only Persons that sat in those Councils by that Title. For there were, besides those, Aldermen of Cities and Boroughs, who were elected by those Places; and who it is very likely appeared for them as their Representative in those Councils, until by Succession of Time those Towns began to send two Burgesies in their stead; some Footsteps of which still remain in London, where the Aldermen of every Ward are first proposed to be elected Parliament Men before any other: And it is certain that those Aldermen, in the most antient Cities, as London, York, Lincoln, &c. are not elected by any Grant or Charter from the Crown, but by an inmemorial Right of Prescription.

But admitting that these Earls or Aldermen appeared in these Councils, by reason of their Offices or Dignities which the King conferred upon them, yet doth it not prove, that the very Office itself proceeded wholly from him; since we find the Authority of those chief Men, whom Tacitus calls Princes, (and which anwet these Earls) to have been used among the antient Germans long before, when he tells us in the fame Chapter where we cited the relit; Urna per Pagos, Virofuge [Principes] redditus, centum finguils ex plebe Comites Consilium publicum & auxiliares adfum. Which exactly answers our County, and Hundred Courts, under the SAXON Kings; wherein the Aldermen of the County, or his Deputy the Sheriff, presided, and the Freemen of the County or Hundred were the Judges of all Matters of Fact. So that though the King might appoint these Princes or Governors of Provinces, or Counties, yet doth it no more follow, that they owed their Being and Place in the Great Council wholly to his Will, than (as I said before) supposing that the King had antiently the Nominatio of all the Bishops and Abbots in England, that therefore they must also owe their Place in our great Councils, or Synods, wholly to them; since the King performed both of them as a publick Truth committed to him by the Commons in the one case, as much as in the other.

But indeed, I think the greatest part of the Members of this Assembly (besides Aldermen and Burgesies for Cities and Towns), consisted of those Thanes, whose Names are often found in the Subscription of the antient Charters of our SAXON Kings after the Principes, Duci, et Consulares; and that though many of them might be the King's Poulsh Thanes, or Tenants in Grand Serjeancy, of Knights Service in chief, as Mr. Selden tells us in his Titles of Honour, yet that Author no where excludes the ostsepara Regens or Leyeping, i.e. middle or left Thanes, from having Voices in those Assemblies, who were Afterwards called Vassalours, or Lords of Townships, afterwards called Mavours, with Courts annexed to them under the Names of Sue and Sac; which were the same with our Court-Leet and Court-Baron: Especially, if you please farther to consider what a vast
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a vast number of Akedars, or Free Tenants, there were then, who held their lands discharged of all services, but the common Burthen and Taxes of the Nation, none but the Lands of the King's Thanes, being held by Military Services before the Entrance of the Normans.

So that whoever will but consider the Nature of our Saxan Councils will find, that the greatest part of the Persons that appeared there did not owe their Places only to their, being the King's Minifters or Officers, as you suppose; but to their holding such Lands and Possessions as capacitated them, and gave them a Right to have Places in those Great Councils. And that this was so, we need not go no further than the Laws of King Athelfram, where you will find Gwineor, Tyreif given to an Earle in Land: For you will be pleased to consult King Athelfram's Laws, you will there find, that if a Vifion, Vi. Land, or Churl, could fit thrive to get an Earifor of five Hiders in Land, he was at least reckoned a Thane, is to a Gentleman or Nobleman, as they were promiscuously reckoned at that time.

So that though I suppose there might not be in those Times that exact Distinction between Peers and Commons, as there hath been established since the coming in of the Normans; yet was it the same thing in effect, since the Bishops, Earls or Aldermen of Shires (though not enjoyed as Hereditary Honours) might make them the greater Nobility or Peers, as the Thanes were the less Nobility, Gentlemen, or principal Freeholders; who all appearing in Person, might, together with the Aldermen or Burgesses of Towns, represent those which we now call the Commons. And supposing that then there were no Knights of Shires, yet these being then the only Proprietors of any considerable Estates of Land in the Nation, might very well represent not only the Lords or Under-Tenants, as Tenants for Years, and as Will, are at this Day by the Knights of Shires, though they have no Votes at their Election.

To conclude: Though I grant that the Kings of England are the Fountain of that Honour, which we call Peerage; yet it is only in pursuance of that ancient Constitution which their Ancestors brought out of old Saxan and Normandy along with them, as the fairest Defence of Kingly power against the Infidelity and Insufficiency of the common or meaner sort of People, as well as Tyranny in their Princes. And therefore in all Monarchies where there is no Hereditary Nobility, the Prince hath no surer way to maintain his Power than by Standing Armies, to whose Honours and Factions he is more subject, and is also more liable to be murdered, or deposed by them (when discontented with him) than ever any limited Prince yet was, or can be by his Nobility or People. As I could thee from a Multitude of Examples, not only from the Roman, but Moorish, Arabick and Turkish Histories: And therefore, to constitute a lasting, stable, limited Monarchy (as ours is) it must be according to the Model I have here proposed.

M. I shall not contradict the latter part of your Discourse; but I must freely tell you, that if it (as you yourself grant) there were no Knights of Shires in the Saxan Times, I cannot see how those we call the Commons of England had then any Representatives in the Great Council; since those Thanes, or Lords of Manors, whom you suppose to have represented their Tenants to the Vassals, were never chosen by them, and consequently could not properly be their Representatives: But I think it will be easy enough to prove, that none of your inferior or middle Thanes, but only the chief or superior, had Places in those Assemblies. So that these Feudal Thanes, or such as held of the King in chief by Military Service, were of the same kind with them that were after the Norman Times Honorary or Parliamentary Barons, and their Lands alone were the Honorary Theland, and such as were afterwards Parliamentary Barons. Nor can I find any Footmen in our ancint English Histories of Cities and Boroughs for any Representative.
BIBLIOTHECA POLITICA.

Representatives to those Great Councils. So that admit I should own as present, that the Bishops, and some great Abbots, had, from the first settling of Christianity in this Island, an indispensible Place in the Great Councils; and likewise that the Earls, Aldermen, or great Nobility, had also Votes in those Assemblies; and that the chief Tenants, or great Nobles, had also their Places there, by reason of the Tenure of their Estates. Yet certainly the House of Commons was of a much later Date, and owed its Being either to the Grace and Favour of our Kings of the Norman Race, or else to those that had usurped their Power. And this I think Dr. Braddy hath very well proved against Mr. Pope: And I think I could convince you also of the Truth of it by his, as well as other Arguments, were it not now too late to enter upon so long a Subject.

F. Therefore, pray let us defer any further Discourse of this Question till the next time we meet: wherein I hope I may shew you, that if you owe that Opinion to the Doctor's Arguments, he hath led you into a very great Mistake. And I shall only at present take my leave of you, and bid you good Night.

M. I wish you the like.
Bibliothea Politico.

D I A L O G U E  VI.

Whether the Commons of England, represented by Knights, Citizens, and Burgess in Parliament, were one of the Three Estates in Parliament, before the 49th of Henry III. or 18th of Edw. I.

M. Sir, you are welcome; and since you were pleased to send me word, that you would come and sit with me this evening, I have been looking over all the Saxon Councils, coloured by Mr. Lambard, and Sir H. Spelman, and yet I cannot find in them any mention of Knights of Shires, or Burgess for Cities or Boroughs; the only Persons there mentioned, as Members of those Great Councils, being Archbishops, Bishops, Abbots, and Great Lords, and Judges; often called by the general Latin Names of Magnates, Principes, Proceres, Optimates, or Primate Regni, which were all comprehended under the Saxon Word, Wites, i.e. Sapientes; by whom (as Th. Wrio, Sir H. Spelman shows us in his Glossary) were meant only Senators, or Wise-men, B. G.

that is, either Noblemen, or Great Lawyers; Wite, in Sommer’s Saxon Dictionary, being first rendered Optimus, a Nobleman; and then Sapientis, a Wife-man. So Ps. 66, 67:

that these Wites, or Sapientes (so often mentioned in our Ancient Saxon Laws) when they are put alone, signify all the Ecclesiastick, as well as Lay-Members of the great Council, such as Earls, Aldermen, and Thanes, and Judges, as Dr. B. more particularly proves, in his Glossary at the end of his first Volume. But by Principes, and Optimates, can only be meant Nobles, or Chief Men, as the Word Principes, Magna, and Optimus do always signify in the Latin Tongue: That is to say, such of the King’s great Officers, Noblemen, and Judges of the Kingdom, as he pleased to choose out, and call to his Great Councils, either for their great Wisdom or Estates, to make use of their Advice and Assistance for the making of Laws.

Therefore pray shew me where there are any Commons once mentioned in any of their Councils, or any that represented them. Here are indeed particularly mentioned, Archbishops, Bishops, Abbots, Aldermen, Wites, Great-Men, and Chief-Men, or Noblemen. These were all the Orders of Men that were then the constituent Parts of those Great Councils, Wittens-Genora. And if the Commons, as now taken and understood, were then Members of them, they must be comprehended amongst the Wites or Sapientes, the Wise Men. But that it cannot probably be so, I shall prove, (1.) That most of the Saxon Laws, in their Prefaces are said to be made and ordained by their Kings, with the Advice and Assistance of their Wites, or Wise Men simply, without mentioning any particular Orders of Men whatsoever. And when any Rank or Degrees of Men are particularly mentioned, they are only the same before recharc’d, both Ecclesiasticks and
and Laicks. (2.) I note, that it cannot be denied, but that in every one of these Wittenan Gemotes, Micel Symods, Micel Gemotes, or Great Councils, where the Laws are said to be made only by the King, with the Advice of his Wites or Sapientes, within one speaking any Degrees of Princes or other Nobility, the Earl, or Alderman and Thane, for the Temporal, were paramount at the making of them; as also the Judges, if there were any of the higher Clafs, other than Bishops, Aldermen, and Generes, or Prophets.

(3.) I note, that it follows from thence, that thefe all jointly were the Sapientes, where there are only Wites or Sapientes in general named, without reciting any particular Orders or Degrees of Men. If now you can throw me from as good Authorities as I have here produc'd, that any of the Commons sat in thefe Great Councils, at least to represent the Body of the Commons among the Saxons, I will grant, that during the SAXON Government, the Freemen, or Commons of Englund, as now called, and distinguished from the Great Lords, were an effential constituent part of the Common Councils of those Times.

F. To return you as thoftr an Answer as I can, to thofè Authorities you now cite, I muft in the first Place premise, That though I grant all Nobility among the Ancient Germans, Saxons, and Franks, (who were but few Strips or Branches of the Gothic Nation,) were at first wholly Military; yet it is a very great Mistake, and favours of the Prejudices of the Age and Country we live in, to imagine that anciently there were the fame Diftinctions between Peers or Noblemen, and Gentlemen, (whom we now often call Commons,) that there are among us. For if we go but over into France or Germany, we fhall find no Difference there between the greater and the lefs Nobility; and a Gentleman is as Noble as a Duke, or a Marquis. And if we pass farther into Denmark and Norway, from whence most of the Danish Laws are suppos'd to come, it is certain, that but a few Years ago, there were no fuch Titles among them as Earl, or Baron; every Lord of a Town, or Diftrict, being that which they call an Adelman, or Noblemen. And fo if I suppofe it anciently was among the English Saxons, The Word Adel, or Adel, comprehending (to speak in our present Dialec,) all Degrees, as well Noblemen, as Gentlemen; and for this, I can give you the Authority of an Ancient Author, viz. Paulus Warnfridus de gestis Langobardorum, who speaking of these Adelmen, or Adelings, tells us, Sia opus eos guidam Nobilis prospicia vocabuntur. So likewise Sir H. Spelman in his Glossary, Tit. Adelings, Tier. p. 9, 10. writes thus, Anglorum legisbus dicit pro nobiliibus in gener, quod nec d Cain ad Germans antiquam ec, qui annus nobilis, Adelmen vocabant, a Saxonicus Adel promovit: And Mr. Seiden in his Titles of Honour, makes the Word Adelam to signify all one, either Gentlemen or Noblemen. Besides, Adam of Bremen, and Niardus likewise, both Ancient Historians, divide the Saxo Nation into Three different Degrees, or Orders, viz. into Adelings, i. e. Nobles; Frelings, i. e. Freemen; and Lazarus, i. e. Villains, Bours, or Bondmen.

Besides which Noblemen, or Gentlemen, there was likewise another Sort of Men, who though of an Inferior Rank, yet as Freemen, and having a confiderable Share of the Riches and Strength of the Nation in their Hands, had likewise a Place in the Great Councils, as well as the former. And there were the Aldermen, or other Magistrates of Cities and Boroughs, and in this they resembled the German Dijts, whose confident Members, there, according to Genenus, an Ancient German Poet,

Breflari, Proceres, misisique potentissim Urbis.

But since this is a Dispute about the Signification of Words, in what Sense they were used in that Age we are now treating of, it will not be inconvenient to, examine from the most Learned Glossarists, the Ancient Signification of thefe Words which are in Dispute between us. And therefore, since we are agreed about the Meaning of all other Words except thefe, viz. Alderamen, Thanes, Wites, Magnates, Optimates, and Principes, Proceres, or Primates, let us examine each of their Ancient Significations. To begin then with, the Word Alderman, Alderman, which Word was of a very general Signification: For Sir Hen. Spelman in his Glossary, Tit. Alderamen, tells us, that there was Aldermans Regis, Comitatus, Civitatis, Burgi, exc. de quorum potestas non facile et adeharet. Mr. Lam-
Dialogue the Sixth.

Mr. Lombard renders the Word Calceo- nian, in Latin Senator, (i.e. one that had in his Glos- sary, £5, in the Great Council); and so doth Mr. Sommier in his Saxon Dictionary, from whence you may learn, that this Word is of a large Signification, and might comprehend such as in latter Times were called Commons, to distinguish them from the Lords or higher Nobility.

Versteegen renders this Word thus: Calceo-, so written in our ancient Lan- guage, is properly an Elder, or Senior; yet an Calceo-nian, which we call now an Alderman, was such in effect among our Ancestors, as was the Tribunus Plebis with the Romans, that is, one that had chief Jurisdiction among the Commons, as being a Maintainer of their Liberties. And if so, such Perions must certainly have had a Place in the Great Council as Commoners; and therefore must from the Reason of the thing, signify something more in those Times than an Earl, or great Officer of the King only.

So likewise, that the Word Thane comprehended more than the King’s Great Feudal, or Military Tenants, may appear by these Interpretations of it, which our Antiquaries have given us. The Indescribous Mr. Sommier, in his Glossary at the end of the X. Scriptores, as also Mr. Selden in his Titles of Honour, do both agree in the difference: I now make between the Greater and the Lesser Thanes; the former being called cynunger, Thani Regis, the other called meistera, Thani Mediores, vel Inferiores Thani, Middle, or Lesser Thanes, who were Manerriorum Domini, Nobilis minoris, Vassalos et nonnullam libertatem tenentes. With whom Sir H. Spelman in his Glossary agrees, Thanesus duo erat, Thani Regis appelletur, Thani Regis, et Thani Simpliciter, seu Thani Minores, qui idem erant qui Barones Minores, hoc est Manerriorum Domini Nobilis minoris, et nonnullam Liberi Tenentes necnonpurtur. So likewise Mr. Lombard in his Glossary, thus Thani autem appellantes viri interdum Nobiles, interdum libere conditores homines, interdum Magnusarius aequo numero Ministrorum nominatur. And also in his Perambu- lation of Kent, faith Cegen, was usually taken for the very same that we call now from the Latin word Gentilis, a Gentleman, that is, "s身高, A man well born, or of good Stock and Family. So that I think nothing can be more evident, than this according to the Opinion of our best Criticks in the Saxon Tongue, the word Thane doth not always signify a great Lord, or Baron of Parliament, as he is now called, in distinction to an Inferior Nobleman or Gentleman. And that there were also Baruch Thanes, Thanes of Cities and Boroughs, will evidently appear from a Writ or Charter of K. Edward the Confessor, which is still to be found in Sir John Cotton’s Library, in these words Eowap King grece Willem ? Leocan ? flay popnce pecen ?, alle mine Burgbnder on Lunben ppenuance, which Charter with divers other of like nature, confirming the Privilege of that: Monastery, were collected by a Monk of Westernor called Salcardus, who lived not long after the Conquest.

In the next Place, as for the Word Magnates, though I grant it there often signifies Great Men or Lords; yet not only such as were Lords or Noblemen by Birth, but as I shall shew you by several Instances, as well before, as after the Normans Entrance, that it also comprehended the Gentry, or Inferior Nobility, and such as were eminent and considerable either in the Countries or Cities, for Interests, Office, or Eftare.

As for the Word Optimates, I know it signifies the better, or best sort of Men; yet not always great Noblemen, or Lords. For in Monastic Anglic. Tom. 3. we read of one Goda, who under Edw. the Confessor subscribed himself Optimatam, et Ministrum Regalem, (i.e. Thane.) And left you should apprehend that Optimam should always signify the King’s Thane, or Tenant in Capite, de Freyne in his Glossary defines Optimates to be Vejlale Barones qui ab uno Domino ratione Homini unde pendunt; but I shall say more of this word Optimates, when I come to speak of the Times not long after William the First.

In the next Place, for the Word Proceres, it doth not only signify Men noble by Birth, but Ifidore (a Spanish Author in the Gothic Times) in his Origines, Lib. 9. Cap. 4. says thus, Proceres sunt Principes Civium; and that this word often signified in the ancient English Saxon, the Chief Magistrates of Cities or Burghs, appears by Affricke’s ancient Glossary, where these words Proceres pri- mates, vel primores, he thus renders yblipr buhp papa. And de Freyne in his P. 64.

M. 2

Glossary
Glossary also, Proceres appellabantur qui in Cuiuslibus praeceps Magistratus gerebant.

As for the word Principes, any Man that understands any thing of the Latin Tongue, knows that it doth not always signify Princes, or Men Noble by Birth; but any Chief, or Principal Man remarkable by Place, Office or Dignity; and therefore we often read in Lucy, and other Latin Authors, of Principes Cuiuslibus; and in this Sense I suppose every Member of Parliament may be reckoned inter Principes, among the Confidante or Chief Men of the Kingdom; So that when our ancient English Historians, (as well before as immediately after the Norman Conquest) do often, after the Archbishops, Bishops, &c. add, et eisleri totius Regni Proceres, & Optimates, or Principes, as Members of the great Councils of those Times: Yet that these Writers did not then mean what you would understand by these words, only Princes, Earls, or Great Lords, Mr. Selden in his Titles of Honour teaches us, when speaking of this word Principes (as the most comprehensive of any) says, that the Principes in the Singular, were proper to every Earl or Alderman; yet in the Plural, Principes is more often applied comprehensively to others alfo of the highest of special Eminency, such as were Viz Primarii, or Thanes. And for this he refers us to the Charter of King Eadbald, (as it is recited by W. of Malmesbury, Lib. 2. Cap. 2. and Ingulph) wherein that King granted Tithes, and divers other Privileges to the Church-Abbey of Malmesbury, which is said to be done Conflito Episcoporum, & Principium Suorum; as also of Hen. Hunt, Who relating the Election of Harold the Son of King Cnut, exprests it thus; Vix magnum placuitum opus Oxonford ubi Leoarius Consul, & omnes Principes egerunt Heraldum.

Lastly, As for the word Wite or Sapientes, there can be nothing in that Word which can limit it only to Men Noble by Birth, since it signifies no more than the King’s Great Council of Wife Men or Senators, and might also well refer to the Chief Magistrates, or Representative of great Cities and Boroughs. For Du Fresne in his Glossary tells us, That among the Lombards, Sapientes in Italia appellabant, & Cuiuslibus Goves Primarii, quorum Conflito Republica gerebantur. Hieron. Rubens, Lib. Hist. Raven. Anno 1597. — Sed longe ante illud nomen obtinuit in alris Longobardorum Cuiuslibus ut colligere liceret ex Ottone, & Acerbo Morena in Hist. Rerum Lendeciviantum, &c. Nor is this Authority inconsiderable, since the Lombards were derived from the Gath, from whom also the English Saxons had their Original, and had the like fundamental Constitution, and were governed by much the same Laws.

But that the Title of Wite or Sapientes, was often attributed to the Commons of England, I shall explain to you when I come to treat of the Antiquity of the House of Commons, after the Normans Entrance; where I shall shew you, that divers Petitions were directed a tres Sages les Commanes. And lure whose-foever is chosen by a County, City, or Borough, as their Representative, and is by them thought wise enough to be trusted with their Purses, and to make Laws for them, may very well I (think) be called in Old English a Wise, or in our modern Dialect, a Discreet or Wise Man. But let this word Wite signify what it will, yet it could never mean here great Lawyers or Judges, as your Dr. will have it; since I very much doubt whether Law was then a Trade or Profession, or not. And that the Judges in those Days had not any more Voice in making Laws, than they have now, or any more to do in it than in the bare drawing of them up, I am very well satisfied; since if they had any such Power in those Days, I do not believe our Kings would ever have let them have loft it, since it was so advantageous to their Prerogatives that they should keep it. I could give you divers other Authorities, though of later date, to prove that the Commons were often included under the word Sapientes in our ancient Statutes and Records; but I refer those for the Times after the Conquest. I beg your pardon for being so prolix already, which the Abufe your Dr. hath put upon these words would not permit me to avoid. But now we have cleared most of the Terms in dispute between us, I hope we may proceed with greater Certainty.

And though your Discourse hath been so long, yet since it is so essentially necessary to the right understanding the matter in hand, I am well satisfied; and I shall more fully consider the Account you give of these Words another time.
time. But at present give me leave to tell you, That suppose I should admire, that those Words on which you have now given Interpretation of divers Authors, may sometimes be taken in the Sense you have now put upon them; and that consequently the Commons might be represented under some of those general Names; Yet am I not satisfied, how the Aulermen and Magistrates of Cities and Boroughs, could be included under this Word Wits, since in the Antiquy to the Thirty Fifth Law of Edward the Confessor, tis said, Event & also potestates, & dignitates, per Provincias, & Patrias universas, & per singulas Comitatus totius Regni constitutis, qui Heretoches apud Anglos vocabantur, Selectit Barones, Nobiles, et insignes Sapientes, &c. And Gregory of Tours, Rodoviers, and many of the Foreign Ancient Historians, mention Sapiences only as Lawyers, Counsellors, Judges; and among the modern Foreign Lawyers, Botoman and Calvin say expressly they were such. But perhaps not of the Inferior Rank, no more than the Saxoona Sapientes were, of which their Wiezen semooces only confided. And we have at this Day the Judges, and King's Council, and other great Lawyers, that sit in the Lords House, and are affiliated to the Parliament, when there is Occasion. Nor have you yet brought any Proof, that the Cities or Towns then sent their Representatives to the great Councils in the Saxon Times, by this, or any other Title. But as for the Knights of Shires, though I grant the Treatise called Modus tenendi Parlamentum, mentions such Persons to have been present in Parliament in the Time of King Ethelred; yet by that Word Parliament, so often used by the Author of that Treatise, and divers other Circumstances, it may be easily perceived that the Author lived but about the Time of Eadward III. or Edward IV. as Mr. Salter in his Titles of Honour, and Mr. Prye in his Antimadvertisons to Sir E. Coke's Fourth In nitutes, have very fully proved; so that admitting that your Thanes, or Lords of Towns, did then appear in those Councils for themselves and their Tenants, yet could they not be properly said to be their Representatives, because (as I told you before) they were never chosen by them, whereas now the ordinary Freeholders, of Forty Shillings a Year, and the Freemen and Inhabitants in Cities and Towns, have the greatest Share in the Election of Knights, Citizens and Burgesses.

And as for those Thanes you mention, they are those under whom they claimed, owed their ESTATES wholly to the Grants of former Kings, and held their Possessions from them by some Tenure or other. And by Virtue of this Tenure it was, that all the Lands of England were liable, even those that belonged to the Church, to those Three Services, anciently called Trinoda Necessitas, vis. Expedition, Castelli, & Parias extrada, that is, Military Service against a Foreign Enemy, and the Repair of Castles and Bridges; and subject to the common Services of the Kingdom. And that the Earls and Chief Thanes did hold their Lands by Knights or Military Service, appears by the Reliefs of the Earls and Thanes, expet the Laws of King Eadward, in Sir H. Spenning's Councils. So that if all the Persons who held those Lands, owed them wholly to the King's Bounty, it feems plain to me that they must likewise owe their Places in the great Council to the same Original.

F. I think what you have now further urged will be of no great Moment against my Opinion; for as to the Authority you bring from the Addition to that Law of Eadward the Confessor, it is plain by the Word Barones, that it was added long since that Time, that Word not being commonly in Use, till some Time after the Norman Conquest. But letting that pass, it is plain by the rest of the Law, if you would have been pleased to have read it out, that these Heretiches (here called Barons) were no other than ordinary Gentlemen, or Thanes (which then answered the Word Barons. And thefe (as this Law it self expressly tells us) were chosen by all the Freemen in the Folcmen, or County-Court. And therefore though I grant they might be Men of Estates, yet there was no Neceffity of their being Lords, or Noble by Birth; nor is it likely that the People would have chosen their Earls, or any other of the like Order, when they had sufficient Choice of those or Gentlemen in their own Country, to command the Military Forces of it. And though it is true that Gentleman are called Nobles, and remarkable Wife Men, yet this (according to your own (hewing) doth not exclude others, and those of a far different Profession, vis. Counsellors, Lawyers, and Judges, all which, you suppose had then Places in the Great Council, as they have now in the Lords House. And if this Word might comprehend
both Swordsmen and Lawyers, I cannot fee why it may not also take in the
better and richer fort of Citizens and Magistrates, who in that Age, were elected
by their respective Corporations: And I have already proved that these were
called Sapientes in other Countries, and I fee no reason why they may not have
been called so here too. But that the King's Judges and Counsellors could have
no Votes in the Saxon Great Councils, I have already given a sufficient Reason to
the contrary.

I shall not farther shew you, That the Cities and Boroughs in the Saxon
Times being so much more numerous and considerable than they are now, must
needs have had (according to the Custom of those Times (a considerable Share
in those Great Councils, since in them confided a great Part of the Strength and
Riches of the Kingdom); and were many more than they are at this Day; for
Bede tells us in the beginning of his History, That there were in England long
before his Time, Twenty Eight Famous Cities, besides innumerable Citties, and walled
Towns of Note; many of which, though now extremely decayed, or quite ruined,
were then very considerable, the greatest and richest Part of the Nation inhabiting
in those Times for the most part in Cities, or great Towns, for their greater Benefit
or Security; and the greater Part of the Lands of England in the Saxon Times,
and long after, lay uncultivated, and over-run with Forests and Bogs: So that the
Inhabitants of those Cities and Boroughs being then so considerable for Estates in
Lands, as well as other Riches, could not be excluded from having Places both in
the Britsh, or Saxon Great Councils. What Man of Sense can believe, that the
Ancient and Potent Cities of London, York, Canterbury, Lincoln, &c. should
ever be excluded from having any Hand in the Great Consultation about giving
Money, and making Laws, and for the Publick Defence of the Kingdom in the
Saxon Times, any more than they are now? And therefore we find, that
in all the Kingdoms of the German, or Gotbick Original, the Chief Cities and
Towns have still sent Deputies to the Diets, or Assemblies of Estates, as I said
but now.

In the next Place, though I do not affect, that there were Knights of Shires be-
fore the Conquest; yet I am not convinced that there were none. For though I
confess the Treatise you mention, appears to have been written since the coming
in of the Normans, yet the Substance of it must have been much older than the
Times of Edward III. and Richard II.; or else certainly King Henry IV. or his
Chancellor for him, would never have been at the Trouble of transcribing a Copy
of this said Modus into Ireland under the Great Seal, which is thought to in-
croach so much on the Prerogative, had he not been very well informed of the
Antiquity, as well as Authority thereof. And therefore it might very well be writ-
ten about the Time of Henry III. from some Ancient Historians and Records, not
now Extant, though the Copies we have of it, may be of no longer Standing,
than the Time Mr. Seiden mentions.

But admitting that there were no Knights of Shires before the Conquest, and
though the Thanes (who I suppose made the greatest Figure in the Wittena
Gemotes) were not Earls, or chief Thanes, that is, of the Greatest Nobility, yet
they were great Freeholders, and though Commons, yet Gentlemen, and of the
Leffer Nobility, in the same Sense as Gentlemen, or Knights of Shires are now.
And though not elected by the Countries, yet might be as well esteemed their
Representatives, as they are now of Freeholders under 14oc. per Annun, Lease-
holders and Copy-holders for Years, who have no Votes at the Election of Par-
mount Men; whereas these Thanes were then the chief (if not the only) Fol-
assadors of all the Freehold Estates in the Kingdom.

Nor is it any material Objection to say, that these Thanes might at first owe
those Estates to the Grant of the First Saxon Kings, and might also after a Sort
hold their Estates of them as Heads of the Commonwealth, by such Services as
were fented by Publick Laws; yet does it not therefore follow, that they owed
their very Right of coming to the Great Council wholly to the King's Favour. For
in the first Place it is to be considered, that though the First Saxon Kings con-
quered this Island from the Britons, yet those that affiled them being only
Volunteers, the Chief Officers or Commanders of them might not only defend,
but also capitulate for their Shares in the Land so conquered. And thefe being
given out by the King, according to each Man's Quality, Condition, or Defect,
might
might constitute those who were called the King's Thanes; as those who held like-wise under them, were the Middle Thanes or Vavallors; supposing (till you can prove the contrary) that these had Places in the Great Council, as well as the other; and you might as well argue that they could have no Places there, but by the Favour of their Lords. Whereas I have already proved, that an Estate of Five Hides in Land, of whomsoever helden, made a Thane or Nobleman of the Inferior Rank: And we find by the same Laws of King Athelstan, his Worrigild, or Price of his Head, was valued but equal with that of a Mafa Thane or Priest, (viz.) at Two Thousand Thrymsnfæ. So that a sufficient Estate in Land, did not only make a Man a Gentleman, but also give him a Place in the Great Council. And there were besides all these several Aldorij, who held their Lands, discharged from all Services, and could sell or dispose of them without the Consent of the King, or any other inferior Lord, and are those often mentioned in Domeday-Book, qui poterit tres cum terra quo voluerit. Nor is your Argument conclusive, that because in those Times, as well as now, all Lands were held either immediately or immediately of the King, and were chargeable with those Three general Services you mention for the Publick Safety and Good of the Kingdom; that therefore not only all Mens Civil Properties, but also their Right of coming to the Great Councils, must wholly depend upon the King's Will: Since I have already proved, that the first Saxon Kings by their Conquest of the Kingdom, could not assign the sole Property of all the Lands thereof to themselves, though they might be made use of as Publick Trustees, to distribute them according to those Mens Qualities and Deferes, who had helped them in the Conquest. So that when they were once possed of such Estates, they had immediately thereupon a Right to a Place in the Great Council, the Burthen of the Government lying chiefly on such as had Estates in Land.

And that many others besides the Kings Thanes, or Great Lords, had Places in the Great Council of those Times, appears as well by the Name of Mycel Synods, or Witen-Gemotes, which are rendered by our Ancient Glossarists Namurigalos, or Popula Concentio, as also the Titles and Conclusions, to divers of the Titles of those Great Councils in the Saxon Times, where are often mentioned, after the Conquests, & Processes Terræ, aliorum fideliun infinita multitudinis, which must certainly take in many more than the King's Thanes, Judges, or other of his Great Men, who were then but a few in Comparison of all the rest of the Freeholders of England.

H. I will not longer dispute the Probability of what you say; all the Difficulty lies in the Proof of the Matter of Fact. For in the first Place I deny that any other of a less Degree than the King's Thanes, or Chief Tenants, had any Places or Voices in the old English Councils. Nor can you find (as you yourself are forced to confess) in our Saxon Laws, or Ancient Historians of those Times, any Representatives of the Common People mentioned, such as are now, much less Citizens or Burgesses for any City or Borough in England. And therefore what you say concerning the Riches or Power of the Cities and Towns before the Conquest, though perhaps it might be true, yet doth it not therefore follow, that they must then fend their Representatives to the Great Councils. Nor is it any Argument to prove that they did, because great Cities and Towns do or did lately fend Deputies to the like Assemblies in other Countries, since our Government might not only Originally differ in that from theirs, but that also the sending of those Deputies might be granted by some later Princes, long since the Time of the first Beginning of those Kingdoms; and I do believe will prove so, if closely look'd into.

F. I think your Reply hath no more Weight in it, than what you have already tinge'd: For in the first Place it lies upon your Side to prove, that none but the Kings or Chief Thanes, had any Places in the Great Councils of those Times; and when you can prove that, you may do something.

But what I have now brought to prove the great Antiquity of our Cities and Boroughs in England, is not so little to the Purpose as you would make it, since it confirms that Right of Pre-emption, which all Ancient Cities and Boroughs in England do claim of leading Members to Parliament; and therefore pray for what. Mr. Lambard, a Person whom all the Learned own extremely knowing in the English Saxon Government, tells us on this Subject, in his Archæon in these Words. "That
"That whereas in the Beginning of the Laws, (via. those made by the Saxons Kings he there mentions) all the Acts are said to pass from the King and his Wife Men, both of the Clergy and Laity, in the Body of the Laws, each Judge being thus, And it is the Advice of our Lord, and his Wife Men. So as it appears that it was then a received Form of Speech, to signify both the Spirituality, and Laity (that is to say, the Greater Nobility, and the Less, or Commons) by this one Word Witenas, i.e. Wife Man.

"Now as these written Authorities do undoubtedly confirm our Affirmation of the Continuance of this manner of Parliament, so is there also unwritten Law or Precedent, that doth no less infallibly uphold the same. For it is well known, that in every Quarter of the Realm, a great many Boroughs do yet send Burghesses to the Parliament, which are nevertheless fo Ancient, and fo long since decayed, and gone to Nought, that it cannot be believed that they have been of any Reputation at any Time since the Conquest, and much less that they have obtained this Privilege by the Grant of any King succeeding the same. So that the Interest which they have in Parliament growth out by an Ancient Usage before the Conquest, whereof they cannot then deny Beginning; which Thing is also confirmed by a contrary Usage in the self same Thing; for it is likewise known, that they of Ancient Demesne, do prescribe in not sending to the Parliament, for which Reason also, they are neither Contributors to the Wages of the Knights of Shires, neither are they bound by Fundry Acts of Parliament, though the same be generally Penned, and do make no Excusion of them. But there is no Ancient Demesne, saving that only which is described in the Book of Doomsday, under the Title of Terra Regis, which of Necessity must be such as either was in the Hands of the Conqueror himself, who made the Book, or of Edward the Conqueror, that was before him. And so again, if they of Ancient Demesne, have ever since the Conquest prescrib'd not to elect Burghesses to the Parliament, then (no doubt) there was a Parliament before the Conquest, to which the which of other Places did send their Burghesses.

From whence we may conclude, that the Learned Author did not only believe that the Lords, but that also the Inferior Nobility, and Representatives of Cities and Towns, were included under the Word Wites, and also that these Places claimed that Privilege by Prescribtion, and not by Grant of any King since the Conquest, or before.

M. I shall not deny but Mr. Lambard was a Learned Antiquary, yet there are others, more in Number, and perhaps of greater Learning, who do suppose, that no Cities or Boroughs sent Burghesses to Parliament, but since the Conquest; tho' I confess the Time is not exactly agreed on; but whenever they began to appear there, it is certain they could have no Right of coming, but from the King's Summons or Grants, since none but such Cities or Towns, that held of the King in Capite, had anciently any Place in those Assemblies; nor of them neither any other, but those whom the King pleased to call. And from thence proceeds that great Variety we find in the List of those Towns, which send Members to Parliament. But I shall omit speaking any Thing farther of this at present.

But as for those middle, inferior Tenors or Vassailours (as they were afterwards called) whom you suppose to have made so great a Figure in the Saxon Great Councils, I do not believe that they had any Votes there; and I hope I shall be able to prove to you by and by, that none but the King's Tenants in Capite appeared in those Meetings, from the Time of William the Conqueror, to the 49th of Henry III. Now if it be true (as you suppose) King William made no material Alterations in the constituent Parts of the Great Council of the Kingdom, after his Conquest of it, it will likewise follow, that the same Sort of Persons, viz. Tenants by Knights Service, were the only Members of it before the Conquest too. But if you have any expect Authorities, out of our Ancient Saxon Laws or History, to prove that the Commons appeared at the Witenas Gemonas in their Saxon Days, pray let us see them.

F. I shall perform your Command immediately; but in the first Place give me leave to tell you, that what you have said concerning Cities and Towns, not sending Burghesses to Parliament, till after the Conquest, is a great Mistake, built upon a false and precarious Hypothesis, that they all held in Capitale of the King;
the contrary of which, I shall make out, when I come to treat of that Question; So likewise is it as precarious, that none but the King's Tenants in Capite, had any Votes in our Great Councils, in the Times immediately succeeding your Conquest, till the 49th of Henry III. and that therefore it must have been so before the Conquest. For as I own that King William made no material Alteration in the Government of the Kingdom, after his Entrance, so I likewise affirm, that as well after, as before that Time (if not Knights of Shires, yet) all the Thanes or Barons, i.e. great Freeholders of England, had Places in that Assembly before the 49th of Henry III.

But to proceed to the Authorities you desire, I shall begin with the Fift, and most Ancient General Council we have left us in the Saxon Times, viz. that which was held at Canterbury A. D. 605, by King Ethelbert, not long after the Settlement of Christianity in this Island; which is Recorded by Sir H. Spelman in his British Councils, in those Words, An. Internationis Dominicæ 685. Page 136. Ichthobertus Rex in sole Ruroratus Catholica una cum Berta Regina filiæ Eudo. ad reverendissimo presule Auguslino, ceterisque optimisibus Terræ Sollemniæm Natales Domini Celebrant Cantuaræ, Convocavit igiter ibidem Commun. mi Consilium tam Cleri quam Populi; Whence you may observe that the People then made a considerable part of the great Council from the very Beginning of the Saxon Times.

M. Pray, Sir, will you give me Leave to Answer your Questions, one by B. A. P. one as you go, for fear I should not only forget them, but also tire you with too long a Speech. In the first Place therefore give me Leave to tell you, that you are very much mistaken to suppose, that by the Word Populus, is here meant the common People, or Vulgar; Whereas, when Clerus and Populus are used together, in our Ancient Writers of those Times, it signifies no more than a Common Council of the Clergy, and People or Laity, and not the Common People, for then the Lords, or Great Men would have been quite left out of this Council, as certainly they were not; and so when Clerus, and Populus, are used together, and thus contradistinguish’d, then they are expressive of Two different Estates or Conditions of Men of Christians, the Clergy, and Laity or secular Men; and those were the Optimates Terræ, the chief Men of the Land before epressed. Neither was this Council held under a sole Saxon Monarch, but under Ethelbert King of Kent only, and that but Eight Years after Auguslin’s coming hither, and above Two Hundred Years before the Seven Kingdoms were united into one Monarchy.

F. I am not at all concerned at this Answer, since I can prove, that by the Word Populus must be here understood Somewhat more than Kings, Noblemen, and Judges, viz. the Representatives of the Commons likewise; or else the Saxon Writers-Gemeters were not what their Titles speak them to be, Common, or General Councils of the whole Kingdom; that is, of all the Estates or Orders of it there, but only a Convention of the Bishops and Great Lords. And therefore if the Word Clerus did then comprehend all the Clergy, both Superior and Inferior, i.e. as well the Bishops as Abbots, Priors, Deans and Clerks, for the Secular Clergy, and Cathedral Chapters, &c. I pray give me a Reafon why the Word Populus, when put alone, must be wholly confined to your Earls, or Chief Thanes, and may not also take in the Middle or Lefs Thanes, Freeholders, or Lords of Townships, and the Representatives of Cities and Borough Towns; and why not with as much Reafon, as that the Word Populus amongst the Romans, took in the whole Body of the People of Rome, both Patricians, and Plebeians, when attibbled in their Comitiss Centuriatis, to make Laws, or create Magistrates. The reft of your Argument is not very material; for though I grant this Council was held before the Heiparchy was united into a Monarchy, yet I think it is very easy to prove, that as all the Saxon Kingdoms confisted of feveral Nations of the fame Language and Original, so were they likewise under the fame Form of Government; And that Councils confituted of the fame constituent Members, as I shall prove to you from the Kingdom of the Weif Saxons, from which was the foundation of our present English Monarchy. And for this I shall give you the Authority of Wil. of Malmesbury, and H. Huntingdon, (who ’tis highly probable) had feen the Ancient Histories and Records of those Times) and they both agree in the Relation of the Deposition of Sigebert, King of the Weif Saxons, for Tyranny and Cruelty, Anno 754; the Words are remarkable, which pray...
read; Unde in Anno secundo ipsius Regni congregati sunt Proceres, & Populi Totius Regni & pruvia deliberatione, & unanimi conyenjus omnium expansus est a Regno & Cneawolhus fatus ex Regio sanguine eelus est in Regem; where you may ob-
sERVE a plain Difference made between the Higher Nobility, here called Proceres, and the Representatives of the People, here called Populi; as also from another Au-
thority of a Great Council, held under the same King Ethelburt, as it is men-
tioned by Roger Hoveden, Domestick to King Henry II. in the Second Part of his
Annals, where among the Laws of King Edward the Conessor, and which he writes
to have been confirmed by King William I. you will find under the Title de Apibus,
& de alis minutis Decimis, (which are there said to be given to the Clergy by
former Kings, and particularly by this King Ethelbert) these Words; Hec enim
Sanctus Augulfus predicavit, & docuit & hae conceda sunt a Rege, Baronibus &
Populo. So that if Populus here doth not signify an Order of Men, distinct from
the Barons or Great Lords, it would have been a Tautology with a Witnes.

II. I must confess, if this Authority you now urge, had been as Ancient as the
Time to which it is affered, it would be of some Weight; but it appears by
this Word Baronibus (not used in England till after the Conquest) that it was ad-
ded long after that Time (by some ignorant Monk) to the Conessor's Laws, and
therefore will not prove that for which you bring it, viz. That the Valus under-
stood for the People or Commons, in the Sense they are now taken, had any
Place in the Saxon Great Councils.

But the more of it, this was but the Confirmation of a Law made
by King Ethelburt; but how, and by what Words the Legislator were ex-
pressed near Five Hundred Years after the Law was made, or how they were
revised in Latin after the coming of the Normans transiently, and with
our Design to give an Account of them, cannot be of much Validity to prove
the Words of the Laws of King Edward were made, or at least translate into
Norman Latin, after the Norman Conquest, appears by the Words
Comites, (besides the Barons already mentioned) Milites, Servientes, &c. all
Norman Words (used in those pretended Laws) and not known here, till their
Coming hither. He that will affert any Thing from a single uncouth Exprefion in
one Cafe, and upon one Occasion only, brings but a slender Proof for what he
says; so will any Man think, (because his said in one of King Edward's Laws,
and perhaps no where else, concerning this King's Coronation) good debt in
propria persona coram Regno, & Sacerdoti & Clero, jurare ante quam ab Ar-
chiprefios, & Epidoros Regni coronaretur.) That the Priests were not Clergymen,
but the Clergymen Priests; and that the Archbishops and Bishops were neither.
Many other uncouth Expressions do often occur in the old Monks, which are to
be interpreted according to the common Language and Practice of the Times in
which they are delivered. And therefore seeing before the Time of the Conquest, and
for Two, or near Three Centuries of Years afterward, the Commons (as at this
Day understood) were not called, nor did come to Great Councils or Parliaments,
as I shall prove when I come to speak of those Times: So that by Barons must
be here meant the Great Barons, and by Populus, the Communis Angli, or
which was then all one, the Communis Baronioum, the Left Barons, or Tenants
in Capite; and the Senfe of the Words is farther confirmed by several undeniable
Authorities; wherein, by the Communis Populi, must be understood not the
Community of the People or Commons, but the whole Body of the Left Tenants
in Capite.

But to give you an Answer why the Word Populus could not comprehend all
Sorts of People among the Saxons, as it did among the Romans, but only the No-
bility, (who were then, properly speaking, the only Freemen) is this, that none
but the Nobility pollied any Lands in Fice-simple; all the rest of the meaner Sort of People (then called Cleorolk Folke) holding theirs in Villageage under their Lords or
Thanes, being no better than meer Villains, or Coltagers, and who were all
bound to the Good Behaviour, every Tenth Family being bound one for another,
In the Sheriff's Tonne, or Court of Fram-Pledge, under their Head, or Tenth
Man, called the Tything-Man, who was to answer for them. So that the Com-
mons of England were not such a Free People, nor had any Share in the Gov-
ernment, as some suppose, but being, I believe, no such Persons as our Yeomen
or Farmers in those Days.
Dialogue the Sixth.

F. I shall, I hope, take off this Objection against my Signification of the word Populus. Perhaps this Law might very well be transcribed from some old Copy of King Æthelberht's Laws not now extant, and in which there might be the Word Thanes, instead of Baronibus, which is but a Translation of it, in the Senfe in which it was used not long after the Conquest.

Nor is it true which you affirm, that the Word Barones was never in use before the coming in of the Normans, in ancient Charters; as I shall prove to you by this Charter of King Edgar, to the Abbey of Westminster, containing a Confirmation of their ancient Charters and Privileges, collected by the aforesaid Suicardus, a Monk of Westminster, as it is to be found in the Cottonian Library, the Charter itself is long, but concludes thus, in Consilio habitato infra Basilicam Westmonast. Presidente secum Filio suo Edwarde, & Archiprete Dunstanno, & universis Episcopis & Baronibus suis; where you may see that the Word was not unknown before the Time of William I. And I could give you more Instances of other Kings Charters, where the same Word is used before the Conquest, were it worth the while to trouble you with them.

And so likewise Populus for People, or Folk in the Saxon; Yet take it (as you suppose) to have been writ not long before the Time of Edward, the Author (which was above 80 Years before the 49th of Hen. 3.) This Author, or whoever else added this Palfage to this Law about Tythes, did then suppose, that according to the Custom then used, the People or Commons had Representatives in those Assemblies; which I shall prove from your own Sence of the Words; for if the Word Populus signifies here another Sort of Men different from the chief Thanes or Lords, then this Word Populus must not necessarily signify some that were Commons, and not Lords, by your own Conception; and who also must represent others besides themselves. But it is highly improbable, that by this Word Populus should be meant the Communitas Anglie, or the Comunitat Baronom, for then if the Word Baronum would have included all the Tenants in Capite, both great and small, to what Purpose should the Word Populus have been added at all? Therefore I am so far from believing this way of expressing the several Estates of the Kingdom, to have been a Monkish Blunder, (as you suppose) that it was rather a common and ordinary way of Expression among the Writers of those Times, as well in Records as Histories, who then very well knew the People or Commons, to be an Estate, or constituent Part of the Common Council of the Kingdom, quite different from the Lords; and in which Sense it is recited in an ancient Charter of King John, that he being divorced, the new Queen was crowned, de communi affectu & concordi Voluntate Archiepiscoporum, Episcoporum, Comitatium, Baronum, Cleri & Populi totius Regni; Where by Clerus it is plain must be meant the inferior Clergy represented by their Proxies in this great Synod or Parliament; and by Populi was understood the People or Commons, likewise prevenient by their Representatives; or else the Words Clerus and Populus had been idle Tautologies in this Record. And in the like Sense it is also used by Matt. Paris, in the 9th of Hen. III. presbittium Cleri, & F. 222, Populorum, cum Magnibus Regionibus; Where this Author makes a plain Distinction between the Magnates, and the Populus, which had been altogether in vain, if the Word Magnates would have comprehended all your greater or lesser Barons, or Tenants in Capite.

But I shall in the next Place proceed to that great Synod, or Council, that was called by King Edward the Elder, Anno Dom. 905, and is mentioned by Simeon of Durham, and other Authors quoted by Archbishop Parker, the Compiler of the British Antiquities, in the Words, Plegmunis Cantuariensibus Archiepiscopis, una cum Rege Magnifico cognominato, Edwardo seniori Confidum Magnus Episcoporum, Abbatum Fidelium, Procerum & Populorum, &c. convocavit. Which Synod, or Council, was called to divide the large Dioceses of Winchester and Sherburn into Five other (as I have already told you); where you may plainly see the Words Fidelium & Populorum, put distinct from the Word Procerum, if we take that Word to signify only the greater Nobility.

I shall now conclude with a few Words in Reply to your Answer, why the Word Populus, could not among the Saxons take in all Sorts of People, as well as amongst the Romans; for I cannot take it as a Satisfactory Answer, for
for these Reasons: 1. Because, tho' I should grant that the vulgar Sort of People were greater Slaves than they are now, and that they had no hereditary Properties in their Estates, but at the Will of their Lords; yet does it therefore follow, that all the Freemen of the Kingdom were Noblemen or Gentlemen, or else Villains, as now understood? Since Nitarus tells us in the Place abovementioned, that there were Three Sorts of People among the Saxons, Elders, Frithings, C. Lasis, i.e. Gentlemen or Noblemen, Freemen, and Slaves or Villains; and this middle Sort of Men might also possess Land in Allods, or Free Tenure, tho' they did also depend upon greater Men for Protection, and seem to be those who were after the Conquest called in Doomsday Book, Commentarius, i.e. such, who tho' they lived under the Protection, and within the District of some great Man, Lord or Patron; yet as Sir Henry Spelman tells us, were free both as to their Persons and Estates, not as sworn to, or holding of any but the King. And besides these there were also great Bodies of Men in Cities, and Burgh Towns, and those very considerable for Estates and other Riches, who tho' not nobly born, and yet being Freemen, it was but reasonable that they should have their Representatives in Parliament, as well as the former.

M. I shall not at present dispute the Matter farther with you concerning the Word Populus, since I shall refer speaking more about it, till I come to the Times after the Conquest. And therefore to return to the Matter in hand, had you but read a little farther in the same Leaf, in the Author you have cited, you might have found who they were, whom King Edward the Elder called to this Council; The Words are these, Edwardus Rex Synodum Praditionis Nobilium Anglorum congregavit cui praefebat Plegandus. Here your own Author tells us in few Words, the meaning of a long Title of this Synod now mentioned, viz. that the Bishops, Abbots, Fideles, Proceres, & Populus, were all Nobles, Noblemen, that is, the Ecclesiastics and Laics, or the Bishops and Lay Nobility, as I shall make more evident hereafter; and not the Vulgus, Commons, or ordinary Sort of People.

And to this Effect Malmesbury, and the Manuscript in the Bodleian Library cited by Sir William Dugdale, and Mr. Somner, from the Treasury of the Records and Evidences of the Church of Canterbury, cited by Sir H. Spelman, do all report of this very Council, That Edwardus Rex congregavit Synodum Senatorum Gentis Anglorum cui praefebat Plegandus, &c. That King Edward convened a Synod of the Senators (in the Saxon, Aldermen, of the English Nation) that is, such as were usually called to such Councils, which were only the Nobles, and great Men, for ought yet appears from this Instance. But what if after all, there was never any such Synod called, and consequently no such Title to it? For it was laid to have been assembl'd, by reason of a chiding Letter from Pope Formosius; now this Formosius died Anno 895, that is, Ten Years before this Council was supposed to be called.

F. I see this Authority gall's you, therefore I do not blame you to do what you can to be rid of it; but I shall not give it up for all that. For that this Word Populorum, then signified all the Lay Persons, who were actually Noblemen, that is, of the greater Nobility, I think is a great Mistake. For to what Purpose are all these different Words here heap'd together, since the Word Proceres had done as well alone in your Senile, and at once comprehended all those Lords or Noblemen, that you would only have to be there? But the Word Nobiles did not in those Times, neither doth at this Day in any other Country but England, signify none but great Lords, Barons, or Peers; since in Germany and France, and other Countries, every private Gentleman is Nobis. And I think the Middle or less Thanes, might then as well be called Nobili, as the great Ones. And the Aldermen, or other Magistrates of great Cities and Towns, might also very well be called Nobili, ratione Officii, for the time they acted in that Employment, and might also deny the Name of Senators, as well as the greater Aldermen, or Earls: And if there were no other Lay Men, but your greater Sort of Aldermen, then what becomes of your Chief, or Kings Thanes, which you your self grant, were confine Members of the same Councils? Not indeed doth the Word Senator only signify such who were Noblemen by Birth, since among the Romans there were Senators of the Plebeian as well as Patrician Order; as any Man who hath
but read Lucius Florus, may quickly see. But as for your Exceptions, That there was no such Council, because Pope Formosus is said to have died Ten Years before this Council was called, it is a bold Affirmation to annihilate a whole Council, because of the Mistake of the Date, or Time of its meeting, or perhaps in the Name of the Pope, or King then reigning; especially when it was assembled upon so remarkable an Occasion, as the erecting of these new Bishopricks, which all our Historians ascribe to this Council.

But I shall now proceed to another Authority, and that is to the great or Common Council held at Winchurgh, Anno 873, where you will find in Sir M. Spelman's Councils, as also in Ingulph's Histoire, that after the Bishops, Earls, and other great Men, or Thanes, who subscribed to the Law of Tythes, granted by way of Charter there mentioned, wherein these following Parties are there mentioned, Adorumque Edelium infinita multitudo qui omnes Regnum Circumscissu aduorum, Digestus vero sua nomina subscripsit. And the learned Commentator upon King Alfred's Life, published in Latin at Oxford, is so well fattish, that the Commons were meant by this Expression, that he hath this remarkable Observation upon this King's granting of the Tythes: Bc viderit Rev Decesam Exsita concilfite, Primium Anno 844, et vero 854. vel ut aliis 874, et tuta Regione, et cum Agenfus omnium Nobilium, et totus Populi. Where this Author rightly supposes, that the Words at the Conclusion of this Council, did comprehend the Consent of the People or Commons, as well as of the Lords, or Noblemen. Or else this reciting of this Word Populus, as different from the Nobiles, had been altogether in vain.

So that tho' I do not affirm, that the meer Vulgar, or Plebeian Sort of People did appear personall in the great Council of those Times, any more than they do now, yet they were there by their Representatives, viz. either by Knights of the Cities, as now, or else the chief Thanes, or Freetholders of the Kingdom, as also by the Aldermen, or chief Burgesses of great Cities and Towns, who I suppose did then represent those Politick Bodies, since all Men could not appear there in Person.

But I shall give you another Authority out of the same Author, viz. Archibishop Parker's British Antiquities, where when he relates the calling of the Pag. 87. Council of Caen, for the turning of Married Priests out of Monasteries, and Cathedral Churches, and putting Monks into their Places, He tells us a remarkable Accident that then happened, viz. the falling down of a Room where the Council was assembled: So that there fell together all of a sudden, (pray take the Words themselves out of the Authors there cited) Presules, Proceres, Equites, Nobles, pariter & Ignobles Cornurom. So that you see here were other Sorts of Men present in this Council, besides the Presules, (i.e. Bishops and Abbot,) and the Proceres, (i.e. the Earls and chief Thanes,) viz. the Knights, or Inferior Thanes, Noblemen or Gentlemen; as also Ignobles, those that were not Noble by Birth, such as were the Representatives of Cities and Boroughs. And of this Opinion the Archibishop himself seems to be; for at the End of this Relation he makes this Remark; Sed ne hujus domus in quid omnium Ordinum, tam Consecrati Clarissimi, tam Consecranti tam repentina ruinam, quae Diabolica carere potuit; where by Omnium Ordinum, he must certainly mean the Three Estates of the Kingdom, in the same Sense as the Word Orderer is used by Camden, and other Latin Writers, who call our Parliament Concensus Ordinum, that is, the Assembly of Estates.

M. I pray give me leave to answer this Authority before you proceed farther; I must beg your pardon, if I cannot believe that all the Perons whom the Historian relates to have perished by this Fall of the Council Chamber, to have been all of them actual Members of that Assembly, since there might have been there divers Persons, who tho' of an inferior Rank, might have been present as Auditors or Lookers on; it not being then the Caltrom to hold those Councils so privately, as we do now, so that divers of the common or ordinary Sort of People, called here Ignobles, and perhaps of the inferior Gentry too, being there, might all partake of this common Ruin, and so pay dear for their needless Curiosity.

I must beg your Pardon if I do not assent to your Opinion in this Matter's face, (unless you can shew me very good Authority to the contrary) that the common People or Vulgus, in the Sense you take them, were let in only to gaze at such Assemblies. For what Room could have contained so great a Crowd?
and if they were in those Days so great Slaves, as the Gentlemen of your Opinion please to make them, it is not likely that they should be admitted to grace into the Great Councils then, any more than now, when you allow them more Liberty, and greater Privileges than they then enjoyed. And therefore I think I may very well stick to the Archbishops Opinion, who supposes them to have been the whole Assembly of the Three Estates, who were all involved in this Ruin.

But letting this pass, I shall now give you an Authority of a Great Council held under King Ethelred, which will farther confirm our Sense of the Word Populus, which Council you may see in the First Volume of Monasticum Angliae, contains a Conceision and Confirmation of divers Privileges to the Monastery of Wolverhampton, in these Words: Hae decretum sunt Sigiriuchi Archiepiscopi in placito coram Rege Ethelred, & Eboracensi Archiepiscopo, & omnibus Episcopis, Abbatis Regiones Britanniae, seu Senatoribus, Ducibus, & Populo Terra: Where it seems plain to me, that the Populus Terra are here put as a distinct Order of Men from all the rest aforesaid.

To come now to the Time after the Danish Invasion, and the Settlement of the Crown upon King Cnut, who after he was made King, partly by Conquest, and partly by Election, yet altered nothing of the Ancient Constitution. And therefore Florence of Worcester tells us, that Anno 1017, being the First Year of his Reign, he divided the whole Kingdom into Four Parts, and also fudavit cum Principibus & omn Populo, Iste & illi cum Iste perceperunt: Where you see the Populus or Commons is put distinct by this Author from the Great Lords or Noblemen, here called Principes; and this Council is called by Abbot Brompton in his Historie Parliamentum apud Occasum: And also in his Charter to the Abbey of Bricetburgh (since called St. Edmundbury) which is still to be seen in the Office of the King's Remembrancer of the Exchequer, it is thus recited, Ego Cnut, Rex totius Albionis Insulae, & aliarum Nationum plurimarum, in Cathedra Regali promotorum, cum Confito, & Decreto Archiepiscoporum, Episcoporum, Abbatis, Comitum aulorumque omnium Fidele eligi Sanciend: Whence it plainly appears, that under the Word Fides, was then comprehended many Offices of an Inferior Rank, or Order, to the Comites, or Earls, there mentioned; and these could mean no other, than the Representatives of the Commons, whom I have proved to have been present in these Councils.

Al. I cannot believe you have yet proved it; for though I have hitherto continued to give you my Thoughts of this Word Fidelium, yet I must now tell you once for all, that by this Word is not here meant, or any where else in our Saxon Laws, to be understood the ordinary or common Sort of People, or any that represented them, but only Tenants in Capite, or in Military Service, which were then called the King's Thanes, and were afterward the same with the Barons Minores, mentioned in King John's Charter. But I shall plainly prove, when I come to it, that the Word Fides, after the Conquest, signified only the King's Tenants in Capite, and were the same with the Abbes, whom we find to be Witneses after the Duke's, or Earls, to this Charter of King Cnut. And though I confess this Word Fides, doth in a common, or larger Acceptation, signify all such Subjects as owe Fealty and Allegiance to the King; yet in a Strict and Legal Signification (as it is here to be taken) it signifies only the Barons, or Tenants in Capite, as Dr. B. hath very well shewed us in his Glossary. And therefore Sir Henry Spelman himself differing much between the and all other Subjects, in these Words, Interdum Specialiter dicatur idem, qui Vassalus, qui Feudo accepto in Patrono Fide, & cuncta sua, in fide aliquo nomine fidem afferantar. But indeed it is impossible to understand it in your Sense; for then all that swore Fealty to the King (and so were called Fides) should have had a Place in Parliament, and all the Men in England above Fourteen Years of Age, must have been there in Person, which would have been a pretty large Assembly, and such a Multitude as no one Place could have contained them.

F. If what Dr. B. in his Preface to his Normen Historie, page 157, as also in his Answer to Mr. P. page 20, be true, that Feudal Tenures owe their Original to William the Conqueror, though in other Places he is of another Mind; then certainly this Word Fides, must have been used in a larger Sense, in the Times before the Conquest, and must have extended to all those who were bound to take the Oaths of Fealty and Allegiance, in the Folkmore, or County Court; as they
they did long after the Conquest, and ought to do so still, if required; and therefore this Word *Fideles* could be then no more limited to Tenants in Capite in that Time, than it is now; who, though I grant they could not all be present in the Great Council in Person, yet they might be there by their Delegates (as well as they are now) and who might also conflict of far greater Numbers than they now do; since we find in the Council of Winchester, (but now mentioned) that after the Dukes, Earls, and Great Men of the Kingdom, there is also added, aliorumque fidelium infinita multitudine; which great Multitude sure must have signified somewhat more than your Chief Thanes, or Tenants in Capite alone, or else the Words *Comites*, and *Procures*, might very well have comprehended all the Degrees of Laymen: And therefore I desire you to shew me by some better Authorities than you yet have done, that before the Conquest, the Word *Fideles* must needs signify *Tenants in Capite*, and no other; but that it did not signify only so after that Time, I shall join issue with you by and by.

I shall now proceed to my next Authority, which is from *Ailred, Abbot of *Script. X. *Rievaulx*, who lived not long after the Conquest, who in his Life of *Edmund the Confessor*, relating the manner of that King's Election in his Mother's Womb, tells us, *How Ethelred his Father called a Great Council about appointing a Successor, that hereupon says thus, Fit Magnus coram Rege Episcoporum Procerumque Conventus, Magnus Plebis Vulgique Consensus*, where you see apparently, that this Abbots made a Difficulties between the Assemblies of the Bishops and Great Lords, and that of the Plebs, Vulgus, or Common People.

*M. Fray* give me leave to interrupt you a little before you proceed to any fresh Authorities. I grant it is true, that the Abbots in the Place you mention, tells such an idle Tale, that this *Edward* was chosen King whilst in his Mothers Womb, and to his Father made the Nobility swear Fealty to him before he was Born. He is the only Author of this Legend that I know of; and sure your self must own that it is a little too gross to be believable; and therefore I wonder that you should urge that to me for a sufficient Authority, for the People or Commons having any. Place in the Great Council in those Times.

*F. Fray*, Sir, observe to what Purpose I make Use of this Authority; it is not to make good the Election of *Edward* the Confessor in his Mother's Womb, but only to prove who were then supposed (when this Abbots writ) to make up the constituent Parts of the *Witres-Gemot*, or Parliament, in the Saxon Times, which was then believed by all Men, to confit of the *Clergy, Higher Nobility*, and Commons, unless you can suppose that the Abbots should mention the Commons by Prophecy. And granting that it was only according to the Custom of his own Time (which the Author of the *Prelace de to the Decem Scriptores* makes, to be about the 6th of *Henry III.*

But I shall now conclude with the Conclusion to *King Edward the Confessor's* *Vol. Spol.* 3rd Charter to the Abbey of *Welshmister*, in a great Council held in the 1st Year Coun. Fol. of his Reign, as you will find it thus recited in Sir *H. Spelman's Councils*, in these Words; *Hanc gisitum Chartam mee donationis & Librarii, in die dedicationis pre* dilete Eccles. recitari juva coram Episcopis, Abbatis, Comibus, & omnibus, Optimatis Anglia, omni Populo audiente, & videntem, where by the Optimates *Anglia*, I think can be understood no other than the *Thanes*, or Freetholders of all Sorts, as well the Kings as others; as also the Deputies of great Cities and Boroughs, the Words being Optimates *Angliae* (non Regis); and though it is not likely that the *Populus*, who are here mention'd to be present, should be the Mob, or Common People, only admitted to flaré and hearken at such a great Assemble; yet since the Words are in respect of them only, audiente, & videntem, I shall not insist upon the Word *Populus* here, as a Part of this Common Council of the Kingdom.

But yet that the Word *Populus* does oftentimes refer to the Representatives of the Commons, I shall conclude from the Anfwed of *King Harold*, the last *Saxon King*, to the *Meilage of William Duke of Normandy*, demanding the Kingdom of *England*, and that *Harold*, according to his Promise, should marry his Daughter: The Words are remarkable, and therefore pray tell me out of *Will. of Malmesbury*, who lived near that Time, *Contra, lib. (scil. Heraldis) que Will. Malm. de dixit de Fueca nuptis referentis, de Regno (additis) praeindicu defilse quod *his Annuarum, absque* *Lib. 2. fol. 52.*
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of the general Senatus, & Populi Convemto & Ediže ohemn illi hereditatem
jurisdiction. Now that by the Word Senatus is to be understood the higher No-
bility, such as the Bishops, Abbots, Earls, &c. and that is meant by Populus
the Representatives of the People, we have Mr. Selden's Authority on our Side,
who in his Differents on Pella, speaking of the great Question that arose in Par-
liament in King Edward III. Reign, concerning King John's Donation of his
Kingdom to the Pope, gives their Conclusion to this Debate, in these Words,
Ordine universi tam generis Hierarhici, quam Proceris, & Senatus, & Populus,
sollemni initia deliberatione in Concilii, illi responderunt unanimes, irritum plane subiece
Johannis Donationem illam ut posta tam fine ordinum afferens, quam Juramento,
in augurias adversum. But of this great Authority I shall speak more hereafter,
when I come to it in order of Time.

Since therefore it is apparent that the Commons had a Share in the Great Coun-
cells before the Conquest (as you call it) I desire that you would be pleased to
shew me how they came to lose it after the coming in of the Normans, and to be
so long without it, as until the 49th of Henry III, or 18th of Edward I. If your
Authors are to be credited.

M. I must confess the Authorities you have brought out of the Saxon Coun-
cells, would seem to be of some Weight, were I not sensible, that the Monks,
who were the only Recorders of those Councils, are very short and careless in
giving a true Account of them; and if we go to the Councils themselves, we might
be sufficiently convinced, that all those that are said to be present at them, could
not have any Places or Votes in those Assemblies, as Members of them; for in
some of them (as in this Example) we find the Queen to have been there, and to
have given her Consent to the King's Charters; and yet I suppose you will not
have the Queen to have been there as an Eftate by herself, much less to have
been a Member of any of the Three Estates.

The like we may say for those Abbesses we find mentioned to have been
present in divers of those Councils, and particularly in that of Winchester, you
so much afflit upon, wherein Tythes were granted; and those are said to have
approved of the Royal Charter, as well as any of the rest; and sure you
do not make Women to have had Voices in our great Councils in the Saxon
Times. So that it appears plain enough to me, that Persons being men-
tioned as present in these Assemblies, or being Witnesses to Charters there
granted, do not make them to have been constituent Members thereof: And there-
fore since the Saxon Times are so dark and obscure, and so little to be col-
cel of Certainty from what we find in the old Monkish Histories, and those
Fragments of Laws and Charters they have left us, many of which are also
forged by the Monks; I think it is Time that we pass over this, to the next
Period after the Conquest, wherein I doubt not but to shew you, that for
above an Hundred Years after that Time, none but the Bishops, Abbots, Earls,
Barons, or Tenants in Capite, were summoned by the Great Council or Parlia-
ment till the Time I have often mentioned.

R. I see you do all you can to perplex very plain and evident Proofs; For
as to the Queen's being often present at the great Councils, it is no more
than what was usual in these elder Times; and that in France as well as here,
as any Man that will but peruse the Charters of some of the Kings of France,
of the Second Race, as they are in Father Mahillon de Rediimplomatique, may
easily satisfy themselves; and as for the Abbesses, whom we find sometimes men-
tioned to have been there before the Conquest, they might also according to the
Custom of those Times have appeared in Person in the great Councils, in
the Right of their Monasteries, and of those great Possessions they held, or else
they might have been often represented by their Decons, or Stewards, who
transacted all Business for them; and your own Civil Law doth always sup-
poze, that what any Persons perform by their Lawful Proxies, it is laid to be done
by themselves; and that the Abbesses and Prioresses, did together with the
other Spiritual Tenants in Capite, join to grant Sequestrate upon the Knight's Fees
they held, after your Conquest, I shall shew you before we have finisht this
Disputation. But since I think I have sufficiently proved the Commons being
in Possession of this Right by a Long Prescription, I shall now leave it to you to
prove, that they did not enjoy it after the Conquest, and that not until the Time
you suppose.

M. Since
Dialogue the Sixth.

M. Since you are pleased to impose this task upon me, I shall willingly submit to it; and therefore before I proceed farther, pray let us see how far we are agreed. In the first place I think you will grant, that till about the latter end of Edward I's reign, there is no express mention made in our Records, or Historians, of any Representatives for the Commons, either by Knights of Shires, Citizens or Burgeltes of Towns; much less the word Commons, mentioned by them in the Senate it is now taken: For if we peruse Ingulph, or Eadmerus, or any other Ancient Historian of William the Conqueror, or his Son's time, when they have occasion to speak of the Great Councils of that age, we can find none mentioned (besides the Bishops) except the Principes, Proceres, Primates, or Optimates Regni; or else in the following age, these Optimates, or Magnates, (by Matt. Paris, and Matt. of Wetstamfer,) are often comprehended under the more particular Titles of Comites & Baronetes, or else by the more general ones of Nobilitas, Universitas, Community, or Baroignium Regni, that is, the whole University, Community, or Body of the Kingdom, reprented in Parliament by the Bishops, Abbots, Earls, and Baron thereof. As for most of these Words, I have given you my Sense of them already, in the Times before the Conquest; and though I grant there may be other Persons sometimes mentioned after the Barons, as Militis, Liberi Homines, or Tenentes, yet I think Dr. B. very plainly proves, by those Authorities he produces in his Anfwer to Mr. P. as also in his Glossary at the End of it, that by all the Words before-mentioned, which are used in our Ancient Historians, can only be understood either the Greater Barons, or else the Lefi, who were Tenants in Capite, and were a Part of the Baronee or Nobility of those Times, and whose Votes did then conclude all their Subdeputies, or Megne Tenants, who held of them; and these together with the Bishops and Abbots, &c. did represent all Degrees of Men in the Kingdom, and being often comprehended under the General Titles of Clerus et Populus, or else Plebei, or Vulgis; or else under these Titles, as yet more generally expressd by Regnum, and Sacerdotium, i.e. the Clergy and Leity of the Kingdom; the Words Populus, and Plebi, or Vulgis, signifying more no more in those Days, in our Historians, (when they treat of Parliamentary Affairs) than the Lay Earls and Barons, with the other Lefi Tenants in Capite: So that the Vulgar, or Common People, neither by themselves, nor their Representatives had, than any Place in our Great Councils: And therefore I think I may boldly affirm with Dr. B., First, That the Commons represented by Knights, Citizens, and Burgeltes in Parliament, were not introduced, nor were one of the Three Ellates in Parliament, before the 49th of King Henry the Third. Secondly, That before that Time the Body of the Commons of England, or Freemen (as now understood, or as we now frequently call them) collectively taken, had not any Share or Votes in making of Laws for the Government of the Kingdom, nor had any Communication in Affairs of State, unless as they were represented by the Tenants in Capite. And these Two Propositions I think I shall be able to prove by undeniable Evidence, drawn from our Ancient Historians, the Laws and Charters of our Kings, as also from those Parliament Rolls, Records, and Acts of Parliament, we have yet left us.

F. I confess you have made a very bold Challenge, and if you can make it out, I grant you will carry the Day, and I shall then willingly submit to your Opinion. But since I find the greatest Part of our Arguments do confit in the equivocal Use of those Words, by which I confess the Commons in Parliament are generally expressd in our Ancient Historians; I shall in the first Place shew you, (to avoid all unnecessary Dispute about Words) that by every one of these Expressions you have mentioned, the Commons might very well be comprehended, as well after the Conquest, as before. And therefore to take the Words in the same Order as you have recited them, I shall begin with the Word Principes, which I have already proved signified before the Conquest no more than Chief, or Principal Men; and that it means no more after the Conquest, I shall shew you by several Authorities. And though I grant that Word is most commonly used by Eadmerus, yet could it not be meant in the Senate it is now understood, there being then never a Prince, nor so much as a Duke in England. But what was understood by this Expression in after-times, we must appeal to Historians. Mass. of Wetstamfer, in his Eores Histor. anno Vol 499. Dom. 1290. Being the 7th Year of Edward the First, which was but Fifteen Years
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after the 49th Henry III.) thus reckon up the Constituent Parts of that Parliament: Rex, Prouinces, & Principes Anglicani converteuntur in unum, &c. Yet in Rot. Cheuf, 7. Edward I. it is called a Parliament, and at which the Statute of Mortmain was Enacted. And that the Commons were there as well as they are now, I shall prove when I come to those Times.

But as for the Words Processus and Populus, used as different from them, if you please to consult the Ancient Manuscript Chronicle of Walter of Coventry, 9th Henry III. Anno Dom. 1225, you will find this Passage: Paritiatione Beata Marie conversantur apud London, Processus Anglia, ibique tractata habita differtior cum Clero, & Populo ibidem consecrato Rex consecravit Libertates tam Ecclesiæ quam Regni, quam Forehullias Carta sua inde consecravit & fingulis Comitibus litteras perpetuis restiterit ibidemque consecravit Domino Regi a Comitibus, & Eboracibvs, & Clero & Populo ibidem presentibus, Quinta decima omnium seculis de Commissis afferens, pretia quam de Ecclesiis.

But Mat. Paris, in his History of this Transection under this Year, relates it thus: Rex Hen. ad natale tenuit Cariam juam apud Westm. Processus et populo, cum magnatibus Regniis solennitate igiur ut desceat completa, Huberius de Burgo ex parte egiitiam Regis possessum eorum Archibishopos, Episcopos, Comitiis, Baronibus, et his auxilis, &c. But to give you now the full in English: The King being assembled the Fifteenth Part of all their moveable Goods; upon which the Parties above-mentioned, with one Accord answered, That they would willingly yield to the King’s Desire, if he would confirm the great Charters. To which the King having assented, and sealed them; they granted the said Supply. From which we may observe, that as at the inferior Clergy were comprehended under the Word Clerus; so mooth, by a like Party of Resist, the Commons be under Populus, or else it would have been an idle Tautology when it is put, as it is here, different from Magnates.

Now supposing there be no other Persons expressly mentioned by these Two Historians to have been at this Parliament of the Laity, but the Earls and Barons, and Laity, comprehended by them under the general Names of Processus, Populus & Magnates; yet do but read the Conclusion to the great Charter of the 37th of Henry III. and you will find, that besides the Archbishops, Bishops, Earls and Barons, there were also present, the Knights, Freetholders, and all others of the Kingdom, by their lawful Repreentatives, as I shall show you more at large, when I come to make Use of this Charter, as an Argument to prove the Commons to have appeared in Parliament before the 49th of Henry III. So likewise the Statute of Fines made 37. Edward I. was ordained de Commiss Concilii Regni, and yet no Mention made either of the Audience of the Lords or Commons; and yet this Statute was made but Nine Years after the 49th of that King. Since which Time the Doct or himself acknowledges the Commons to have been always represented in Parliament, as they are at this Day; and yet Mat. W MASTERING, speaking of this Parliament, mentions its Orders only in general Words, thus, Dominica secunda Quadragefima civitas Magnatibus Regni apud Westmonasterium; and yet it is certain all the Estates of the Kingdom were there: So that it is not easy to conclude from the general and equivocal Expressions, either of Ancient Statutes, or Historians; That the Commons were not in Parliament, becaus not particularly mentioned.

I could give you more Instances of the like Kind, but I will not tire you. But shall now proceed to shew, that notwithstanding the Use you make of the Testimony of Mat. Paris, as to the Sense of the Word Magnates; yet, that all those Historians that write immediately before, or after him, and continued his History, do frequently make Use of the Word Magnates & Primates, to signify the Commons, as well as the Lords assembled in Parliament. And for the Proof of this, I shall give you the Testimonies of Two approved Authors. The First is Thomas WELFINGTON, in his History of England; who in Anno Dom. 1273. 6. Edward II. hath these Words, Recedunt: (Rex) de Berewiis paribus persentum Eboracum, sub magnam cum Clero tenuit Concilium, & Regni Magnatibus Universis.

So likewife Mat. of WELFINGTON, in his Flores Historiarum, in the 24th of Edward I. Anno Dom. 1296, relates a Parliament held at St. Edmundsborough, at which appeared Primates, ac Magnates sui Regni, &c. a quibus nouum Tullagium populi, &c. I could give you more of the same Kind out of this Author, but I fear, lest I should tire you; and therefore I shall conclude with the Testimony of
Dialogue the Sixth.

of Hen. de Knighton, in his Historie, De Euentibus Angliae, where, in p. Henry III. he thus speaks concerning this King's granting the Great Charters, Poit hic Rex Henricus concedit Magnatibus terre duas chartas, unam de Forela, & aliam de libertatis, ob quam causam Communes Regni concesserunt quattuor decimam partem Nobilium, & immobiliam. From all which you may observe, That in the Time when this Author wrote, it was generally believed, that this Term Magnates, comprehended all the Estates of the Kingdom; and likewise suppos'd the Commons (whom he here calls Communes,) to have had a principal Share, not only in the taxing, but granting this great Tax. And for the further Proof of this, you may see what W. Malmesbury says in his Historie, when reciting the Speech of the Bishop of Winchester, then the Pope's Legate, speaking of the Londoners, hath this remarkable Passage, Londinenses, qui praecipui habitabant in Anglia fuit PROCESOR, so that if the Chief Citizens of that famous City, were reckoned siclus PROCESOR, sure thole they chose to represent them in Parliament, might much better defend that Title. And thus likewise Walshingham in his Historie, in the 37th of Edward II., tells us, that he summoned to a Parliament at London, Regni PROCESOR, & Prelates ad Traisdium de taris Regni negotiis; but in the close Roll of this very Year, it appears by the Expendit Mulum, that the Commons were there as well as the Lords. So that you see they were all then often comprehended by our Historians under the general Term of PROCESOR Regni.

I come in the next Place to the Words Nobili & Nobilitas. Walshingham, 5. Mr. Pryn's ad Edward II. gives us this Account: Poit Natale Dominicum convenit universa multitudo Regni Nobilium ad Parliamentum Londoniis. Now what is here meant by this Multitude Nobilium, may be proved by the Parliamentary Writs of this Year, as appears from the close Roll, wherein there are Writs of Summons for the Commons, directed to the Sheriffs.

And that the House of Commons were often styled Noble in latter Times, appears by a Speech Recorded in the Rolls of Parliament, 7th of Richard II. to be spoken by Sir Mich. de la Pool, then Lord Chancellor, to the Lords and Commons, which begins thus, Dift vous (i.e., I say to you) Meilleurs Prelats, & Seigneurs Temporels, & vous mess Compaignons les Chavelers, & autres de la Noble Commune de Angleterre.

And to prove that this Word was then used in this Sense amongst Civilians, from whom we derive most of our Titles of Dignities, you may see in the large Work of Barthol. Caftanues, called Catalogus Gloria Mundini, written on this Subject, where, in his Eighth Part, Confid. 18, he hath this amongst other Comments on the Word Nobilitas, Nobilitas etiam causer ex loco, quoniam civis ex urbe splendida orundas, Nobili sest, for which there he gives many Authorities. And this Title he looks upon as due also to Country Gentlemen, living upon the Husbandry of their own Estates, or Annual Rents.

And that by the Word Magnates, are often understood the Knights of Shires, commonly called in old French, Grantes des Comtes; I can give you sufficient Authorities: Now this Word Magnates is always rendered in our old French, P.R.C. p. by Grams: For the Proof of this, I defire you in the first Place to take Notice, that Rot. Clau. 3 E. 2. in 16 dorso, you will find this Title, Inhibitio ne qui Magnates, viz. Comes, Baro, Miles, seu aliqua alia notabiles Personas transeat ad Parties transmarinas. Where you see the Word Magnates is applied to Knights as well as Earls and Barons. And amongst the Common Writs of Michaelmas Term, Anno 34 Edw. I. in the keeping of the Remembrancer of the Treasury of the Exchequer, the Knights of Shires, and Barons of the Cinque Ports are called Magnates. So also in the Statute, 25 E. 3. de securitatis, it is there enacted, per Assent de les diz Prelats, Comtes, Barons, & autres Grandez de la dite Communale, illoques Assemblees. Also in the Statute-Book printed in French, in the Statute of the Staple, 27 E. 3, the Knights of the Shires, are expressly called, Grantes des Comtes. And lastly, as for the Word Optimates, which is derived from the superlative Optimus, it signifies no more than the best Sort of Men in any Commonwealth or City. And in this Sense, William de Malmesbury, in his Historie, speaking of the Rich Commons of the Place, hath this remarkable Passage, Londinenses qui pro max. Pat. 18p. mutidine Civitatis optimatis sunt. And that not only Knights, but also such Citizens as were remarkable and eminent for their Estates or Offices in Cities,
had the Appellation of Magnates, appears from an ancient Manuscript Book, kept in the Archives of the City of London; where in Anno Dom. 1229, being the 13th of Hen. 3, an Act of Common Council was made, per omnes Aldermen, & Magnates Coirians, per alumnis universorum Civitum, quod nulli temporaliter aliquam vicem comitem admitteri in vicem comitem per duos annos continere, fiscum primi existeret. So likewise in the same Book, Anno Dom. 1244, 29 H. 3. mention is there made of a Delention that then arose about the Choice of a Sheriff; and the Book says, quodde de suo elegantur. Nicholas Bar., per alumnis Majors, & Magnates elegiantur Adam de Bentall. I could give you more of a like Nature; but I will not tire you; but no doubt the eminent Citizens of York and other Cities, were called Magnates in those Times.

From all which we may fairly conclude, that not only Knights of Shires were called Magnates, but also the Representatives for the Cities were often filed Proceres, Magnates, and Nobles, in our ancient Rolls, and Acts of Parliament, and other publick Writings. I beg your Pardon for being thus long; but I could not make an End sooner, and prove the true Sense of these Words in question, from ancient Historians, Acts of Parliament, and Records; by which I hope you will be satisfied how unsafe it is to depend upon the general and various Expressions of our English Historians (especially, as understood by these of your Opinion); since if we should depend upon them alone, the Commons would not oftentimes be found to have been present in Parliament, even when the Records themselves expressly prove they were there.

M. I must confess you may make me think more on this Subject, than perhaps otherwise I should have done; yet I must observe, that most of the Quotations you have made use of, concerning the meaning of the Words Proceres, Magnates, and Nobles, &c. are from Authors who write after the time that I own the Commons, as now represented, to have been constantly summoned, to Parliament; so that they might very well, through Haflie or Indiscretion, confound them with the Earls and Lords, and fo title them by the same Titles. For I will prove to you, before the Conclusion of this Difficourte, by undeniable Records, that by the Words Magnates and Proceres, must be understood the Bishops, Earls, and Barons, as differing from the Commons. And I think I can sufficiently prove from Mat. Paris., and the ancient Laws of our first Norman Kings, as also from the Magna Charta of King John, that by the Words Barones are meant the Tenants in Capite, who are there only mentioned to have constantly appeared in Parliament, till the 18th E. 1.; the greater and left Barons, or Tenants in Capite, together with those of higher Degree, (viz. the Earls, Bishops, and Abbeys,) being the only Persons who represented the whole Body of the Nation, in our great Councils, or Parliaments. And I take this to be evident and clear, that I cannot quite this Opinion, without you can shew me better Reasons to the contrary, than hitherto you have done.

F. I see nothing will satisfy those who have once received a Prejudice; or otherwise I think it may be proved sufficiently, from that Clause in Magna Charta I have mentioned, that other Persons were then before the 40th of Henry III. besides your great Barons, and Tenants in Capite. And as for the use of those Words you mention, in our Historians after the Reign of Hen. III. nothing can be a plainer Proof for me: For if they did comprehend the Commons under those general Words or Phrases; we have been now disputing about, I desire to know why they might not have been likewise comprehended under the same Terms, by Mat. Paris., and those other Historians who write their Histories from the Norman Conquest to the End of the Reign of Henry the Third; and were they might not have then confounded the Commons with the Lords, as well as they did afterwards. But since I fee you insist so much upon your Barons, and Tenants in Capite, whom you will have alone to constitute the Baronage, or the Communities, or Universitas Barondii Angliae, pray give me leave to ask you a plain Question, Were your lesser Tenants in Capite, (or Barone minorum) Lords or Peers of Parliament, or were they Commoners only? 

M. To give you Mr. Selden's Opinion, in his Titles of Honour, cap. 5. He tells, that after the Time of the Conquest, there was the middle of King John, every Tenant by rent of his Tenure or Lands he held in capite, was indifferently an Honorary or Parliamentary Baron; but that about the

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End of King John's Time, some only that were most eminent of those Tenants, (sometimes called Barones Maiors Regni) were summoned by several Writs directed to them as Lords or Peers of Parliament; and that the rest, being the lesser or lower Tenants in Capite, (sometimes called Barones minores,) were for some Time before this summoned by general Writs, directed to the Sheriffs or Bailiffs, as appears by King John's Magna Carta. Yet whether these Men were ever really Peers or not, I have Reason to doubt, since I do not find but it was they alone who for some Years after the Conquest, served upon Juries in County Courts, and dispatched all the Publick Business of the County; which was then (as at this Day) a Drudgery beneath the Peers to perform; and therefore I shall not insist upon it. But thus much I think is certain, That they were a sort of Persons much above any other Laymen of the Kingdom; since they held their Estates immediately from the King, and were so considerable, as that by the Constitutions of Clarendon, they were not to be Excommunicated without the King's Leave; and so were then in some sort of the same Order, sationem Tenure, with the Great Barons or Peers, being commonly called Barones, and made up but one Estate or Order of Laymen in Parliament. And from thence I suppose proceeds that common Error of Sir Ed. Coke, that the Lords and Commons did Anciently sit together, and made but one Houfe. Now if you have any Thing to object against this Notion, pray let me hear it.

F. I think you and I are come pretty near an Issue in this Question; for you confess that these lesser Tenants in Capite, and whom you comprise under the Word Barones, were not truly and properly Barons; and as far as you are in the Right; but yet you will have them to be somewhat more than mere Commoners, as if there had been some Degree or Order of Men in England in those Times, who were neither Lords nor Commons, but an Ambitious Race between both. But to prove that they were indeed no more than Commoners, and not Lords nor Peers at all, nor equal with them, we need go no farther than their way of Tryal in Cases of Treason or Felony, which was by mere Commoners, who were not Tenants in Capite, as well as those that were; so that a Person who was no Tenants in Capite, might serve upon a Jury of Life and Death, with those that were so, and as the Doctor, in his Answer to Mr. P. has observed, that they only served in the Country upon all Juries; and that before the Time of King John. So after all this Noise of none but Lords and Barons appearing for the whole Commons of England, we find by your own showing, that Three Parts in Four of the Lay-members of that Council, were as mere Commoners as our Knights of Shires, and Barons of the Five Ports at this Day, nor can I see any Reason why the other 117. Serjeants, or inferior Military Tenants, might not be as well comprehended under the Word Barones, as the former, who were mere Commoners likewise; if we consider that it was neither Nobility, nor Birth, nor the King's Writs of Summons, but only the mere Tenure of their Lands that gave them a particular Right to a Place in that Assembly in those Ages. So that the Question then amounts to no more than this, Whether the Commons of England were then represented by Tenants in Capite, or by Knights of Shires, and others, as they are now. But since you will have none but Tenants in Capite to have had Places therein, pray tell me whether you allow that Privilege to all who held in Capite, or not?

M. Yes, I allow it to all who held in Capite by Knight's Service, and who also enjoyed a whole Knights Fee; or so much as was sufficient to render them able to maintain the Dignity of that Place, but not that the King had also a Prerogative of summoning or omitting whom of them he pleased, to his Great Council or Parliament, till the Left Tenants in Capite thinking it a Wrong to them, it was provided by King John's Charter, that all of them should be summoned by one General Writ of Summons, directed to the Sheriff. But I except from this Council, all Tenants by Petit Serjeants, who tho' true, he held of the King in Capite, yet was it not by Knight's Service. So likewise I exclude all Cities and Towns, though the Citizens or Burgesses of divers of them held their Lands and Tenements by that Tenure: Since being neither Noble by Blood, nor, having Estates sufficient to maintain the Port of a Gentleman, or Knight, they had no Right to appear there in Person among the other Tenants, who were Owners of one or more Knights Fees. Yet do I not affirm, that the Commons were not after some Sort represented in Parliament by their Superior Lords, since the Bishops, Abbots, and other Barons, did then make Lords, and give Taxes, not only 117. Serjeants, for
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for themselves, but their Feudatory Tenants also, though of never so great Estates; and Tenure in Copite was then looked upon as the only true Freehold of the Kingdom, and the Tenants by it as the only true Freeholders.

¶ I shall shew you by and by the Fallacy of this Notion, but in the mean Time pray tell me when a Great Council or Parliament was called, who represented those Perfons, who you say did not appear there, and made General Laws, and granted General Taxes for themselves, and the whole Kingdom, when there was Occasion? For I see you butt out the greater part even of thefe your own Freeholders from this Assembly.

¶ As for the Tenants in Petit Serjeancy, I at prefent conceive (though I am not sure of it) that many of them might hold Lands, and perhaps divers Knights Fees, by Grand Serjeancy, or Knights Service also, those Estates which were given by the Conqueror to his Servants, to be held of him by fuch and fuch Petit Services, might in Proceeds of Time fall by Purchase, or Defeasment, into the Hands of such Great Tenants in Copite, as had sufficient Estates to maintain his Dignity; and as for the reft, they might, for ought as I know, before the Statute de Tolagio non concedendo, have been taxed by the King's Write, according to the Proportion of the Knights Fees, or Parts of Knights Fees, which they then held; and according to the Rate of the Sums imposed in Parliament; either by way of Aids, upon every Knight's Fee, or else by way of Subsidy, by fo much a Yard, or Polo Land throughout all England, which has been the only way of Taxing, ever since that of Knights Fees hath been difposed.

¶ Then I find after all you have said, that three fourths of your Tenants in Copite had any Votes in Parliament, either by themselves, or their Representatives, and so having made Laws for them, and being taxed at the King's Will, were as errant Slaves and Vaffals, notwithstanding their Tenure in Copite, as the meanest Perfons of the Kingdom, who was taxed (as you would have it) at the Will of his Superior Lord, which whether so great and powerful a Body of Men would ever have suffered, I leave to any indifferent Perfons to judge.

¶ I grant this may now appear somewhat hard; yet since it was the receiv'd Law and Custom of the Kingdom, it was not then look'd upon as a Grievance; and it was then no more unjust than it is now, that Perfons under Forty Shillings a Year in Lands, though of never so good Estates in Money, or Stock, or that Tenants for Years, or for the Life of another, should at this Day have no Votes at the Election of Knights of Shires, and consequently be without any Representatives in Parliament of their own Choice, and yet be subject to all Laws and Taxes (though never so great) when made and imposed by the King in Parliament. And I am able to give you divers good Authorities to prove, that even London it self, and all other Cities and Towns which held the King in Copite, and were called his Demesnes, were often taxed by the King and his Council out of Parliament, before the Statute De Tolagio non concedendo: And I think Dr. B. hath proved this beyond Exception, in his Animadversions upon Mr. A's Librrum facres nova, and he there gives us the Record it fell of 29 Hen. III. now in the keeping of the King's Remembrancer of the Exchequer: That the King did that Year (as he had divers times before) Tollerate, or Tax all his Demeinfe Lands in England, and then likewise demanded of the City of London, the Sum of Three Thousand Marks, in the Name of the Tollerage or Tax so laid: And the Mayor and Citizens at last yielded to it, after a great Content. It appearing upon Search of the Rolls in the Exchequer, that the Citizens of London had been several times before so Taxed, in the Reigns of King John, and the King himself, and fo they paid at leaft the Sum which the King demanded. By which you see, that the greatest and richest Cities and Towns in England were Taxed at the King's Will; nay, I think I am able to prove (were it now necessary) that the whole Kingdom was often Taxed by the King and his Council only, before the granting of King John's Magna Charta; and the Statute De Tolagio non concedendo, abovementioned.

But to return to the Matter from which you forced me to digress.

I think nothing is more plain, than that our Ancient Parliaments were only the King's Court Baron for the Dispatch of the Publick Affairs of the Kingdom, and in which, as in the Lesser Courts Baron, or Courts of Manor, the Suitors or Tenants were, together with the Lord, or his Seward, the sole Judges. So that at first, after the Conquest, it belonged to the King alone, as the Supreme Lord.
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of the Kingdom, to appoint or call which or what Sort of those Tenants he pleased, to attend him with their Aid and Advice, at his Common Councils, or Parliament. And I think nothing is more evident, (as I shall prove more at large from our Ancient Histories, Records and Statutes) than, that before the 49th of Henry III. and some Years after that Time, none but the Bishops, Abbots, Earls, and Greater Barons, and some of the lesser Tenants in Capite, called in King John's Charter, Barones Minores, then constituted the whole Body of the Parliament, under the Titles of Baronagium Angliae, or Communia, or Universitas Baronagii Angliae. And for this I can give you 56 such Authorities, that nothing more cogent and evident Proofs can bring me from this Opinion. And therefore I must tell you, I do not value those loose and inconsiderate Expressions of Historians, either before or after that Time.

F. I see the Testimonies of Historians are of no Credit, if they make against your Hypothesis, but I shall show you your Mistakes about the King's Taxing anon, but the main Force of your Argument lies in the Signification of those Latin Words you have last mentioned, and which, I must needs tell you, I think you take in too strict a Sense. For First, as to the Word Baro, I grant it was not much in Use before William I. obtained the English Diadem. Baro, says Camden, Britannae pro suo non agmen, in Anglo Saxonico legibus non quam compactum, nec in Alphio Glossario Saxonico inter dignitatum vocabula habetur. For the English Saxons called thole in their own Language, Æardermen, which in Latin were named Comites, and by the Domesday Book, it was of so extensive an Import in its Signification, that we read of Aldermen Revis, Aldermen Comitatus, &c. as I have already shewed you. So that according to the strict Sense of this Word, we had great Number of these Aldermen, whose Titles faldom, if at all, descended Hereditarily, till the Conqueror's Time: And after William I. the Saxon Words Æaldermen, and Thanes, began to be changed, and in the room of Aldermen & Thanes, we find Comites & Baronæ, as in all our Ancient Laws and Histories. Nor was the Word Baronæ only taken in those Days for Great Barons, and Tenants in Capite, but also for the Inferior Barons, or Free Tenants, which held great Eftates of other Mason Lords, as well as of the King, by certain Services, and to whom the Great Lords, or Earls (as Sir H. Spelman saith we in his Glossary, Title Baro) often directed their Charters, Baronibus, & Fideibus Page 121. 

norris tam Francis, quam Anglis; and we there also read some Quotations from the old Book of Ramley-Abbey, wherein the Barons of the Church of Ramsey, as also the Milites, and Liberi homines thereof, are particularly mentioned under the Title of Baroni, all which, (as this Learned Author tells us) non de Magnatibus sunt intelligenda, sed de Vassallibus feodalibus, non feu. melius.

And the same Author says a little lower, that Barons are often taken pro libere Timbatibus in genere, hoc est tant in Sociagio per servitium Militare.

M. What then? Do you suppose that all the Freeholders in England, by whatsoever Tenure they held, were Barons, and appeared in Parlement, before the Time Sir H. Spelman in his Glossary, and Dr. B. affign for the summoning of the Commons to Parliament? At this Rate every Yeoman, or Petty Freeholder, was a Baron: So that this Assembly might then confift of above Fifty or Sixty Thousand Persons. Since Spel in his Chronicle tells us, that William the Conqueror referred to himself the Service of about Sixty Thousand Knights Fees, which by B. A. P. the Time, I suppose, might have been divided into many more lesser ones, by Co-heirship, or by Sale; and otherwise Parcelled out by the King's Licence into Half Knights Fees, Third Part of Fees, Fourth Part of Fees, Eight Parts, Sixteen, Twenty, Thirty and Forty Parts of Fees; and so have been increas'd into as many more. And thefe, besides the Tenants in Socage, must needs have been so numerous, that what Room, now, what Field or Place, was able to contain so great a Multitude? Or how could any Bishops have been transferred therein, without the greatest Confusion imaginabile?

F. So then you your self must also grant, that when all your Greater and Lesser Barons, or Tenants in Capite, appeared in Parliament, Parliaments were much more numerous than they are now; since according to the Doctor's Catalogue, out of Doomsday-Book, (in his Appendix to his Introduction to the English History,) all the Tenants in Capite, or Serjeancy, that held the Lands in every County of King William, did (besides the Bishops, Abbots, Earls, and Barons) altogether amount but to about Seven Hundred; and these in the 49th of Henry III. by Forfetture,
and new Convenances from the Crown, or by those other ways you have now mentioned, might be multiplied into twice as many more; and those all of sufficient Eftates to maintain the Port of a Member of Parliament, or Knight. Since Fifteen Pounds a Year was in the Reign of King John, and beginning of King

Henry III. reckoned as a Knight's Fee; and he that had it was liable to be Knighted. And if so, I pray, according to your own Hypothesis, how could so great an Assembly be managed, as of about Three Thousand, or Four Thousand Persons, without strange Confusion and Disorder? But upon our Principles there will follow no more Aburdities or Inconveniences than in yours; for either these Barons of Counties, Burgesses, and Inhabitants of Towns and Cities, were always represented by Knights and Citizens, as they are now; or else these Barons of Counties appearing for themselves, were Lords of Manors, or Freeholders of good Eftates, who were not so numerous or inconsiderable as you imagine; the Freehold Lands in England, being in those Days but in a few Hands, in Comparison to what they are now. And for this Opinion I have Sir H. Spelman of my Side, who in the Place already quoted, under the Title of Barones Comitatus, expressly tells us, hoc nomine contineri videtur antiquus paginis, omnis Baro Eeadem species, in uno quoque Comitatus degentium: Proceres tempore, & Mane-

riorum Dominii, nec non liberia quaeque Tenentes, hoc est fundorum proprietars. Anglice Freeholders, si superius dictum est. Notum autem est hoc liberia Tenentes, nec tam eas esse alii feile, nec tam Valuerat ut bodice depredantium, nam villas, & Domina, in minutias Hereditatis non dum differebant Nobilis, sed (ut vidimus in Hibernia) penes se retinentes, agros, per precarios e celantes, & ascriptiiones.

So that you see Sir H. Spelman then believed, that the Manors, and Great Freeholds in England, were not then Parcell'd out into so many small Shares as you imagine. And that such Inferior Barons, whether they held in Capite, or not, were also called Proceres, see the Laws of Henry I. Chap. 25. The Title whereof is, de Privilegiis Procerum Angliae. The Law runs thus, Si eexarat in ASsiam inter homines aliquos, Baro Eeadem jocarn habentium, tradetur placentum in Curia Domini ius. Now that this Soena was no more than Sec. in old Saxon, see Spec. Gloss. Tit Soc. i.e. fella de hominibus in curia Domini secundum consuetudinem, so likewise in Tinta Soche, vel dicitur, Soc; in Saxon soc. i.e. hiberias Francobia. From all which we may observe, that these Lords of Manors, (here called Proceres & Barones) had Court Barons, which took their Name from their Lords, though Feudatory Tenants or Vavasours.

But granting that the End of King John, or beginning of the Reign of Henry III. supposing that the Lords of Manors, and Great Freeholders, whether Tenants in Capite, or others, might amount in all to Five or Six Thousand Persons, I do not see why such an Assembly might not be as orderly, and as well managed, as one of Three Thousand, or Four Thousand, (supposing your Greater Barons, and Leis Tenants in Capite, to have then made about that Number,) especially if we consider, that sooth Buiñes, or Acts of any Consequence, (and for which Parliaments were called) might be prepared, and drawn up by the King and his Council before they met. So that take it which way you will, fewer Inconveniences and Improbabilities attend my Hypothesis, than yours.

A. That the Earls and Greater Barons, both Spiritual and Temporal, together with the Tenants in Capite, (although never so numerous, as you are pleased to fancy,) then made the Body of the Barone of England, I have very good Authority on my Side; but that any Feudatory Barons, or Tenants of a Lesser Degree, ever had any Places or Votes in those Assemblies, I think you can give me no sufficient Authority for it.

Tis true Mr. P. in his Treatise of the Rights of the Commons aforesaid, gives us Two modern Quotations; the one out of Mr. Camden's Britannia, the other out of Mr. Selden, to prove this Assertion. As for the former, it is in the Introduction to the Britannia, first published in Quarto, the Words are these, verum Baron ex ilia nominibus videtur, que tempos paulatim melora, & molliora reddidit, nam longo post tempore non MILites, sed qui liberis erant Domini, & Thuni Saxonibus dicentur, Barones vocari caperunt, nec dum magni bonoribus erat, paulo autem postea (meaning after the Norman Entrance) ex honoris perveniunt ut nomine Baronis Angliae omnes quodammodo Regni ordinis continerentur. But he doth not tell us that this learned Author, in his last Edition of this Work in Two, being sensible of his Mistake, hath added the Words Superioris.
Superiores before Ordines, whereby it is plain he now retrenchs it only to the Earls and Barons, as they are now underfoot.

Mr. P's other Quotation is out of Mr. Selden's Notes upon Eadmerus, where Vol. 168. Commenting on the Word Barones, he faith, Vocabulum nempe allo natione usurpari quam vulgo, neque eos duxisse ut hodie significare, quibus peculiaris ordinem Comitis locus est; but then conceals this that follows, which makes directly against him; Sed universos, qui Regis munificentia, ad formulan Juris notiri Clientelari quod nullus Ville Regis gilebant, sed ipsum tantum modo Regem possident, Tenore en Chief (Phr. fori forensi dictum) fice Tenara in Capite lati funda postebat; whereby you may fee that he expressly restrains this Word Barones to Tenants in Capite only, though your Author takes no Notice of it. Nor indeed in his Titles of Honour, doth Mr. Selden give us any other Description of a Baron, (I mean such who had a Vote in Parliament) but such in the Sence that is taken in Henry I. his Charter, as it is recited in Matt. Paris, Siquid Baronum necorum, Comitum vel Alliorum qui de me tenent mortuum fuerit. I. e. One who was either one of the Earls, or Greater Barons; or otherwise held in Capite.

F Mr. P. is not at all to be blamed (as you make him) in these Two Quotations; in that out of Camden, you cannot deny, but he hath truly cited that Author, as it was in his First Edition; and if he afterwards altered it, it may very well be questioned, whether he did not add the Word Superiores, rather out of fear of displeasing the English Nobility, (whom that Quotation had before shock'd) than out of any Sence of his being in the wrong, as it appears by the Words immediately following, when he tells us out of a Nameless Manuscript Author, whose Name I wish he had told us, Thir Henry III. out of so great a Muititude of Barons, which was sedivius and turbulent, called the Chief and chiefest of them only by Writ to Parliament. By which it plainly appears, that he suppos'd all thefe Lest Barons, or Tenants in Capite, though not as now underfoot, who were thus excluded, to be been only Nominal, and not Real Barons; and if so, mere Commons; or else he muft extend the Peerage of England to at least Three or Four Thousand Perfons; for so many Tenants in Capite, might very well be at that Time.

The fame I may likewise say as to the Quotation out of Mr. Selden, for by the Words, quibus peculiaris in ordinam Comitis locus est, 'tis plain he suppos'd that all the rest of thefe Tenants in Capite were but Commons; yet he no where affirms, that none but thefe appeared in Parliament for all the Commons of England, but he very well knew the Unfoundedness of that Supposition. Since besides thefe Barons, or Tenants in Capite, Bradlon, in his First Book, tells us of chap. 1 divers other Orders of Men, of Great Dignity and Power in this Kingdom, about the Time when you suppos'd this marvellous Alteration to have happened. His Words are these, Et sub illis (vit. Regibus) sunt Duces, Comites, Barones, Magnatones, juxta Vavallores, & Milites, & eisiam Liberi, & Villani, & diversa personitates sub Regi conscripta, and a little farther, sunt & auxi Potentes sub Regi qui dictantur Barones, hoc est Robert bellii, sunt & auxi qui dictantur Vavallores sunt magnae Dignitatis. From which Words I desire you to observe, that he here makes the Magnates, and the Vavallores, or Feudatory Tenants, to be all one, and also ranks them before the Milites. Now whether these Vavallores and Milites, who did not all hold of the King in Capite, were Men of so great Dignity and Power as thefe whom he here reckons immediately after the Earls and Great Barons, should have no Votes in Parliament, neither by them selves, nor their Representatives, is altogether improbable.

And agreeable to this of Bradlon, Du Fresne, in his Lexicon Tit. Vassallor, tells Reg. 1256. us, that Vassallorum duo erant ordinates, sub majorum applicatione compluuntur, qui Barones appaullantur, sub minorum vero, quos tulebat Vavallores dicunt, & legi Henrici I. Reg. Thanes minores, respectu Thesaurorum majorum qui Barbones equiperantur. But that thefe Leiffer Thanes or Vavallores, were also titled Barones, Sir H. Reg. 70. Spelman tells us expressly in his Glossary, Tit. Baro, Ritam Barons, Comitum, Procerumque, hoc est Barones subalterni, & Barorum Barones sulphecum leguntur, and of this he gives us many Examples, and particularly of the Chief Tenants of the Abbey of Ramsey, above-mentioned. So likewise the fame Author, a Leaf or Two farther, speaking of the Barones of London, mentioned in the Charter of King Henry I. understands them, pro civilibus pretialtoribus qui jocos fuent, & confuetudines, i.e. Caritas babuerunt, & Privilegia, eorum inferar, qui in Comitatu, Barones Comitatum
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Comitate dissuntur, &c. Not did this Title of Baronets extend to London alone; but he also immediately tells us in the same Place, Sic. Barones de Eboraco, de Ceftrie, de Waruico, de Sue Feverham, & plurimis Villarum Regis Fratricis insignium, cum in Anglo-tam in Gallo, &c. And that Barons of Counties were no more than Lords of Manors, I have just now proved; for Senex means no more than a Court Baron, or Court of a Manor. So that here arises a plain Distinction between the Barones Regis, the King's Great Barons, or Tenants in Capite; and these lesser Barons, we now are here speaking of, called Medii meae Theses, and Burgh Theges, by the Saxons, till they fix on the Word Parliamentum, to signify the Common-Council of the Kingdom; who, though no Peers, yet were Barones Regn, Barons or Noblemen of the Kingdom, according to the general Acceptation of the Word Nobiles, in that Age; and as such made up the Body of the Baroneage, called by Matt. Paris, and other Authors, Baronagium, or Communitates Baronagii totius Anglie.

M. I see you do all you can from the equivocal Use of the Word Barones, to crowd in new and unknown Men into the Great Council of the Kingdom, viz. your Barons of Counties, Cities, and Towns, whom (since you dare not affirm there were then any Knights of Shires) you suppose to have forced instead of them; and these you would have to be, not Barones Regis, but Regni, or Terra, forthwith, i.e. of the Land, or Kingdom; whereas we never had any true Barons that held by Meane Tenures here in England. This if you deny, you must deny all History, and all our Ancient Laws, and Law-Books too; and if you grant it, you must confess, that every true Baron was a Tenant in Capite, and by your own Concession, he must then be the King's Baron, or Baro Regis. I grant indeed, there were Nominal or Titular Barons (such as you mention) many in those Times, such as were Tenants to Great Lords, Bishops, or Abbeys, or Monks, of whom we find few Parts of any Notes in our Ancient Histories, Records, and Charters. But these are not the Men who had ever any Place in our Great Councils; and I desire you would prove to me, that ever they appeared before the Times I allude to; and I would also have you inform your self of the Gentlemen of whom you borrow this Notion, if they can prove that there were any such kind of Tenure, as Tenura de Terra, or de Regno? Or whether there was ever any Man that held an Eftare de Regno? Whether Forreits or Eleheats were to the Kingdom? And whether Fealty was sworn, or Homage done to the Kingdom? Or whether an Earl was invested or girt with the Sword of the County by the Kingdom? Or whether the Ancient Ceremonies used at the Creation of Earls and Barons, were done by the Kingdom? Thus all the Barons of England held of the King; and thus all these Things were performed and done to our Ancient Kings, and by them; which are most manifest Notes of the King's immediate Jurisdiction over the Barons; and that they were his Tenants in Capite, and by Consequence his Barons only, which you cannot deny; and of which Tenants in Capite, the Earls and Greater Barons, always Created by Investiture of Robes, or other Ceremonies, were summoned by particular Writs; and the other Less Barons, or Tenants in Capite, ever since the 17th of King John, were summoned by one Common Writ, directed to the Sheriff of the County; since which Time (if not some Time before) I grant these Tenants in Capite were not look'd upon as Barons or Peers of the Kingdom, properly so called. Yet did their Votes in Parliament full conclude, and charge their Tenants in the making and impounding of Taxes or Laws, which they alone, together with the Bishops and greater Barons, full performed, until the Times I allude to.

E. I see you are in a Wood, and do not know well under what Clas'a to rank your Tenants in Capite, for if they were at first all Lords or Peers, how could they serve upon Juries in Hundred or County Courts? If they were mere Commoners, then there were Commons in Parliament, before the 49th of Henry III. and why might not others as confederate Commoners, have Places in the Great Council as well as they, whether they were the King's Barons, or Tenants in Capite, or not? But in Answ'er to this, you tell me, that we never had any Baron held by mean Tenure, here in England; this is plainly equivocal; for if you mean it of Barons in Capite, it is true; if of other Baronies, it is false by your own Confession. And Sir Hk Spelman tells us, in the Title I allude to, that the Baron of Burford pleaded to hold of the King per Tenure non

mem, and yet he was never any Baron of the Kingdom. Now I desire you to shew me, if he, and such like Barons as himself, had no Place in Parliament, who it was represented them there. And therefore in Answ'er to your Dixeems, I grant thus: every
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every Baron by Tenure, was a Tenant in capite; but every Tenant in capite was not a Baron; and this I think is so plain, that you your self cannot deny it.

But as to your next Question, I can answer it without asking the Gentleman, from whom you suppute I borrow the Notion, That there might be other Barons, or Lords of Mannors, who by reaso of their Estates might have Places in Parliament (supposing Knights of Shires were not introduced till after King John's Time, when such Freeholders became too numerous all to appear in Person) and yet these might not be Barons by Tenure; And therefore all your Questions conclude nothing; for you suppute that which is null to be proved, that because all the Barons of England, properly so called, held of the King in capite, and were consequently his Barons, that therefore none but Barons, and Tenants in capite, had any Place in our great Councils, which is the Thing you suppute, and I as positively deny.

M. Well Sir, since you put it to that Issue, I hope I shall fully convince you, that none but the Persons I have mentioned were the constituent Members of the Common Council or Parliament, before 49th Hen. III. or 18th Edw. I. and who alone gave Assent to all Laws that were made, and all Taxes that were to be imposed on themselves, and their Under-Tenants, who were then concluded by the Acts of their superior Lords.

But not to wrangle with you any longer, about the Signification of the Word Barons, I grant there were Nominal or Titular Barons, very many, such as I have mentioned; nay, that there were severall other great Subects, who had Tenants that held 5, 6, 7, 8, or 10, nay more Knights Fees under them, and who had the Name and Title of Barons. But what is this to the Purpose I desire you would prove to me, by any direct Proof, that the Sort of Men had any Voices, either by themselves, or their Representatives in our great Councils, till after the Time we allow them; and this (besides the Proofs I have already brought) I think is sufficient; since it is plain, that the Barones Regni, or Terra, and the Militiae, and Homines sui, are all one and the same Persons, that is, they were the King's great Barons, or Tenants in capite, who alone constituted the Baronage, or University of the Baronage of England, or of the Kingdom, in our great Councils, or Parliaments. And for the further Proof of this, I need go no farther than those very Arguments your own Author Mr. P. hath made use of, in his Right of the Commons asserted, wherein he would prove from certain Letters that were sent from the Baronage, or University of the Baronage of England to the Pope, against the Church of Rome's Exactions here in England. And therefore I shall not bring only Fragments, Phrases, or single Words out of the Records or Histories which seem to commenence my Opinion, contrary to the true Meaning of those Records, and the Sense of the Historians, as some of your Men do, but shall give you the Quotations out of those Authors, whole and entire; and shall make such reasonable Deductions from them, as I think you will have no reason to deny to be fairly raised from the Words themselves.

Thus also, as Matt. Paris relates, in the 29th Hen. III. the Earls, and Barons sent Letters to the Pope, then at the Council of Lyons, to complain of the Pope's Exactions; which Letters are said by this Author to be directed a Magnatibus, & Universitate Regni Anglia. And it is also true, that in the same Year there were other Letters sent thither, from the same Parties, to the Cardinals there assembled, which are recited by the old Manuscript to have sent Mellengers to the Cardinals; and the old Manuscript in the Cottonian Library, that they sent to the Cardinals assembled at the Council of Lyons, Letters to Baronis, Militibus, & universitate Baronagi Regni Angliae per procuratores suos Rogerium Bigod Comitem Norff. Wilhelmm de Onetepo, Johanneum filium Galfridus Redolphum filium Nicholae, Philippum Basset, Barones, Procuratores Baronagi Angliae tunc temporis, Innocentii Papa quartor celebrantur Concilium ibi generale. Anna Gratiae 1245. And the Letters are thus directed; Venerabilibus in Christo Fratrisibus universis, & singulis Dei Gratia Salutem. Barones, Militibus, & Universitate Baronagi Regni Angliae. And Matt. of Wesminster says likewise agree in this Relation, only titles the Persons last named, Militis: whom Matt. Paris called Viri Nobili, & dierentis: But this will make no Difference, as I shall shew you by and by; and to these Matt. of Wesminster adds Mr. William Ponic Clerk, who seems to have been their Secretary.

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But notwithstanding, it will appear that all these Persons so sent, named Barons &c. &c. &c., did not represent the Commons of England at all, but only the great Earls, Barons, and Tenants in Capite. For it appears from Sir W. Dugdale’s Baronage of England, that every one of the Persons here named, was either an Earl, Baron, or great Tenant in Capite, and not common Persons, as your Author would have them: And thus it is true, the Cottonian Manuscript, and Matt. of Westminter call some of them Militares, yet this makes nothing against our Opinion; for as I proved before, the great Militaries were often Riven Barons, and the Barons Militares.

Nor was this Earl, and the four Barons here mentioned, chosen or sent by the Baronage of the Kingdom assembled in Parliament, to represent them at the Council of Lyon, but were only picked upon by a Body of Military Tenants, or Barons, at a Tournament intended to have been held at Dunstable, which was forbidden by the King; and these took upon them to warn Mr. Martin, the Pope’s Clerk, out of the Kingdom; as appears by the Account Matt. Paris gives us of this Business, in the Paragraph immediately following: So that the History of the thing makes it plain, who were the Universitas Regni; to wit, the Barons, or the Universitas Armatorum, who were met to hold the Tournament, and these the King there called his Barons.

And after this, in the 30th of Hen. III, when the Pope did not give Satisfaction to their Grievances, the King called (as this Author tells us) ad Parliamentum generalitatem, totius Regni Angliae totem Nobilem Territorium Londoni (viz.) Prelectorum tam Abbatum, & Priorum, quam Episcoporum, Comunium quoque & Baronom ut de Statu regni jam vexatione efficaciter prope rudem urgent neces- sitas contrefaret. In this very Parliament the King conferred with the Bishopps by themselves, and the Earls and Barons by themselves, about this Business of the Pope’s not keeping his Promise: And certainly if there had been then any Commons in this Parliament, he would also have conferred with them about the same Matter.

The Refit of all these Conferences was, that yet for the Reversion due to the Apostolick See, they should again suppliant the Pope by Letters, to remove their intolerable Grievances, and infupportable Yoke. And this they do in separate Conferences. The Bishopps write by themselves; the Abbots and Priors by themselves; and the Earls, Barons, &c. by themselves, to the Pope; and if there had been any Commons, as at this Day, they must certainly would likewise have wrote to the Pope, as well as the other contiguous Parts of this Parliament did.

I hope I shall be able to answer what you have now said: In the first Place, tho’ I should grant that these Commissioners sent by the Baronage of England, were all of them Barons, and no Commons among them; doth it therefore follow that the Persons that sent them, must have been all Lords too? For if those Commissioners, were all Peers, who represented your Barones universi, or Tenants in Capite, (who, as you yourself have granted, were no Lords at all) why might not those Lords as well represent all the Commons of England, as they did their inferior Tenants in Capite? So that it seems plain to me, that these Words, Universitas Baronagi Anglia, must needs then comprehend somewhat more than your Barons, and Tenants in Capite only; since the Words Barones &c. &c. alone had sufficiently expressed all the constituent Members of your Parliament, without adding &c. Universitas Baronagi, which would have been a Tautology.

But that it was very usual for the great Lords in those Days, to write Letters in their own Names, as also for all the Commons of England. I shall shew you by and by, when I shall make use of two other Inferences of a like Nature, in the Reigns of Edw. I. and Edw. III. And therefore it is no good Argument to prove, that the Commons had no hand in this Message, or Letters, because they did not write by themselves; much less is it so, because it is not expressly mentioned by Matt. Paris, that the King consulted the Commons as well as the Bishopps, Earls, and Barons, that therefore they were not there: Since this Author writing very concisely, comprehends all the Lay Ellates, under the Words Comites & Baronae, or eli Magistrates alone. So likewise Matt. of Westminter, when he mentions divers Parliamenters in the Reign of Edw. I. and Edw. II. expresse them under the same Title. And tho’
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tho' this Author often mentions the Earls and Barons to have done this, or that; yet it is no Argument to conclude, that the Commons were not then there. And for this, pray take these Examples out of Matt. Wofeminster, when Anno Dom. 1300. the 28th of Edward I. he tells us, the King held his Parliament at Lon- don, where the Comites & Barones demanded a Confirmation of the great Charters, and they further asked, that the Deformations made by the King should be confirmed; and then he tells us, that thereupon the Charters of Liberties and For- ests, were again renewed; and being paid under the Great Seal, were proclaimed before all the People, in every County; where you see that the Complaints were made by the Earls and Barons; yet it is certain, that the Confirmation of these Charters, must have proceeded from all the Eftates; tho' the Bishops, an'd Abbots, and Priors, who were then constituent Members of this Parliament, are not at all mentioned. Yet that they, as also the Commons were at this Parliament, will easily appear, if you please to consult the Clause-Roll, where the Summons are entered. So also Henry de Knighton, Anno Dom. 1301. the 29th Edin. I tells us of a Parliament this King held at Stamford, where met the Earls and Barons, and with great Courage persifled until they had got the Charter of Forests fully granted and confirmed to them. Where note, that tho' by way of Excellence, the Earls and Barons (who then bore the greatest Sway, are here only mentioned) yet it is certain, that the Commons were also summoned to this Par- liament. Now if these latter Historians pass by the Commons, tho' then constituent Members of this Parliament, without any one express Mention, why might not Matt. Paris do so too?

But that he did so, appears very plainly from the Letters of the Parliament held in 30th Hen. III. to the Pope and Cardinals, being still at the Council of Lyons, to remove the intolerable Grievances above mentioned. That to the Pope is recited at large by Mat. Paris, tho' that to the Cardinals is omitted by him; but in an Ancient Manuscript of the Time extant in Sir John Cotton's Library, both Letters are said to have been sent to the Cardinals at Lyons, a Bo- rumbus, Multibus; & Universitate Boroughti Angliae. Now who these were, the subseuent Letter to the Pope in Mat. Paris will inform us, which begins thus, Sandroyne, etc. Devotis huius fui Richardus Comes Cornubiae, etc. together with divers other Earls there named; but the Commons are not particularly recited, yet are comprehended under the general Words, Barones, Proceres, & Magnates, ac Nobiles Portuam maris habitaturus, nec non & Ceres & Populæ Univcrsæ Salutem; and pray note, that Mat. Paris had before called this a Parliament, Consensibus ignar ad Parliamentum totius Regni Magnae Brittanæ; Pag. 697; which Words take in the Knights of Shires; as the Nobles, Portuam maris habitaturus, &c. the Barons of the Cinque Ports; (which by the way are here called Noble, tho' more Commons.) And to obviate your Objection, that the Word Ceres after Barones, may refer to the Bishops, Abbots, and Priors, that could not be; for they at the same Time had already writ Letters apart to the Pope, concerning this Matter; as you may see in the same Author immediately before. And therefore nothing feigns plainer to me, than that by these Words, Ceres & Populæ Univcrsæ, must be meant the inferior Clergy, and Commons, appearing by their Reprehensives in this Parliament, and that so became generalissimum Parliamentum, as this Historian calls it.

Mt. Pray give me leave now to reply.

In the first Place I must tell you, that the Influences you have brought out of Matt. Woflin. to prove that under the Words Comites and Barones, & Baronagium Angliae, were comprehended the Commons of England, and that after the Time I allow them to have been there, will not do your Business.

As to the Influenç of the Pope's Nuncio, it seems to have been an Order of the Lords only; the Words being in Latin, de Affiru Comitiouis et Baronæm. As to the Third Influence out of Knighton, he laid indeed, that the Comites et Barones met at the Parliament at Stamford; and that might very well be, since they alone then insisted upon the Confirmation of the Charter of Forests.

But as for the Argument you draw from the Direction of this Letter to the Pope; The learned Dr. in his Tretitē against Mr. P. hath given us a very good Answer to it; to this Effect, that tho' it is true, that after the Barones & Proceres, there are divers other Parties mentioned, yet was this Troop of Words put together in this Letter to no other purpose, than to make an Impression upon
the Pope, and make him sensible what a general Dislike the Nation had of his Exactions and Encroachments, and to induce him to a Compliance with their Desires; the Multitude or Commons not being any-ways Parties, or privy to the writing of the Letters. For the Clamour of the People was a great Argument used in all these Letters, to affect the Pope, how ungrateful his Impostions were to the Nation. But in this of the Temporal Barons more especially, who address themselves to the Pope by Petition, enforcing it by the Clamour of the People, against those Injuries and Oppressions upon the whole Kingdom, it is to no purpose to repeat all that follows; only observe this Clause, Aequan necessis est ut veniant Scandala Clamore Populi, tam Dominum Regem, quam nos intolerabilem impetunem, et the King likewise: in his Letter to the Pope and Cardinals aggravates the Matter, by the like Arguments, as appears by this Clause, in his Letter to them, utrum Clamorem incomparabilem Magnatum Anglica tam Cleri quam Populi non possumus obvadere. From this general Clamour of the People, and not from their being Parties, it was, that the Beginning of the Letters from the Baronage, or the University of England, was stowed with so many Words and Phrases, to awaken his Holiness, and invite him to redress their Grievances.

F. In return to what you have said, I must tell you, that I am not convinced, that in the Parliament mentioned by Matt. 17, the Demand for the Confirmation of the Charters was made by the Lords only; since it is not likely that the Commons (who are there filled Devores Plebeis, and are said to have been grieved by their Infringement) should not have been Parties to the Complaint for their Redress; especially since we find that in all succeeding Parliaments, the Commons are mentioned as most eager for the Confirmation of these Charters.

But as for the most material Part of your Answer to my Authority from the Parliament's Letter to the Pope, I know the Dr. endeavors all he can, to avoid the Force of this Objection, by making the Parliament to whom his Holiness spoke empty Words, instead of Matter; that is, according to the Dr. own Phrase, they only laid an airy Ambuscade to intrap him. But whether the old Gentleman was thus like to be caught, I give you leave to judge. For certainly both he and his Conspirators of Cardinals, knew as well as the Parliament itself, what were the constituent Parts thereof, and they could quickly have anwered them, that they put a meet Sham upon his Holiness, in mentioning the Noble Inhabitants of the Sea Ports, and all the rest of the People, both Clergy and Laity in their Letters; whereas they had nothing at all to do with the Matter, nor had shown any dislike of his Holiness's Proceedings. For if they had no Representatives in Parliament, how could it be known whether they were aggrieved or not? Or is it likely the Pope had no Nuncio, or Friends, among the Clergy, to give him an Account of the Cheat they there put upon him? And they might as well have talked of the Clamours of the Timners in Cornwall, as of those of the Inhabitants of the Sea Ports, if it was only put in to augment the Clamour, or to fill up the Number of the Complainants; if the People (I mean both Nobility and Commons) had not been Parties to these Letters. And you your self have but now recited a Clause in the King's Letter to the Pope and Cardinals, which makes it plain it was so; when he tells them, that he could not stop his Ears against the Clamour of the Magnates, tam Cleri, quam Populi, i.e. as well of the Clergy, as of the Laity, as the Dr. renders it. So that these Words, Clamorem Magnatum, must signify here the Clamour or Complaint of the whole People in Parliament; or else they signify nothing at all.

And I may as well say that the Clerus and Populus never appeared in Parliament at all, but that these were also mere empty Words to frighten the Pope. But what say you to the next Precedent Mr. P. produces to prove that the Lords and Commons together have writ Letters to the Pope, when he attempted to invade the Right of the Crown or Kingdom, viz. The Letter from the Parliament at Lincoln to the Pope, in the 29th of King Edw. I. wherein they assert the King's Superiority over the Kingdom of Scotland; and desire that his Holiness would not deject from meddling farther with it. Which Letter, tho' subscribed by above a Hundred Earls and Barons, as it was the Culum of that Age, yet it is said expressly in the Conclusion, In eius rei Testimonium Signatum pro nobis, quam pro toto Communiate predheli Regni Angle presentibus jam effértatur. 1. 2

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M. Though this Authority is after the Time we acknowledge the Commons to have been summoned to Parliament, and therefore I need not speak particularly to it; yet I grant your Argument hath some Weight in it, since it here feems, that the Lords did Sign this Letter, for the Commons, as well as themselves: I shall therefore endeavour to Answer it. I confesse it appears very specious at first sight; but what if I shew you, that this Letter was written by the Lords only from Lincoln, after the Commons had been disnifled from thence by Prorogation or Adjournment? For though it is commonly story'd, (but erroneously) that this whole Parliament, or at least the Temporal Lords, and the Commons, wrote to the Pope concerning the Jurisdiction and Superiority of the Kings of England over the Kingdom of Scotland: Yet it cannot be so, for this Parliament met on the 30th of Huly, & the 20th of January, and fate but Eight Days: the Writs for the Commons Expenses bear Date January the 30th of the same Year, and the Letter to the Pope, from the Temporal Lords for themselves, and the whole Community of the Kingdom of England, is Dated February the 12th next following at Lincoln, after the Commons had been discharged Fourteen Days. So that you see the Barons full continued to fitle themselves the Community of England, and both Spiritual and Temporal Barons, and others of the King's Council, did stay and difpatch much Buifness, after all others were disnifled, according to the Tenor of the there recited Proclamation, and may be fully proved from the Proceedings of that Parliament, as they are to be found in RyIee's Placent Parliamentaria. So that nothing feems plainer to me, than that the whole Community of England, for whom the Barons there named set their Seals to that Letter you mentioned, were the Community of the Barons only.

F. I confesse Mr. Prye, in his Animadversions upon my Lord Coke's Fourth Infitute, was the first who started this Objlaction. That the Commons could not be prefent as Parties to this Letter. Yet he fIll supposes that the Lords who flaid behind, and made a Kind of a Great Council at Lincoln, Signed it not only for themselves, but for the Commons alfo, though not actually there; and is not fo extravagant as your Doctor, to fuppofe, that by the Words in this Letter, Tum pro Nobis, quam pro tota Communitate, &c. are to be understood the Community of Barons only, for that would have been a Tractology indeed: For the left Words, Communitas Regni, &c. would have signified no more than that they subscribed for themselves, and theirselves; and that the Word Communitas Regni, (which I can prove to you by many Examples, did then comprehend the Commons of England) muft here mean more than your Community of the Earls and Barons. For pray take Notice, that the Tenants in Capite, had now by your own Concedion, left off to appear in Parliament in a Body, as being now reprefented by the Knights of Shires, &c. So that Sir Edward Coke very well obferves in his Fourth Infitute, that this Letter was Sealed by above One Hundred and Four Earls and Barons, yet it was by the Affent of the whole Commonalty in Parliament; and Mr. Prye is fo far convinced of this in his exact History of Papal Ufurpations, that he fiftles this Letter, The Memorable Epifle of the Earls, Barons, Great Men, and Commons; Page 899 of England, &c.

But to fhew you further that there was no Change, neither of the confittuent Parts of our Ancient Parliament, nor of the Terms by which they are expreffed in our Ancient Records, appears by a Plea among Mr. Ryie's Printed Pless of Parliament, in the 35th of Edward I. where it is recited, that in the Parliament at Carlisle Wil de Tele, the Pope's Clerk, was Impach'd per Comites, Barones, & alios Magnates, & Communitatem totius Regni, concerning divers new and intolerable Grievances laid upon them by the Pope: Where you fee there is no Change of this Word Communitas, after the Commons were (as you fuppofe) certainly prefent in this Parliament; and why the fame Word should not signify the fame Thing in the beginning of this King's Reign, as well as now, you had need give me very good Authority to prove the contrary againft fuch clear Evidence as this. But this Record goes on, and farther recites, that thefe Letters were fent to the Pope, Ex parte Communitatis prididis; and in which, Clerus & Populus diili Regni, set forth the faid Grievances to the full. Now, as the Word Clerus here expreffes all forts of Degrees of Clergy, as well Superior as Inferior, repreffed in Parliament and Convocation, fo muft Populus here signify the Laity of both Orders, as well the Commons as Lords, since the Commons were certainly prefent at this Parliament; and why the Word Populus should not Ignify
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signify the same Thing long before, I can see no Reason for it, but the Doctor's bare Assertion.

And as for what you say, that the Commons could be no Parties to this Letter, because it appears by the Writs of Expenses, that they were discharged before this Letter was written; admitting it were so, it makes nothing against my Assertion. For why could not the Commons agree upon the Substance of the Letter, and leave the Lords to draw it up, and finish it for them, after they were gone Home? And that it was so, appears by the Letter itself, which recites, That the King had caused the Pope's Letter, In media, or pleno Parliamento exhiberi, ac seriose nobis feiti exponi unde habito tradutu, & deliberatione Diligenti super contentis in litteris vestris memoratis, communis concors, & unanimis omnium, & singulorum consensus sibi, &c. Now every one knows, that understands any thing of Parliamentary Affairs, that when any Thing is said in an Act of Parliament, or other Record, to have been agreed upon in full Parliament, that is always understood to have been done, all the Estates being there present. Nor can I see any Reason why this Letter should not be called the Letter of the Commons, as well as of the Lords, since the very Statutes of that Age were often said to have been affixed to the Commons, though in clear it they were not drawn up into Form till after the Parliament was dismissed.

But that the Commons were certainly Parties to this Letter, appears by a Record of the beginning of Edward the II d's Time, Printed by Mr. Prym, then Keeper of the Records of the Tower, (and which he tells us he found amongst the Rolls in the White-Tower) which Record contains the Heads of a Defence compiled by the King's Council, in order to a stronger Plea against the Pope's taking Cognizance in the Court of Rome, concerning the King of England's Superiority over Scotland, in the Conclusion of the Second of which Records, there is a remarkable Article relating to this very Letter now before us, in the Words, Item ad finem quod Nobilis Regni Angliae & Procuratores Communitatis subditorum Regni pridni admittantur per ipsum Dominum Regem ad hujusmodi defensiones approbat, prout coram Antecessores ab Avo dicti Domini Regis nostri erant admissi. Now to what Translation of this kind, in the Reign of Edward I. this King's Grandfather, can this Passage refer, but to this very Letter, which was affixed, as well per procuratores Communitatis Regni, as by the Barons, here called Nobilis Regni? And this Application thereof is given by Mr. Prym himself, when he makes Ule of these Records.

But to let you see farther, that the Lords and Commons, for all this Author's Opinion to the contrary, might join in a Letter to the Pope, I shall show you by that which was writ in the Name of the whole Parliament to the Pope, in the 17th of Edward III. about the Provisions of Benefices, which then grew to exorbitant, that Wettingham tells us in his History, Quod Rex & tota Nobilissima Regni patris noluit, &c. which Phrase the Letter it self will best explain. The Beginning and Conclusion of which I shall give you in English, as you may find it in Mr. Fox's Book of Martyrs.

To the Most Holy Father in God, Lord Clement, by the Grace of God, of the Holy Church of Rome, and of the Universal Church, Chief and High Bishop, his Humble and devout Children, the Princes, Dukes, Earls, Barons, Knights, Citizens and Burgesses, and all the Commonalty of the Realm of England, assembled at Parliament holden at Westminster, the 15th of May last past, &c. In Witness whereof we have hereunto set our Seals. Given in the full Parliament at Westminster, on the 18th Day of May, Anno Dom. 1343.

And it still appears by the Parliament Roll of this Year, viz. 17th Edward III. n. 29. that the Commons Petitioned the King, that the Lords might stay at the Parliament till they had perfected and Seal'd this Letter.

And that there was such a Letter then writen by the Parliament, appears by the King's Letter to the Pope about the same Matter, still amongst the Tower Records, (in which he imitated his Grandfather, Edward I. and Great Grandfather Henry III. who also sent Letters to the Pope on such like Occasions), but in those to excel the Archibishop of Canterbury from being the Author of those Complaints, he had this Passage, that since it was the Judgment, tam Procurans & Nobilium, quam Communis Regni in ultimo Parliamento contra Procurum Exercitum.

To
To conclude, I think nothing is plainer, than that under the Universitas Regni, in the First Letter to the Pope, the 29th of Henry III. and under the Communitas Regni, mentioned in the Letter of the 29th of Edward I. were meant the same Estates or Orders of Men, as were more particularly recited in this present Letter, under the same Words; viz. The Temporal Lords and Commons in Parliament Assembled.

M. I must freely tell you, I am not yet satisfied with the Senes you now put upon these Words, Universitas, and Communitas Regni, before the Commons were summoned to Parliament, for you your self must grant, that as the Word Universitas Regni takes in the whole Representative Body of the Kingdom, so likewise the Word Communitas signifies no more than the same whole Body or Community thereof. Therefore if I prove to you, that in those Times this University or Community consisted only of the Earls, Barons, and Tenants in Capite, that Word Communitas Regni, ought never to be interpreted by the English Word Communality or Commons of England, till after the Time that I allow the Commons were admitted to make a constituent Part of the Great Council or Parliament, nor always then neither. And Mr. P. in his Book which we have so often cited, hath done very unfairly to make the Universitas and Communitas Regni, to signify the Commons of England, before they ever appeared in Parliament at all; and so hath he likewise abused the Word Populus, as I have already observed, to signify the Commons, when indeed there is nothing thereby meant, but the whole Assembly of the Laity, which at that Time consisted of no more than the Earls, Barons, and other Tenants in Capite. And though I grant that by Communitas Prebendarum, or Barostrum, are often understood the Body of the Prelates or greater Barons only, called by way of Eminency, Processus & Magnates; yet most frequently, these, with all the other Tenants in Capite, did make the whole Body of the King’s immediate Tenants in Military Service, and were all together called the Baronage of England, or the Community of the Kingdom; and for this I think I shall give you undeniable Proofs by and by.

F. I am very well aware that the Word Populus often signifies the whole Body of the Laity, yet not excluding the Commons, as I have already sufficiently proved. For then the Word must signify quite contrary to its genuine Signification, instead of People, the Greater Nobility only; yet when that Word is put after, as distinct from Magnates, it must mean the Commons as now understood, I shall now shew you.

For that this Word Populus does not always signify the whole Body of the Nobility only, but takes in oftentimes the Commons too, pray see Matt. Whet. who tells us, King Edward I. in the 34th Year of his Reign, making his Son a Knight, Fol. 55. Pro hoc militis his Regis concedius effe Regii Tragelgum: Denarius a Popub Gero, Mercatores vero vicegnum concessierunt: Upon which your Doctor in his Glossary very well remarks, that ‘tis evident upon Record, who were the Populus meant by the Historian, viz., the Comites, Barones, et ali Magnates, nec non Milites Comitatuum. So that unless the Knights of Shires were Lords, it is plain Populus takes in the Commons too. But Universitas Regni, and Communitas Regni, called in French le Commune D'angleterre, is indeed often taken for the whole Community, or Body of the whole Parliament, and this Sir Edward Coke owns expressly in his Second Infit. upon these Words, In articulis super Chartas: Thus (says he) here Le Commune is taken for People; so as tien le Commune is here taken for all the People; and this is proved by the Senes of the Words. For Magna Charta was not granted to the Commons of the Realm, but generally to all the Subjects of the Realm, viz. to those of the Clergy, and to those of the Nobility, and to the Commons also.

And this is a Rational as well as Grammatical Interpretation: For as the Word Universitas is derived from the Adjective Universal, which signifies the Whole, or Universal: So the Word Communitas is derived from the Adjective Commune, Common or General. So that these Two Words, when used simply in a Political or Legal Senes, ought to take in the whole Body of the Kingdom, or all sorts and Conditions of Freemen, appearing themselves, or by their Lawful Proxies or Representatives, in Parliament.

But I have already sufficiently proved, that under those General Words used in our Historians and Records, viz. Principes, Processus, Nobiles, Magnates, Barones, et ali de Regno, were then comprehended either all the considerable Freeholders,
or Lords of Manors, or else the Knights of Shires, Citizens and Burgesses. So that if the Sense of these Words have been sufficiently explained, I think no reasonable Man can have any Cause to doubt, whether these Alphabet Words, Nobilitas, Universitas, and Communias, should be taken for all Sorts and Degrees of Men, when thus represented in the Great Council; or whether they shall be confined to the Greater or Lesser Nobility only, viz. the Great Lords, Bishops, and Tenants in Capite, as you would make me believe, which requires stronger Proofs than what you have yet brought.

Besides which Sense of this Word Communias, or le Commune, it is also more commonly used at this Day, and often then too, in another more restrained and legal Sense; and that is, when it is used for the Commonalty or Commons of England, distinct from the Peers; and this may very easily be distinguished, by observing, that when it is taken in this Sense, it is always set after the particular Enumeration of the other Orders of the Lords or Peers, viz. the Archbishops, Bishops, Abbots, Priors, Earls and Barons; or when it is put contradistinctly to the Word Magnates. I shall give you some Authorities and Examples from Historians and Records of both these; and that in the Times preceding those you that allow the Commons to have been summoned in Parliament. Of this Sort is that which Mast. Westmanstrer mentions as a Parliament held the 57th of Henry III. and which is thus recorded in the Patent Roll of this Year: After the other Communication denounced against all Infringers of Magna Charta, there is this solemn Clause added, That if to the Writing concerning the said Sentence, any other Thing, or in any otherwise should be added thereunto, besides the Form of the said Sentence then to be denounced and approved of, that then Dominus Rex. & ps.disti Magnates, & Communias Populi Protentum publice before all the Bishops, that they would never consent thereto; and conclude thus, In ejus Rei Tefimonium, & in possetrum Veritas Tefimonium, the King, the Earls of Norfolk, Hereford, Essex, and Warwick, Petrus de Savoia, et Infantium auctorum Magnatum & Populi Protentum, se habu in oppositum, where you may see, that it was usual before the 49th of Henry III. for those that were Peers to put their Seals for the Communias Populi, or Commons.

M. I pray give me Leave to answer your Authorities as you bring them, lest I not only forget some of them, but also tire you both and my self with too long a Discourse. I hope I am very well able to prove, by the Learned Doctor's Affirmance, that the Communia Populi, here mentioned, both signify not the Commonalty or Commons, but the Community of the Laity there present, consisting of the Greater Barons, or else of the Left, or Tenants in Capite. And for Proof of this, pray take Notice, that Mast. Paris called this Council Tutus Anglia Nobilites. And in this Parliament the King demanded a great Sum of Money of them, after much Content, and upon Promisie to reform all Abuses, according to the Tenure of the Great Charters, thereupon the same Author tells us, The Church granted the Tenth of the Revenue for Three Years, and the Knights (or Nobility) granted for that Year Scutage, to wit, Three Marks of every Scutum, or Knight's Fee. And then the Archbishops and Bishops in their Rontificallus, with light Candles in their Hands, in the Presence, and with the Assent of the King, the Earl of Cornwall, his Brother, and several Earls there named, et alios Auctoritatem Regni Anglia, and other Chief Men of the Kingdom, Excommunicated and curfed all those that from henceforward should deprive the Church of her Right, and all those that should change, alter or diminish the Liberties of the Church, and Ancient Customs of the Kingdom, especially those granted in the Great Charter of the Common Liberties of England, and Charter of the Forest granted by the King, Archiepiscopii, Episcopii, et ceteris Anglia Prata, Comitis, Baroniis, Militibus, & Libere Tenentibus, &c. i.e. To the Archbishops, Bishops, and other Prelates of England; and to the Earls, Barons, Knights and Free-Tenants, or Tenants in Military or Knights Service: For they only were such as paid Scutage, which was at this Time a kind of Composition with the King, for the confirnment Magna Charta, and was never charged but upon Knights Fees, and these were such that held perhaps one Narrow or scanty Knights Fee only; or some part of a Knight's Fee; as an Half, Third, Fourth, Sixth, Eighth Part, &c. who all paid a Proportionable Share of Scutage to the Great Lords, or Tenants in Capite, for the Land they held of them in Military Service, which was paid first to the Great Lords, and by them paid to the King.

And
And from thence I collect, that besides the Baro khoes Maiiores that came to this great Council or Parliament, there were also the Tenants in Capite, according to the Directions and Law for Summons in King John's Charter, who were comprehended under the Words tota Nobilitas, et Military; and that other Tenants that held of the Tenants in Capite by Knight's Service, were bound by their Acts, forth they all knew how many Knights-Fees they held of the King in Capite; and if they had given any away to others, they held of them as they did of the Crown, and answered a proportionable Rate towards this Tax, for the Fees, Quantities or Parts of Fees they held of them; about which there could be no Mistake after the Scutage was afsertain'd. So that in so great an Assembly, where all the Nobility of England were called together by the King's Writ, and upon so great an Occasion and Solennity, as confirming the great Charter of Liberties after such an extraordinary Manner, it cannot be doubted, but besides the Barons, all the Tenants in Capite, both Great and Small, which were then very numerous, were present; or at least, most of them; from whence it is not difficult to tell you who the Communis were; after the Prelates, Barons and Magnates, they were no other than the small Tenants in Capite, who were all summoned by one general Writ, not chosen and sent by the People, but summoned as the great Barons in general, by King John's Magna Charta, as I shall shew you hereafter.

If I hope I shall be well able to prove, that what you have now alluded is pure Imagination, or in the Dr. Pufhe's, an act Ambuscade, and quiet contrary to the Sense of Mat. Paris, as also of the Lawyers and Historians of those Times. For in the first Place, nothing is plainer, than that this Author by the Words Communis Populi, must understand an Order of Men distinct from the Magnates, or else if the Word Magnates might have comprehended them all, it would have been to No Purpose to have mentioned any more.

But to answer those Authorities you bring from Mat. Paris; as for the Word Nobilitas, since you fill insinuate upon it, I have already proved that the whole Parliament, as well the Lords Spiritual and Temporal, as Commons, were both before and after this Time comprehended under these Words, Nobilitas Angliae; and if you yet doubt of it, I can give you a plain Authority out of Walthingham; for it is in his Life of Edw. II. Anno 1327, where relating the Manner of that King's Deponent, he tells us, That when the Queen and Prince came to London, there then met Tota Regni Nobilitas, to depose the King, and chuse his Son in his Stead; and he presently shews what this Nobilitas was, for then there was sent to the King, (being a Prisoner in Kenworth Castle) on behalf of the whole Kingdom, Two Bishops, Two Earls, Two Abbots, and of every Country Three Knights; and also from London, and other Cities and great Towns (especially the Cinque Ports) a certain Number of Perfons, who informed him of the Election of his Son; and that he should renounce the Crown and Royal Dignity, &c. This Proof is so plain, it needs no Comment.

As for the rest of your Argument, the Strength of it chiefly conf its in this, that the Tax there mentioned is said to be granted à Militibus, or Tenants in Capite, (as you would have it) of Three Marks upon every Knight's Fee. But in the first Place I desire you to take notice, that this Scutage is not Scutage Service, but a general Land Tax, or Manner of taxing according to Knights Fees, and which was continued long after Hen. III. Reign as it appears by this Passage in Sir Henry Spelman's Glossary, Tit. Scutagium; Edoar'dus primus habuit 40 Solidos de quodam Feodo Anno Regni ii; Dom. 1285. pro Expeditione comis Waliae. And it was also granted by the Lords and Commons after the 18th of Edw. I. when you and the Dr. suppos'd the Commons to have then come to Parliament; and if I desire to know why à Militibus here mentioned by this Author, must only signify Tenants in Capite, by Knight's Service, and not Knights of Shires, or other inferior Tenants by Military Service; since it is not here said a Militibus qui de Regno tenetur in Capite; and therefore it is a forced Interpretation of the Dr.'s, and without any Authority, to limit these Words Militibus, & liberi Tenentibus, & ommibus de Regno nostrro (which you omit with an &c.) as also the omnis Libris Regni nostrri, only to the Archbishops, Bishops, and other Prelates of England, and to the Earls, Barons, Knights and Free Tenants, or Tenants in Military or Knight's Service; because they were only such as paid Scutage; whereas you have already acknowledged that Magna Charta was granted to all the People.
ple of England, who had all a Benefit by it, and who paid towards the Aid there granted, as well as the Tenants in Capite.

But if Knights Fees alone were taxed, and that by the Tenants in Capite only, I desire to know by what Right all Tenants in Petit Serjeanty, and by Burgage or Soccage Tenure (who made a greater Body of Men in this Kingdom in those Times) could pay this Scurage, since they held not by Knightly Service, but by certain Rents or other Services, and so not appearing in Exon, could have no Representatives in this or any other Parliament of those Times. But if you will tell me they might pay according to the Value that Knights Fees were then reckoned at, viz. for every 20 l. a Years Effeit, I desire to know how this could be called Scurage, or how the Tenants in Capite, or other Lords from whom they held those Lands, could give away their Money for them. And in the next Place I desire also to know how all the Cities and Boroughs in England could be charged with this Tax; a great many of them (as you yourself grant) holding of the King in Capite, or else of Bishops, Abbots or other menie Lords by Soccage or Burgage Tenure, so that this Tax, if granted only by the Tenants in Capite, by Knightly Service, could reach them, and no other Persons, but if by this Word a Militibus may be understood Knights of Shires, then the Tax was general, as well upon Soccage Tenants, as those by Knightly Service.

But for the other Words you insist upon, viz. the Liberi Tenentes, which you translate Tenants by Military Service; if that had been the Meaning of those Words, then they had been altogether in vain, since you have already told me, that the Militias were so called, non a Militari Cagalo, sed a Systema; and if it were no Name of Dignity, then certainly the Word Milites would have served to comprehend all your Liberi Tenentes, or Tenants in Capite, without any other Addition. But that these Words Liberi Tenentes, do not here signify Tenants by Military Service, pray see Sir Henry Spelman's Glossary, Tit. Liber Homo, & libri Tenentes; where he there gives us a more general Signification of these Words thus, Ad Nobilis orum spectabant illi Tenebit, a majoribus ipsis commune Liberi, and then adds thus, unde ingeniosa, Legum, Homo Francus, Tenens Liber, oblat Liber Tenentes qua eisius Sententia, interius hominum, & libri, which upon every one of these Titles he makes to signify all one and the same Thing, viz. an ordinary Freeholder. And therefore it is a very forced Interpretation of yours, to limit these Words Commissarios Populi, only to the Community or Body of the Earls, Barons, and Tenants in Capite.

Th'o' I confess you are very kind in one main Point, in understanding the Commissarios Populi to mean the Community of the Lesser Tenants in Capite, that were no Barons; and then do what you can, those Words must here signify more Commoners, or Commons, unless you can shew us a Third Sort of Men, who, tho' neither Lords nor Commons, yet had a Place in Parliament. So that these Gentlemen, notwithstanding their Tenure, were no more Noble than their feudatory Tenants, or Vassals themselves; nay, than the Knights of Shires are at this Day: And then granting (as I doubt not but I shall be able to prove) that the Cities and Boroughs had then also their Representatives there, I pray tell me whether or no there were not Commons in Parliament before 49 Hen. III. or not. Which is contrary to your Dr's Assertion in divers Places of his Answer to Mr. P.

And that the Word Populus must here signify the Commons, and not the whole Body of the Laity, appears plainly by this Place you have quoted, since it is restrained by your self, to mean not the whole Community of the Kingdom, but only the Community of Lesser Tenants in Capite, that were not Lords. But that Matt. Paris doth also in another Place take the Words Populus for the Commons, and not for the whole Body of the Laity, pray again remember what he says under Anno 1225, where relating the Manner how Magna Charta came to be confirmed in et Hen. III. he tells us, Rex Henricus ad Nobiles tenuit Carnem, cum opud Weslum, Presbyteros Clero, & Populo, cum Magnisibus Regionius, which pray let us put it into English, and see if it will not prove what I say, viz. The Clergy and People being present with the Great Men of the Kingdom. Now if the Word Magnates (as you affirm) did then comprehend all the Barons and Tenants in Capite, to what Purposo is the Word People put here as a distinction? Member of this Parliament? But to shew you farther that this Word Populus is not always to be understood for the whole Body of the Laity, but Lords and Knights of Shires, I shall shew you
out of Welfington, Anno 1597. 24th Edw. I. where he mentions a Parliament held at St. Edmondsbury, in quo a Gratissimis, & Burgis concussa eft Regis Aduta, a Popu- 

ulse vero aliquo duodecima pars Benefiorum. Where he Populus is not only meant the 

Peers, but Knights of Shires, or Grandes Guerres 460.

M. I am not prepared at present to answer all the Queries and Difficulties that you can make or raise against the Dr’s Arguments; yet I think I am able to give you a very satisfactory Answer why all Tenants in Soccage should be bound by the Acts of those of whom they held their Estates. For since (as I have already proved) all the Lands in England (except what belonged to Religious Houses) was granted out by King William the Conqueror, to be held in Capite by Knights Service, and was again granted out by these Head-Tenants, to their Vassals or to every Tenant by the like Services, there were very few Lands granted in Free-Soccage at the first. And tho’ it is true that in process of Time, many of those Estates and Lands became Free Tenements, or were helden in Soccage, that is, were Free- 
holds, yet the Lords still retained the Harnage (which in the Times we speak of was no idle insignificant Word) and by that a Donation over the Estates, whereby 

upon Difobedience, Treachery, or Injury done to the Lords, the Lands were for- 

feited to them; and tho' neither the Lands nor the Tenants to them (which were 
termed Freeholders) were subject to any base Services, or Servile Works, yet the 

Lords had still a great Power over these Tenants, by reason of their doing Harnage 
to them; for no Nomine, their Lands were many ways liable to Forfeiture; and 
therefore it was but reason, that the chief Lords being Tenants in Capite, should 

conclude their Tenants in Soccage also, and both make Laws and give Taxes for 

them, without their being at all privy to it. But admitting I grant, that before the 

49th of Henry III. there were in some Sense Commons in Parliament, tho' not 
as Knights, Citizens and Burgesses, chosen by the Common People as their Rep- 

resentatives; yet will it not destroy mine, nor the Dr’s Assertion, who in the In-

truction before the Answer to Mr. P. only affirms, That before the 49th of Hen-

ry III., the Body of the Commons of England, or Ordinary Freemen (as now under-

stood, or as we now call them) collectively taken, &c. had not any Share or Votes in 

making Laws, unless as they were represented by the Tenants in Capite.

F. Be it so; but I am sure in many Places of the Dr. Book, he absolutely 

denies, that there were any Commons in Parliament, till the Time he assigns.

But as for what you allege in Answer to my Queries, how Tenants in Soccage 
could have Laws made for them, and Taxes laid upon them by their Lords or Te-

nants in Capite? Your Answer is wholly grounded upon Malakus: For in the first 

place, King William did not grant all the Lands in England to be held of him by 

Knights Service; since (as I shall prove hereafter) there were many subordinate 

Tenants to Bishops, Abotts and other Great Lords, who never forfeited their 

Estates at all, nor were dispossessed of them by your Conqueror, and who had also 
great Numbers of considerable Freeholders under them; as in Kent, the greatest 

Part of the Land was Gevelkind, which was Soccage Tenure.

In the next Place, neither were all the Lands he bestowed upon his Fol-

lowers granted to be held by Knight’s Service; since you your self own that a 
great deal of Land was given by him to his Inferior Servants, to be held by 

Perit Serjeanty, and other Tenures; and besides this, a great deal of other 

Lands was granted by that King himself, to some of those old Princes 

who had been dispossessed, to be held in Soccage; as appears from Elora, who 

speaking of the Sort of Men, says expressly: In hujusmodi materies [findicet 

Regis] erant Liberi Homines, Liberi Tenentes, quorum quidam cum per Forcur- 

ores a Tenentem suum suam ejus, eodem poj modum in Vaincinium tenenda re-

sumberunt; & quia hujusmodi Tenentes eum Regis esse dignum, prou-

xerit fact giner, ne fellerat seerent ad Consuetudinem, sed Hauderatum, &c. ——

quorum Congregationem tune Soccam appellerunt, bunc est quod socium habet 
discursum, &c. 

Where you may see that these Scommen, or Soccagers were then granted by a new 

Tenure from this King; and are also called Liberi Tenentes, Freeholders, which 
is contrary to your Dr’s Notion, who would confine the Title only to his Tenants 
in Capite. Nor did all the Tenants left mentioned grant their Lands to others to 
be held by Knights Service, since they as well as the King did at first, as also in 
proceeds of Time, grant Lands to the old English Proprietors to be held of them in 
Soccage; nor was Harnage the proper, or only Burthen of Soccage Tenure, but 

Feltly,
BIBLIOTHECA POLITICA.

That, (unless the Land had been held by Knights Service at first) as you may see in Littleton's Second Book, Sect. 118. Nor did this S recovery give the Lord any more Right over his Tenants cott, to Tax him de alto et bajo, at his Wilt, by reason of the Subjection he was in to the Lord, in respect of Forfeiture; since the King should have had for the same Reason, the same Right over all his Tenants in Capite, to Tax them likewise at his Pleasure. And this Right of Forfeiture in case of Felony, or for want of Heirs, continued to the Lords as well of S, as others, long after the Time you affign for the coming of the Commons to Parliament, even to our own Times; and yet for that, thofe Lords could not give Taxes for such Tenants in S at their Pleasure.

But that we may proceed, pray consider also the Form of the Petition agreed upon between King Henry III, the Prince his Son, and the whole Body of the Kingdom, Assembled in Parliament, to compose all Differences between the King and the Barons: The Title of which in the Record is thus; Hec est forma Petitionis a Domino Rege & Domino Edwards filio suo, Praelatis, & Proceribus omnibus cum Communitate tota Regni Anglia Communitur & Concordeit approbat. Which Articles were signed by the Bishop of Lincoln, the Bishop of Ely, Earl of Norfolk, Earl of Oxon, Humphrey Bohun, William de Monte Comfi, & Majorie London; in Parliament London Mansie iunni Anno Domini 1264. Hec autem Ordinatio fatis est London de Conuenientia, Voluntate, & Precepto Domino Regis, nec non Praetoriam, Baronom, ac omnium Communitatis tumi ibi praebentur. M. I think the Doctor hath given us full Satisfaction as to this Record, in his Answr to Mr. P. the Substance of which I shall here give you in short.

First, It is certain, that at the making of this forced Peace, Simon Montford, and his Faction, then held the King and Prince, as also Richard Earl of Cornwall, the King's Brother, as good as Prisoners, and made them do what he pleased; and he carried the King and Prince along with him, until he had taken in all the strong Places of the Kingdom; and when he had done, then he called this Parliament, which could not be one in the Sense it is now taken, since there were none there but the Earls, Barons, and Heals of the Rebels, which had the King and Prince in their Power; and (as you yourself affirm) were the same Persons that sealed it for themselves, and the other Barons, and the whole Community of the Kingdom of England, which Community must be the Community of the Barons and Great Men, or Tenants in Capite, by Military Service, and no other; for how can the Lords and Barons sign any Thing for the Commons, as at this Day underfoot? They did not then, nor now do represent them.

But I shall give you another Authority, to make this clearer, of some Years before, related in Matt. Paris, viz Anno Dom. 1258, 42d Henry III, where Letters are said to be sent, a Communitate Angliae, to the Pope, concerning Aymar de Vaclens, Bishop Elefant of Winechefer, the Direction is thus, Sanctifino in Christi Patre, &c. Communitate Comitum, Procerum, Magnatum, Aliorumque Regni Angliae cum subjelione debit, Pedum &c, &c. And to put the Matter beyond all Doubt, it is certain that these Letters were sealed by Six Earls, and Five Barons only, vice totius Communitatis. I need not give you their Names, since you may find them in the Author himself, as also cited by the Doctor. And as for H. Bigod, the Chief Justice, and the Four Persons named after him, they are proved by Sir William Dugdale, in his Baronage of England, to have been the Greatest Barons in the Kingdom.

Now pray let me ask you this Question: Did these Eleven Persons, all Great Earls and Barons, represent the whole Commons, or Community of England, as at this Day underfoot? or did they represent the Community of the Barons only, together with theishops, the Militia, which held by Military Service of the Great Barons, and the Leases Tenants in Capite for the whole Community here intended, must be one of them; take what you please, you'll lose the Cause. For certainly these Great Earls and Barons that failed this Letter, vice totius Communitatis, were not chosen nor sent by the Commons to this Parliament or Meeting; nor were the Commons represented as at this Day by them, as you yourself have already granted.

F. I hope I shall not need to make any long Reply to this Answr of yours, or rather of your Doctor's, since it is built upon the same false Supposition with the other, viz. that the Words Cum Communitate tota Regni Angliae, must always mean only the Community of the Tenants in Capite, which Supposition, if it be false in your
your former Argument, is also as false in this of the Lords and Commons too; and therefore it is impertinent to repeat my Answer to it.

But if this were no true Parliament, because Simon Mounsford had then the King and Prince in his Power, this would likewise serve to Unparliament that of the 49th of this King, from whence the Gentlemen of your Opinion date the first coming of the Commons to Parliament; since the King and Prince were as much in Simon Mounsford’s Power then, as now; and yet no Man as I know of, ever questioned the Validity of it; though I cannot also omit, that you pass by in this Letter, the Words Magnatum alorumque Regni, under which Words, (as I have already proved) might very well be comprehended all the Knights of Shires, as well as Citizens and Burghedles; unless the Words had run thus (as they should have done to have made out your Affertion) alorumque qui de Rege Tenent in Capite.

But to come to the main Point you infest upon; which is, How these Great Earls, and Barons, could feel this Form of the Peace, and these Letters to the Pope, in the Name of all the Commons of England?

Before I answer to that, I pray give me Leave to ask you one Question. You have already allowed that the ordinary Tenants in Capite, (of which that numerous Body chiefly consists) though called by Courtey Barons Minores, were really no Barons, nor Peers of the Realm; and if so, were but Commoners. Now pray tell me how these Great Earls and Barons you mentioned to have Signed this Peace, and this Letter to the Pope, could put their Seals for those who were no Barons themselves, by your own Confession; and you cannot say they represented them, for they were as good Tenants in Capite, as the Greatest Lords? But if you say they did it by their Order and Consent, pray why might not those Great Lords, or Barons, as well do the like for the Knights of Shires and Burghedles, by their Appointments? Since I have already proved, that the Lords did all thus in the Letters which were sent to the Pope concerning the Buisness of Scotland. And besides, I must here observe, that the Doctor and you do not deal fairly with your Adveraries, in citing this Authority of the Lords and Barons Signing these Letters to the Pope, Vice totius Communis Angliae, since I acknowledge in this Place, the Word Communias being put alone, doth mean no more than the Community of the whole Kingdom. But in the Authority I have quoted, it is put after the Earls and Barons, and so then must mean the whole Community of Body of the Commons, in the Sense they are now taken, and as it hath been always used in French as well as in Latin, when it comes after the Earls and Barons (as I have already noted.) And for this pray see the Stat. of Westminster I. made the 3rd of Edward I. but Eleven Years after the 49th of Henry III. Per f’ affemtions des Archieuevesques, Evsfsques, Abbes, Priors, Counts, Barons & tout le Communality de la terre Ilonsques humines. Which Phrase I can shew you to have continued the fame in most of our French Statutes, during the Reign of this King, and all his Successors in many Records, and Acts of Parliament, whilist they were writ in Latin or French, which I shall omit reciting, because I suppress you your self will allow it.

I have a great deal more to say concerning the true Sense of the Words Commonis, le Commune, et le Communality; which because it is long, and it now grows late, I shall defer till another Time. But I think I shall be able to shew you from undoubted Records, and Acts of Parliament, from the Reign of Henry III. as low as Richard II. that these Words, when used as I have now said, after the Earls and Barons, cannot refer to them, but to another distinct Estate or Order of Men, then called les Communis, ou les Communis, in English the Commons of the Kingdom, distinct from the Bishops and Lords.

I shall not now dispute with you concerning the Sense you have put upon the Words you mention, but I grant they often signify the Commons, after the 18th of Edward I. in some Acts of Parliament, and Parliamentary Records; but I must beg your Pardon, if I cannot allow Communis to signify the Commons at this Time in your Sense; and therefore am not yet convinced that the Words la Communality de la terre, mentioned in the Statute of Westminster I. ought to be understood or engiifted by the Word Commons; who, I do not suppress were then above once called to Parliament, till the 18th of this King.

But as you argue from the Knights of Shires, who are often called Magistraete, and Grantz des Couteees, I allow they are often so filled in our Statutes Page 219. and
and Rolls of Parliament; but if you consider the Reason of it, this will do you little Service, since they were so called from their being at the beginning of their Election, chosen out of the Greatest and most considerable Tenants in Capite, under the Degree of Barons in each County, and no other; who were chosen to represent the Omnes alios qui de Rege Tenent in Capite, mentioned in King John's Charter; or them, and all the other Military Tenants by mean Tenure. For 'tis scarce to be believed, that those Tenants in Capite, who made such a Noise for their Liberties, would part with this main Point, of being personally present, or else the Body of them represented by some of their own Number in every County. And it may be upon this Account they had the Title of Notable Knights, &c. in the Ancient Writs of Summons, directed to the Sheriffs; though all the Tenants by Knights Service, as Suitors to the County Courts, were the Electors. And this was very likely the Reason of the Statute of the 7th of Henry IV. that the Election should be made in the County Court by all the Suitors; and also why the Statute of the 18th of Henry VI. by which any Man that had 40s. per Annum of any Tenure, who was before permitted to be an Elector, was altered by the 10th of Henry VI. and so explained, that none but Freeholders of 40s. per Annum, should afterwards be Electors, with respect to the lease Part of a Knights Fee, viz. 40s. per Annum, which were now come into the Hands of very ordinary Men. For anciently, soon after, or near the Conquest, there were very few, or no great Socagers; that is, such as held great Estates in Socages, and neither the small ones, nor the Nain, or Coppolders, were reputed, nor the Leagues Homines, (as before-mentioned) or performed the Service proper to such Military Tenants, or those to whom they had alienated part of their Fees. But since I have tired you as well as my self, in wrangling about the Sense and Meaning of the Words in Diffpute between us, I shall for the future take a shorter Cut, and give you Two or Three Authorities from our Ancient Laws of William the Conqueror, and Henry II. and Richard I. which together with King John's Magna Charta, will, I think, make it plain enough in Conscience, that the Commons, as now represented, were not summoned to Parliament, during the Reign of King John; and whether they were so summoned before the 49th of Henry III. (when they were called but once, till above Twenty Years after) will be the other Part of my Task.

F I approve of your Method very well, and I assure you I love Pedantick Diffuses about the Grammatical Signification of Words as little as your self, unless where it is absolutely necessary; as indeed you have rendered it so, by railing at the greatest Part of your Arguments from theequivocal Use of those general Words, whereby our Ancient Laws and Historians have filled the Confident Members of our Great Councils; which if they are well cleared, I think it is high Time to fall upon some more solid Arguments. But before you come to that, I cannot forbear observing that you your self do allow, that in all Acts of Parliament and Records, after the 18th of Edward I. the Words Communia, &c le Commune, when put after the Earls and Barons, do signify the Commons in the same Sense in which they are now taken; but I must confess it seems incredible, nay almost impossible to me) that those Words should signify the Community of the Tenants in Capite, in the 49th of Henry III; or 18th of Edward I. (begin where you please); and yet that the next Parliament after those, the same Words should be taken in quite another Sense, for the Knights of Shires, Citizens and Burgess; and that no Statute, Record, or Historian of that, or succeeding Ages, should take the lease Notice of it.

But before I conclude this Part of the Question, I cannot but rectify a great Mistake you have fallen into, by adhering to the Doctor with too implicit a Faith. For whereas you suppose, that the Reason why our Knights of Shires were called anciently Grantes des Comtuies, was because they were at first elected out of the Tenants in Capite only; and who with the other Tenants by Military Service, were also the only Electors of them at first, till the Statute of the 27th of Henry IV. ordained the Election should be made in the County Court by all the Suitors, as if it had not been many Ages so before. Whereas, if you please to peruse that Statute a little better, you will find it was not made to enlarge the Number of the Electors of Parliament Men; for long before that Time, all Sorts or Degrees of Freeholders, as well Tenants in Capite, as their Tenants by any kind of Tenure; or whether holding of such Tenants in Capite, or else of others, as Abbots and Priors, and
and other Meffe Tenants, did alike owe Suit and Service to the County Court, and consequently were all alike capable of giving their Voices there, at the Election of Knights of Shires, however small their Eftates were. Nor was that Statute of Henry IV. now cited (which requires the Election of Knights of Shires to be made by those that were summoned, and all other that were there present) made to confer any new Right upon such Freeholders, but only to prevent the Abuses of Sheriffs, who were wont before that Statute to procure Knights of Shires to be chosen clandestinely, without any due Summons, or Notice given to the Freeholders of the Election: much less doth the Statute of the 8th of Henry VI. confer any new Right or Privilege upon Freeholders of 40s. per Annum, to give their Voices at such Election, (as you suppose) but only takes away the Right which the smaller Freeholders of under 40s. per Annum (whether Tenants in Capite or not) had before, and restrains it only to such as shall have Lands or Tenements to the Value of 40s. by Year above all Charges. And it is yet a much greater Mistake to suppose, as your Doctoor doth, that this Statute of the 8th of Henry VI. was at all altered by that of the 10th of this King, which is no more than an Explanation of it, viz. that by 40s. per Annum, was meant 40s. Freehold, and that of Lands lying within the County where the Election should be made. So that nothing can prove more expressly, that all Freeholders, as well Tenants in Capite, as by any other Tenure, were all alike capable of Electing, and being Electcd by the Ancient Law andCustom of England, long before those Statutes, and consequently were all alike Freeholders in the Eye of the Law.

But if you have nothing at present to object against what I have now said, pray purfue the Method you have undertaken, and let me see those convincing Proofs you so much rely upon, and which you hope may also serve to convert me.

M. Before I undertake this Task, pray permit me to give you my Opinion, in answer to the Difficulty you have now proposed, which I confess seems to carry some Weight with it; but those Prejudices will soon vanish, when we consider that the first Time this Alteration was practifed, it was done in the King's Name, though by the Absolute Power of Simon Montfort, in the 49th of Henry III. and after a Discontinuance of above Twenty Years was again renewed by Edward I. at the Desire of the Earls and Barons, as I hope I shall shew you before we have finifhed our Conversation. And therefore it being fist done by the King's Absolute Power, and after with the general Consent of the Lords, there needed no Statute to introduce it, any more than these were in the Reign of William the Conqueror, to give the Bishops and Abbots that held by the King's Service, Places in Parliament among the Temporal Lords, and to bring their Lands which were held before in Franc Almoigne, under the Yoke of Military Service.

But to proceed in the Defign I have undertaken, it is necessary that I shew you first of all, who were those Freemen, or Freeholders, properly so called, upon whom the whole Burden of the subordinate Government of the Kingdom chiefly relied, and who then constituted the Legal University or Community thereof, immediately after the Norman Conquest, and during many Kings Reigns after that Time.

I suppose you are not ignorant, that King William the Conqueror having outed all, or at least the English Nobility and Gentry of their Eftates, gave them away to his French and Norman Followers, to be held of him and his Successors in Capite, either by Knight's Service, or Petit Service; referring to himself the Ancient Deme nefes of the Crown, and adding more thereunto for the Maintenance of the Royal Dignity; and for this I need refer you to no better Author than Doomsday's Book it self. And then, after he had thus distributed the Lands of England, as aforesaid, he composed a Body of Laws fill extant, and which are in great part Additions to the Ancient Laws of King Edward, and his Predecessors. I shall B. A. A. give you Three or Four of thefe new Laws, and then I shall leave you to judge, who were the true Freemen, or Freeholders of the whole Kingdom.

Now whose these Freemen were, that were thus to maintain the King in his Lands and Honours, we shall fee in the 55th Law following; Tit. De Clericilibri, seu Vendedorum Juris, & Inheritorum immunitate, Volumus etiam ac furitis præcipuæ, & concedimus ut omnes Liberi Homines totius Norvichæ Regni nostri prædicti habeant & tenent terras suas, & Possessiones suas, bene & in pace, libere ab omni Excitione injufa, & ab omni Tallagio, ita quod nihil ad eis excitatur, vel capatur, nisi suauissimum jure libere, quod de jure nobis facere decent, & facere tenentur, & prout Statutum est eis & ilius, a nobis datum & concessum jure Hereditario imperpetuum per Commune Concilium totius Regni nostri, whereby you may see, that all the Freemen here mentioned, who were to hold their Lands and Possessions in Peace, and free from all unjust Excitiation and Tallage, were only such who were to perform Free Service, (i.e. Knight's Service) which was before appointed and granted them in Hereditary Right by the King in the Common Council of the Kingdom.

So, that none were properly Freemen, or exempt from Tax or Tallage, but such as held by Military Tenure, tho' not Knighted.

And pray alfo, by take notice, that by this Commune Concilium Regni you are not to understand a Council of English Men, or of English and French together, but one wholly made up of Frenchmen or Normans, who as well Bishops and Abbes, as Temporal Earls and Barons, held almost all the Lands in the Kingdom by Knight's Service.

Which is also farther made out by the 58th Law; Tit. de Clentium seu vendedorum praefationibus. Statuimus etiam & firmer præcipientis, ut omnes Comites, & Barones, & Milites, & Servientes, & Universi Liberi Homines totius Regni nostri prædicti habeant & tenent se jener bene in Armis, & in Equis ut decrevit, & opertis & quod sint semper prompti, & bene parati ad servitium suam integrum, nobis plerumque & per gendern casum semper opus ad jurtit sacram eodem quo nobis desunt, de Feudis & Tenementibus suis de jure facere, & scitis dias statuimus, per Commune Concilium totius Regni nostri prædicit & ilis dedimus, & concedimus in Feode, Jure Hereditario, hoc præceptum non fit violatum qui modo super fuerit nullum nostrum ple- nem:

So that here all the Freemen of this Kingdom were to perform their Military Services, with Horse and Arms according to their Fees and Tenures. Therefore they were Tenants in Military Service only (which in those Times were the only great Freemen, and that Service the only Free Service) which were meant in this Law; and how different they were from our ordinary Freeholders at this Day (for whom neither of these Laws were made) I dare leave it to the Judgment of every Indifferent Person.

Thise then were the Men, the only legal Men that named and chose Juries, and served on Juries themselves, both in the Country and Hundred Courts, and dispatched all Country Business under the Great Officers, as will appear by the next Law with a little Expiration by what follows; Ut Jura Regis ita faceretur pro viribus conajunt suffragii, Statuimus etiam & firmer præcipientis ut omnes Liberi Homines totius Regni nostri prædicti sint fratres conscripti, ad Monarchiam nostram & ad Regnum nostrum, pro viribus suis & facultatibus contra inimicos pro poe juro defendenda, & vivitier servandum, Feodem, & Signacratem Coronam nostrae, integram observandum, et ad judicium redendum, & Judicium confratrum omnium modo pro poe juro sese dabo, & sese disponere facendum. Now the Judgingse they were to give, and the Judges they were to do by this Law (besides that in their own Courts and Jurisdiction) was principally as they were Jurors or Recognizors upon Affize, &c. (the more of the greater of their Abilities were often Sheriffs, Hundredaries, and other under Judges and Ministerial Officers of Justice in their several Counties) as may be seen in Glarville every where, but especially Lib. 2. c. 10. 11. Lib. 9. c. 7. c. 17. & lib. 12. throughout. This of being Saiters to the County and Hundred Courts, &c. being a Service incident to their Tenures; and before them many Times annually in the Country and Hundred Courts, and not privily in a Chamber, were executed Duties, Grants and Donations of Lands, contained in very small Pieces of Parchment, witnessed by Thomas of such a Town, John of another, Richard of a third, &c. which were Knights, and Librii Tenentes in Military Service in those Towns of considerable Estates, and not the lower Sort of People: And this Execution of Sales and Affinances in open Courts, was as publick and notorious, and as secure, as if at that time there had been a publick Regifter for them. 3
Dialogue the Sixth.

F. Before I answer your Conclusion from King William's Laws, I must tell you I am not at all satisfied neither with the Account you give, how the Commons of England could come in to be a Part of the Parliament, without any Notice or Notice taken of it, either by our AEs or Parliament, or Historians, since it is not only improbable, but also quite contrary to Matter of Fact, and History itself, as I think, I hope, make good, when we come to treat of that Subject. Nor is your Argument of any weight, since it doth not follow, that because William the Conqueror so subjected the Lands of Bishops and Abbots to Tenure by Knight's Service, that therefore this was done by his sole Power, without any Law for it, made by the Common Council of the whole Kingdom. Since I observe in the First Law of King William, which you have now cited, that the very Services which (you say) were referred upon the Lands he had bestowed, are said to be so appointed or settled, by the Common Council of the whole Kingdom, and therefore certainly the Services of the Bishops and Abbots must be so likewise, and therefore I must confede my self to be of Mr. Selden's Opinion in this Matter, who prelumes there was a Law for it, tho' now lost; and cannot believe that this King (how powerful ever) should attempt to introduce to a great Yoke upon all the Bishops, and so many of the Abbots and Priores of England, without their Confents expressly given to a Law, and made in the Great Council concerning it, tho' that Law (as many others of this King) is not now to be found.

But to come to the main Design of your present Discourse, which is to shew that none but Tenants by Military Service in Capite were in the first Times after the Conquest, properly the only true Freeemen or Freeholders of the whole Kingdom. I shall shew you first, that the Notice is quite new, and never heard of, till this Dr. (from whom we have borrowed it) first broach'd it; neither Mr. Labard, Mr. Somner, nor Sir Henry Spelman, nor any of our English Antiquaries or Lawyers ever discovered any such Thing, before your Dr. arose to differethe above Clouds, every Man of the Kingdom, who was no Villain, being look'd upon as a Freeman, and every Owner of Lands of Inheritance, through of never to small a proportion, reckoned a Freeholder, and his Elate called his Free Tenement, or Freehold, as well in our Ancient as Modern Laws; and that Freehold was not restrained only to Military Service, within a Hundred Years after the Conquest, appears by King John's Magna Charta, in which it is expressly recited, that Nulius servitutur de lecendum majus servitutum de Yeodo Militis, nec de alio Liberu Tenemento quam inde debetur; and that Soccage Tenants, tho' by Villain Services, were as much Freeemen as your Tenants in Capite, see Spelman's Glossary, Tit. Secman, where he says thus; Socmannus in natura brevium (breui de Rehto) proprius tales est, qui liber est, & tenet de Rege, feu de alio Domino in antiquo domino terreus fuerat feu Tenementa in Villenage. Libro Sancti Albani Tit. Houdon, Chap. I. Regre Angliae materiam de Hound tenuarent in domino, omnes Tenentes Liberi, fals; & eum habere per joham defendentium tenementum sibi, etc. ex quo patet foremnem liberos bonos significare.

But since you seem to effect a Distinction between Freeemen and Freeholders, properly, or improperly so called; since King William's Laws you have now cited, do not warrant any such Distinction, I must beg your Excuse, if I am not of your Opinion; for the First Law you have quoted Warrants no such Thing; it only says, That all Freeemen in general, shall take an Oath of Fealty to the King, to maintain him, his Lands and Honours, against his Enemies and Strangers.

Now it is apparent, that this Law extended to all Freeemen (who were by the ancient Saxon Laws recited in the Addition to the Laws of King Edward) to take the very same Oath in the Folkmeet, as they were after your Conquest to do according to this Law, either in the County Courts, or Sheriffs Tourne. Nor will the next Law do the Buisine any more than this; for the Words are, That all Freeemen of our said Kingdom may have and hold their Lands and Possessions free from all unjust Taillage Exactions, &c. Which Word Possessions extends not only to Lands of Inheritance, (much leas to Lands held by Knight's Service) but also to Elites for Life, and all other Chateels or Possessions, as well real as personal; Nor doth the Words Servitutum Liberum, extend, only to those Services which were laid upon Lands held by Knight's Service or Capite, but also to those Common Services (called Trinoda necessitas) which I have formerly mentioned, viz. The building and repairing of Castles and Bridges, and Expedition against Foreign Enemies, which all the Lands in England were liable to, as well after, as before your Conquest: Nor will the 58th Law make more for you; for tho' it R t 2 only
only says that all Earls, Barons, Knights, and their Servitors or Esquires, and all Freemen of the Kingdom shall always be fitted with Horces and Arms as they ought to be, and which they ought to do according to, and by reason of their Fees and Tenures. Now it is plain, that this Law cannot extend to the less Tenants; in Capite only, since they, according to your own Sense, are comprehended under the Word Minors, and their Servientes, which seems to mean their subsidiary Tenants, are as much tied by this Law to find Horces and Arms, as the Tenants in Capite themselves. So that whereas the Law says expressly, Universi Liberi Homines totius Regni, it should have been to make good your Sense, Universi Liberi Homines qui de Rege Tenent in Capite; and as for the other Freemen who were of lesser Estates than to find Horces, they were to be ready with such Arms as befitted their Condition, as we see it explained by the Alisz of Arms of Henry II.; so that this Law of King William is not to be taken in the Sense you put upon it. That all the true Freemen of the Kingdom were obliged to be ready with Horses and Arms, as if none were Freemen that did not; but referring the Words Horses and Arms to those who are to find both; and the Word Arms to those Freemen who were only obliged to keep Arms fit for Footmen, which Sense the Words will very well bear, tho' exprest generally and concisely according to the Mode of those Times, which abhor'd more Words than needs: And if those Laws will not prove what you bring them for, much less will the last you have cited: For if the Word Omnes Liberi Homines totius Monarchiae, in the first Law, who were to take an Oath of Fidelity to the King, must extend to all the Freemen of England, (as certainly it did) all Freemen being alike obliged to be sworn in the Court Leet, and County Courts; so must this too, the Title being to Omnes Sibi, all the Subjects shou'd endeavour to maintain the King's Rights with all their Power, and tho' I grant that Subditi here are the same with Liberi Homines in the first Law; yet since by that Law all Freemen were to take the Oaths of Fidelity to the King, these must be also the very same Freemen, who were to be sworn Brothers to defend the Kingdom, according to their Power and Eftates, So that all that you have said to prove your Tenants by Knight's Service in Capite, to be the only Freemen that served on Juries, &c. being built upon a false Interpretation of these Laws of King William, are but the mere Fancies and Imaginations of the Author from whom you borrowed them. And you your self, (or rather the Dr. from whom you borrow these Notions, have sufficiently confuted this Fancy of the Tenants in Capite being the only Freeholders in the Kingdom; for at the End of that last Speech, you are fain to fall a Peg lower, and grant that all Military Tenants whatever, as well those in Capite as all others that held of them by the like Service, were included in this Law of your Conquerors, and consequentely were capable of the like Privileges, either of serving in Parliament in Perfon, or elie of being elected Knights of the Shire.

But taking the Words Liberi Homines in the largeft Sense, and as they are in the Magna Charta of King John, and Hen. III. Cap. 14, where it is ordained, that Liber Homo non amerciatur pro parvo delito, nisi secundum modum illius delitti, salvos sibi contemenimento fui, & mercator codem modo, salvus mercantia, & villainus salvus Wangage; upon which Words Sir Edward Coke in his Second Inft. observes, that Liber Homo is here meant such a one as enjoys a Franc Testament, that is, any Sor of Freethold.

But pray go on to prove by some plainer Authorities, that the Archbishops and Abbots, &c. together with the Earls, Barons, and other Tenants in Capite, were the only Nobiles of the Kingdom for the collecting of Taxes, and making Laws in the Times immediately preceding the Reign of King William the First.

M. I shall perform your Defires, and will begin with the great Council or Parliament held at Clarendon, of which Matt. Paris tells us, Anno Dom. 1164. 10th of King Hen. II. In presentia Regis Henrici apud Clarendon & Calend. Feb. &c. de mandato ipsius Regis, prescntibus etiam Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitiis, Baronis, & Procristibus Regni, salvo eft Recogniz; and which Quadrijugos, and Geroac jeux, committed under the general Terms of Presuleis, & Procristibus Regni, the Bishops and Great Men of the Kingdom.

What can be more clear by this Enumeration of the Chiefest Parts of this full Parliament (as Mr. Selden and other Authors agree it to be) than that the Commons were then none of them, and that the Clergy and Lay Nobility, were only the Clergy and Lay Nobility.
Dialogue the Sixth.

So likewise when these Constitutions were again renewed by this King at Northampton, the same Author tells us, (tho' by a Milthake it is written Nottingeham) That Rex Pater ibi celebravit Magnum Concilium de Statuibus Regni, & coram Regi Filio seu, & coram Archiepiscopo, Episcopo, Comitibus & Baroniis Regni sui, which Council is more particularly recited by Benedictus Abbas in his Manuscript History (now in the Cottonian Library Anno 1176, (which was the 25th Hen. II.) Circa Fasiam Convenissunt Sancti Pauli, venit Dominus Rex ubique Northampton, & Magnun ibi celebravit Concilium de Statuibus Regni sui coram Episcopo, & Comitibus, & Baronibus Terre sui, & coram eis per Concilium Regni Henrici Filii sui, & per Concilium Comitum, & Baronum & Militum, & Hominum juorum bona subscriptam affisit securi, &c.

And Ralph de Diceto, Dean of St. Paul's, (A. D. 1210.) a diligent Searcher into the Histories and Transactions of his own and former Times, doth yet more fully declare the Meaning of Abbot Benedict, in the Account he gives of this Great Council, thus; Rex cujus Conscientia Filii sui Regis, coram Episcopo, Comitibus, Baronibus Militibus & alis Hominibus suis in hoc conscientiis, &c. Hoc autem fallum est opud Northamptonam, 7mo Kal. Febr. From all which Authorities we may collect, that this Council at Northampton, as well as that at Clarendon, was a Great or Common Council of the whole Kingdom; to which were summoned of the Laity, only the Earls and Barons of his, (viz. the King's) Land, to which is also added, for the better explaining who were underfoot under these Titles of Baronum, Militum, & Hominum juorum; that is, such Tenants in Capite as he pleased to summon, and were his Men or Military Tenants tho' not Knighted, or his lands either of the King, or his Son, to whom the King might assign divers of these Barons and Tenants in Capite to answer Tenants to him, and to maintain his Court and Kingship; and the King's Comites, and Barones terre sui, were the Earls and Barons of his Kingdom that held immediately of him, or were his immediate Tenants in Capite; and that Homo suis & homines sui, doth always signify the King's, or any other Lord's immediate Tenants by Knight's Service; for you may confute Speelman's Glossary, and Du Fresne's Lexicon, under these Titles.

But farther, to confirm who were then the Constituent Members of our Great Councils, pray see the Title to the Affiss of Foreills under King Richard I. which Hereford recites in these Words; Hoc est Affiss Dom. Regis, & hoc sunt precepta de foresills suis in Anglia sua, per Alfenium & Concilium Archiepiscoporum, & Abbatum, Comitum, & Baronum, & Militum totius Regni. Where by Militum is to be understood not only those Tenants in Capite that were Knighted, but also all other Tenants in Capite tho' not actually so. And if the Word ever signifies any other Persons, they were not ordinary Freeholders, but Liber Tenentes in servito Militari, Freeholders by Military Service, as you may find in the Dr. S's Glossary, Tit. Probus Comitis, Militis, &c. But pray remember also what Sir H. Spelman tells us in his Glossary, Tit. Milites, that these Men (when put alone) were properly the Liber Tenentes, or Tenants in Capite, Qui non & Militari Crudulo, sede Facto nomen jumentum. So I think that no ingenious Man but will confess that all these Councils were General Counsels or Parliaments of the whole Kingdom, confitting of no other Persons than Tenants in Capite.

F. To return an Answer to all your Authorities together, I must now repeat what I often said, that there are no firm Arguments to be drawn from the doubtful Words, and general Expositions of our Ancient Historians; and I doubt not but to shew you, that all the whole Strength of your Reason confitts in this alone.

But since I have already spoken so much of the various Signification of the Word Baroens Regis & Regni, I shall omit that, and now proceed to the rest of the Words, which you think make to plain for you; and shall only obviate at present, that these Words Baroens and Militis, are always stretched or contracted, according as the Gentlemen of your Opinion find it fittest to suit with their Hypothesis.

As for Example. If the Word Baroens is put alone, then it must signify not but Great Barons, and Tenants in Capite; if it be joined with Militis, then by Baroens must be only meant the Great Barons or Peers; and by Militis, those Tenants in Capite who were not Lords. If any other Words follow Militis, then this
Word must signify only such Tenants in Capite as were Knighted. So likewise you deal with all other Words, tho’ of never to comprehensive a Signification.

But why may not I with as much Reaen affirm, That by Barones mentioned in these Authorities, is to be understand the Barones properly so called; and by the Milites all Military Tenants, if not the Knights of Shires, whether they were Tenants in Capite, or Feudatories to others: For Radulphi de Diceto in Anno 1040, in the Laws of Malcolm the Second, King of Scotts, mentions certain Milites, Vavfores, qui tenent de Baronibus terras suas; and that not only Tenants in Capite, but all others of whomsoever they held, who were able to maintain themselves like Knights, might be then forced to receive Knighthood, appears by two Writs of 24th and 26th Henry III. as they are found in the Clole Rolls, under this Title, Fornum de Milibus faciendis; and I defire you would read the Writ it self.


Similiter Scribatur omnibus Viccomibis. From whence you may observe, that not only Tenants by Military Service, but also by Service Tenure were then liable to Knighthood.

And as for, the Words Homines Sui, which you will have only to mean the King’s Tenants in Capite, those Words have fo equivoal a Signification, that there is no Argument to be drawn from them; for they may as well signify all the King’s Subjects sworn to him by Fealty and Allegiance, as Tenants by Homage, or Knight’s Service only, as Sir H. Spelman in his Glossary observes upon the Word Homo, dictur de quovis Pradiorum Tenente, seu Suomano, seu Militari: And for this he cites the Book of Rampsey; and if Susses be added to Hom, it doth much alter the Café, as appears by the Words following, in the same place, Dictur Preterea de Quovis Ministro, & Subdito, & fepe occurrat hoc modo in Antiquis Privilegiis, non Sollem Vaffados, & Tenentes, sed Femulos, & Subditos quoslibet Signifiant; and for this he gives us several Authorities.

So that you see thes Words do not only signify Tenants in Capite, but also all other Subjects, and so might take in the Knights of Shires, with the Citizens and Burgeffes likewise, at least the Representatives of such Cities and Buroughs as held of the King in Capite, by your own Sense of these Words.

But I shall however say something of the rest of the Words you in fut, upon, out of Abbot Benedif, viz. Barones terra sua, which means no more, than Regni sui before-mentioned, and then it will signify no more, than that all the Barons of his Kingdom were summon’d to this Assembly. For the Signification of which Word, I can give Mr. Selden’s Authority for; who in his Fifth Edition, 2d Part, hath this remarkable Paffage, speaking of the several Kingdoms of Barons, he says,

“That besides the Barones Regis, there were Barons of Subjects holding, not of the King, but by Meitaly, who made a third Rank of such as were Lords of Manors, &c. Out of this may be understand why, and in what Sense it is longue ‘Anglia, Rex & Baronium suum, & sine Alfenius Baroniis sui. To often occur in our old Stories, taken as well for the King, and the whole State sometimes, as for the greater Nobility.

But if your Dr. had been pleased to have compared the Authors he quotes with others, nay, with the Title to the very Constitutions of Clarendon themselves, as he hath given them, as in his Appendix to his History out of Quadrillogus, this Objection would have been needless; for if you consult Gero of Canterbury, he fifies the Parties to this Council Prefules, and Process Hugliani Regni. And as for Matt. Paris prays obsewe that after the Word Clergy (which after immediately after the Bishops, Abbots, and Priors must needs signify the Inferior Clergy,) he expreffe the Lay Orders thus: Cum Comitis Varobonum ac Proceribus cunlitis, where we may observe the Word Process here put distinctly from Barones, which may very well signify not only the Left Tenants in Capite, but the Knights, Citizens and Burgeffes, as I have already proved the Word Process does often signify,
Dialogue the Sixth.

Signify, both in our Historians and Records, but the Quadragesimides gives us the Title of these Constitutions more exactly in these Words, Eius et sua spectatio, coram Archiepiscopis, Episcopis, & Clero, & Comitis, & Proceribus Regni; and in the next Line he says, That those Customs were thus recognized, per Archiepiscopos, Episcopos, Comites, Barones & per Nobiliores, & Antiquiores Regni; where he likewise distinguish between the Bishops and Inferior Clergy; and those which in the first place he calls Proceres Regni, in the next he calls Nobiliores & Antiquiores Regni; by which he might mean the Knights of Shires, Citizens and Burgesses, who were called in the Saxen Times Seniores & Suietes, as I have already proved: Now if the Inferior Clergy appeared by their Representativi at this Council (since they could not then all come thither in Person any more than now;) to imagine that the Commons of England should not be likewise there by their Representativi of their own Order, is to deprive the Commons of that Right, which you cannot but allow to the Inferior Clergy.

To conclude, You your self confess, that your Les Tenents in Capit, forsetituit called ales situat sonte, were only nominally, and not properly Barons of the Kingdom, in the Sense that Word is now taken; and if so, pray give me any satisfactoriy Reason, why other Commoners as well as they, viz. the Knights of Shires, Citizens and Burgesses, might not then likewise have had Places in our Great Councils or Parliament.

M. I see you use your utmost endeavour from the various and equivocal Sense of the Words in Quelion between us, to prove that the Commons in the Sense they are now taken, might be comprehended under the Words Barones, Militires, & Hominis jux, which it is very certain could not be, according to the Constitution of the Government at that time. And therefore I shall give you a very plain Answer to your Quelion, why other Commoners as well as the les Tenents in Capite could not be present, or have places in those Great Councils, because it was contrary to the received Custom and Law of the Kingdom at that time, appears by those Clausus of King John's Charter, which Dr. B. hath made use of in Vito good success against Mr. P. and the Author of James Anglorum, etc. And therefore I defer you would read them along with me, as they stand here in the Appendix to the Dr.'s Compleat History of England; and as he hath transferred them from an Ancient Manuscript in Bemster College, and divided them into so many different Articles of Chaps; but those we chiefly insist upon are these.

Article 14. Nudum Scutagogium vel Axiliarium poner in Regno nostro nisi per Commune Concilium Regni nostro, nisi ad Corpus nostrum redimendum, & ad Princigenium suis nostrum Militiam faciendum, & ad Princigenium suum nostrum firmem Marisandinum, & ad hoc non nisi ad rationem Auxiliarum.

15. Simili modo juct de Auxiliaris de Civitate Londinensi, & Civitas Londinensis, habet omnes antiquas Libertates & Liberas Conjugiendae suas, tam per Terras quam per Aquas.

16. Practerea Volumus, & concedimus quod omnes abe Civitates, & Burgo, & Ville, & Barones de quibus, Poribus, & omnes Portus habebant omnes Libertates, & omnes Liberas Conjugiendae suas, & ad habendum Commune Concilium Regni de Auxiliis aidendi, aliis quam in tribus civibus prædictis.

17. Et de Scutagogii aequiparandis submoneri faciendas Archipiscopos, Episcopos, Abates, Comites, & Majores Barones Regni subgigneri per Liberas nostras.

18. Et prater scutagogii submoneri in generali per Vice Comites, & Burgores nostros omnes abe quos in Capite tenent de nobis, ds ad certum dim fieri ad terminum quadraginta tertium ad minus, & ad certum locum, & in omnibus liberis subgigni etiam submoniendis illis expemuremus.

19. Et sic falsa submonitio negatione procedat ad Dietum annum Concilium corum qui presentes fuerint, quamvis non omnes submoniti velint.

From which Ancient Monument we may draw these Conclusions.

1. That the King exercised a Royal Prerogative before this Charter of Allodium Aids, and Scutages upon all forts and degrees of Men, without the ALLiant of the Great or Common Council, (since called the Parliament) from doing which for the Future, the King by this Charter tied up his own Hand, unless in the Three Classes here particularly reserved.

2. That there is no mention of any other Metablers to be summoned to this Council, but the Archbishops, Bishops, Abbots, Earls, and Greater Barons by particular Writs, and all the other Lesser Tenents in Capitte by one general Summons
by the Sheriff. So that it is apparent, that the Great Councils before this time only consisted of such Earls, Great Barons and Tenents in Capite, as the King by special Writ was pleased to summon; and this new way brought in a greater number of the Tenants in Capite than ever had appeared before; so that if it should be true, which you affirm, that this Charter was no new Grant to the People of England, but a Confirmation of their Ancient Rights and Liberties, it must then necessarily follow, that Great Lords and Tenents in Capite, called sometimes Barones Minores, were then the only Representatives of the Commons.

And that the Inferior Tenant's Consent was included in the Affent of his immediate Superior Lord, whose Presence was required in those Great Councils or Parliaments, need not, I think, be doubted; and I can give you, if need be, several Authorities to prove it. But pray observe further, that here is no mention at all in this Charter of any Citizens or Burgesses to be summoned to the Great Council, unless you will have them included under the general Title of all others who hold in Capite, and then none but such Cities and Towns who held in Capite could pretend to send any Members; much less is there any mention of any Knights to be chosen for Counties, which certainly would have been particularly provided for by this Charter, had they then had any place in this Assembly. So that I think it is very plain, that the Commons were not otherwise represented than by the Tenants in Capite for the rest of King John's, and most part of King Henry IIIrd's Reign, for ought I can yet discern: For though this Charter was confirmed in the Second and Ninth Year of that King last mentioned, per Commune Consilium totius Regni; yet there is likewise no mention made of any Knights and Citizens, or Burgesses.

F. Before I answer this main Argument of yours, (which I freely grant carrieth the greatest shew of probability of any you have yet brought) give me leave to take notice, that I think you are very much out in your first Conclusion, That before this Charter, the King exercised a Royal Prerogative of imposing Taxes without the Affent of Parliament; for if you mean that this Exaction was exercised de facto, and from thence you would make it a Prerogative of the Crown, I grant this was true, not only before, but after this Charter, before the Statute de Tollagio non concedendo was made; but if you mean de jure, I affirm that our Kings were as much tied up by the 55th Law of William the First, (which you have already cited) from Levying any unjust Taxes, or Exactions, sine Communi Consilio totius Regni, as they could be afterwards by any other subsequent Law that could be made.

But I shall proceed to answer the Authority you have now brought from this Clause in King John's Charter to prove, That none but Tenants in Capite had any place in our great Councils, or Parliaments. But tho' I confess the Charters of Henry III. and Confirmations of Edward I. are the same with this in the most material Part, yet there are severalClauses (of which this Clause in question is one) which are not in King John's Charter, and yet are totally omitted out of both those of Henry III. as I shall shew you hereafter. So that let the Sense of this Place be what it will, I defie you to shew me any great Council of the Kingdom, that was ever summoned according to this Imaginary Model of yours, and that I do not speak without Book, that Parliament or Council of 9. Henry III. held but 11 Years after King John's Charter was confirmed; Mat. Paris (as I have already observed) tells us, it consisted of Cleres, & Populius cum Magnatis Regni.

But give me leave to read this Clause, according as your Dr. himself hath printed and Transcribed it, and as your self have now read it, and I doubt not, but it will appear plain enough, that the Clause you insist on in this Charter, doth not at all concern the great general Council of the Kingdom; and for the proof of this, I defie you only to observe, that by the 15th and 16th Clauses of this Charter you have now read, both the City of London, and all other Cities, Burroughs, and Towns, had a Right to make a part of the common Council of the Kingdom for the Affeation of Aids, (otherwise than in the Three Cities there excepted.) For proof of this, pray take your Dr. 's Paragraph to this Clause along with you in his Appendix to his compleat History of England, viz. That they, viz. the Citizens, Burgesses, and Cinque Ports shall send their Representatives as Commissionners to the Common Council of the Kingdom, for the Affeation of Aids; So that according to his Concession, there must have been Citizens and Burgesses in the great Council.
Dialogue the Sixth.

Council, in the Reign of King John; and if so, I desire you to tell me whether those Gentlemen were Commons or not?

But I will not insinuate too much upon his Concessions: Since, perhaps he may say he did not make that Paraphrasis upon Magna Charta, but that it was given him by a Friend; but I think it is very plain from the Words themselves, which point out a Difference between the Common Council of the whole Kingdom, mentioned in the first Clause, which was to meet to Grant or Affix Aids or Subsidies; and that other Council or Assembly, consisting of all the Tenants in Capite, which by the 17th and 18th Clauses of that Charter, were to meet to affix Écuage, and to do such other Business as was express'd in their Summons. So that nothing seems plainer to me, than that this Assembly mentioned in this Charter, for affixing Écuage, was a distinct Council from the great Council of the Kingdom, which was appointed for the granting of other Taxes, called Auxilia, and for the making of Laws.

M. I confess this Gloss of yours seems at first sight very plausible, and agreeable enough to the way of Reading and Pointing with which the Dr. himself published this Charter; but for all that, I much doubt whether you are in the right, or not; therefore pray give me leave to put off this Debate till our next Meeting, since it now grows late; and in the mean while I will take time to consider the Arguments and Authorities you have now made use of.

F. Pray take your own time, but do not defer it above a day or two, for I have a great mind to have this Question dispatch'd off our hands: I am your Servant.

M. Good Night, Sir.

Add, in Page 284. 1. 12. as follows.

But that the House of Commons were anciently often comprehended under the title of Grants (which is the same with Magnates in Latin) pray consult the Parliament Rolls of Edward III. where you will find the 47th of that King, this Passage; &c. est affimus; accordes per nosse & Seigneurs le Roy, & tous les Grants in pleyn Parliament, (that is, in full Parliament, where both Lords and Commons were present,) that the Proceedings of the Lords against those that were no Peers should not be drawn into Example, &c. Now pray see the Commentaries of the most Learned and Reverend Author of the Grand Quotation, upon these Words in this Record; 1 This hath all the Formality of an Act of Parliament, and therefore all the Estates were present: So likewise in the same Year, in the next Roll but one, Accordes est per nostre Seigneur le Roy, & son Conseil in Plein Parliament, 2 which was an Act of Parliament concerning those that had followed the Earl of Lancaster. So in the 5th of this King, we have the particular mention of the Bishops, as some of those who make a full Parliament, Accordes est per nostre Seigneurs le Roy, Prelates, Counts, Barons, & autres Grands de Roialme in pleyn Parliament. So in the 6th of Edward III. the Archbishop of Canterbury made his Oration in pleyn Parliament, which is thus explained, en le presence nostre Seigneurs le Roy, & tous les Prelats, & autres Grants, And in another Roll, il est accordes & affens per tous in pleyn Parliament; and who thefe were, we are told in the fame Roll; viz. les Prelats, Counts, Barons, & tous les autres Summons a mesmes Parliament;

Now this is the clearest Explication of these Words in full Parliament, viz. in the presence of all those who were Summon'd; so that if the Commons were then Summon'd to this Parliament, (as certainly they were) they must have given their Assents under the Title of Grants; since the Prelates, Earls, and Barons were particularly mentioned before.

S£ Bibliotheca
Bibliotheca Politica.

DIALOGUE VII.

Whether the Commons of England, represented by Knights, Citizens, and Burgesses in Parliament, were one of the Three Estates in Parliament, before the 49th of Henry III. or 18th of Edw. I.

PART II.

F. YOU are welcome, Sir, but I did not expect to see you again so soon.

M. I beg your pardon if I come unseasonably; but the truth is, I have so great a desire to conclude what we began upon, that important Subject we left discouraged of, that I could not be at ease till I had done my endeavour to give you satisfaction therein, if it be possible.

But to come to the matter that we now meet about: I must now tell you again, that tho' I confess this Glos of yours upon King John's Charter, seems plausible at first sight, nay, is agreeable to the Dr's own way of dividing and reading the several Articles of this Charter; yet upon better Consideration, I can see no good reason for making a full, or at least a half flop in the 16th Article, after these Words, omnes liberas consecutandas suas; adding the rest that follows, & ad habendum Commune Consilium, &c. to the following Clause, &c. de sectarum affectibus, &c. much less for apposing as you do, without any ground, that there were two sorts of Common Councils, one for affielding Escuege, and the other for granting all other Aids and Taxes. And then, if read otherwise, it will plainly appear that it was one and the same Council of the Kingdom that did then both grant Aids to the Crown, and affields Escuege ratione tenura, which I am the more inclined to believe from the Fourteenth Clause here cited, which says, That no Scartage or Aids shall be imposed, unlefs by the Common Council of the Kingdom. Now to what purpose is this so express'd, if there was to be one Council for the granting of Aids, and another for the affielding of Escuege: So that if this Common Council of the Tenants in Capite might grant Aids, and affields Escuege upon the Subjects (unles in the Cale before excepted) I see no reason why they should not be the only Council, for the giving their Affent to Laws also; and consequently of concluding not only their own Tenants, but the King's Tenants in Peity Sergeanty and Socceage, nay, the Tenants of any other Persons whatsoever.

And though I have seriously considered Mr. P's Appendix to the Rights of the Commons afferred, and Dr. E's Answer to it, as also his Animadversions upon jani Anglorum, &c. Yet can I not see any colour of an Argument for making any distinction between the King's Curia of his great Lords and Tenants in Capite, and the Great or Common Council of the Kingdom; but that they were then all one and
and the fame. It would be tedious to me, as well as you, to run over all the particular Authorities and Examples which have been urged Pro and Con in this Question. But I desire you, or your Friend Mr. P. to shew me that there was any Bishops, Earls, Barons, or other Members of Parliament in the Times we now treat of, that had any Place, or Vote therein, but according to their Tenure, and the ancient Custom of all Feudal Tenants, who by the German, Gothic, and Lombard Feudal Laws (which in substance were the fame with ours) were always summoned to the Court of the King their Supreme Lord.

But farther, to prove that this Council for Afflicting Escheue, was no other than the great Council of Parliament of thofe Tenants in Capite, appears from Littleton's Tenures, where in his Second Book, Sect. 97. he tells us, That after an Expedition Royal into Scotland, Escheue shall be Affecked in Parliament upon all those who failed to do their Service in that Expedition. So that if the Parliament did them Affel Escheue, I desire to know why they might not do it in the Reign of King John, if this great Council of the Archbishops, Bishops, great Lords and Tenants in Capite, were the Common Council of the whole Kingdom in thofe Times? Yet that Escheue was not always Affecked in Parliament after this Charter of King John, but that the King by his own Prerogative did often grant his Tenants in Capite a Power to take Sequeze of their Tenants without any Affent in Parliament, the B. A. P. Dr. hath given you above a dozen Examples in the Reigns of Henry III. and Page 117. King John.

Thus it was for Aids and Scutage Service; but if it was for Scutage imposed in Parliament as a Tax upon Land by the Common Council of the Nation, then the Tenures in Capite were not only the Fee Grantors, but the Collectors of that Scutage too, from thofe Mefne Tenants: And the Writs to the Sheriff were different in the routes from thofe in Scutage Service, though the fame in Subfiance, as likewise appears by thofe Records the Dr. hath there given us.

F. I doubt not but I shall make good my Affertion, and shall be able to defend what Mr. P. hath in his Learned Treettie afferted concerning this matter. In the first place, I must ftick to that way of reading and pointing of this Clause in dispute, since it is not only agreeable to the Dr's Manuscript Copy, but also to the old French Copy, published by Father D'Archi in his Aquilaeculum, Vol. 13, which is written in the French of that Time: But to answer your Objection against this Interpretation, you your self have in great part helped me to do it, by that true Diftinction you have now made between a Scutage as an Aid or Tax, and as a Service; the latter of which you affert might be granted to the King, to be rafied by his Tenants in Capite upon their Under-Tenants; whereas the former was only grantable in Parliament by the Common Council of the whole Nation. Which Tax, I affirm, was always granted to the King, and imposed by the Common Council of the Kingdom only, and not by the Tenants in Capite alone, before the Expedition was undertaken. Whereas Scutage Service (considered as a Payment of so much Money) was never due or payable, till the Expedition was ended, and then only upon such as had failed to serve in Perfon, or by sufficent Depuities, and was then to be affecked by the Tenants in Capite alone.

And though I grant it may feem to have been a Prerogative as you call it, exerted by some of our Kings, sometimes to grant his Tenants in Capite, a Licent to take Scutage of their Tenants, without the Affent of the Great Council of the Kingdom; yet such Payments or Affeckements were either according to Law, and the express Grant of this Charter, as it is that Writ to the Sheriff of Glouceflhire, for the Affecking of an Aid or Scutage Service of three Marks on each Scote upon the Tenants of Saber, Earl of Wincbeftcr, for making his Eldeft Son a Knight, and which the said Earl might have claimed of his Tenants by the Common Law, as also by the 20th Article of that Charter. But for a Scutage Tax Littleton tells us, Lib. 2. Sect. 101. That because such Tenements came at first from the Lords, it is Reason they should have Escheue of their Tenants; and the Lords in such cases might distrain for the Escheue so Affecked by Parliament, or in some Cases they may have the King's Writ directed to the Sheriffs of the same County, &c. to Levy such Escheues for them, as appears by the Register.

But if either King, or King Henry III. granted Writs to levy Escheue upon the Under-Tenants of the great Lords, and Tenants in Capite, without their own Consent in Parliament, this ought to be no more cited as a Precedent, than any other illegal Acts committed by thofe Kings; since, as our Records and Histories
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tell us, it was such illegal proceedings which were the Cause of the Bawon Wars.

And it is expressly against the Words of this Charter of King John, which you have now quoted, viz. *nullam Scutagium vel Anuallum promun in Regno sufiuro, nisi per Common Consilium Regni mitri.*

So that notwithstanding all you have yet said, it doth not appear to me, how Securitly was given as a Tax upon Knights Fees alone, and to be levied not only from the Tenants in Capite themselves, but their Under-Tenants; as also from the Tenants of them, who though they held in Capite, yet held not by Knights Service, such as were the Tenants in Petty Serjeanty, and those who held of the King in Chief as of several Honours, and not of his Crown as in Capite, could ever charge such Tenants without their Consents given either by themselves, or their lawful Representatives, much less could your Tenants in Capite Tax or Charge death as did not hold in Capite themselves, viz. the Chooses and Prors who held Lands in Right of their Monnies in France, and who, together with their Under-Tenants made about Two third Parts of all the Abbey-Lands in England, or could Tax thofe, who not holding by Knights Service at all, but by Tenure in Soctage, or Fee Farm, did not hold their Lands as Knights Fees and therefore could never be taxed by your Tenants in Capite for so many Knights Fees, or Parts thereof. And Bradon (who lived at this very Time) had distinguished to no purpose between those Common Services which all Tenants owe their Lords, and the general Taxes or Charges imposed by the Common Consent of the whole Kingdom. The Words are very remarkable, pray read them. *Sunt adem Consilium prestatientes que ferius non secundum, nec de confertandis vitiis nisi cum necessitates intervenunt, vel cum Rex venerit, sicam sunt Hidagia, Corragia, Caragia, et alia plura de necessitate e cесс concesse Consilium toius Regni introdudit qui ad Dominum fees non pertinet.* And therefore I cannot see any Reason why the great Lords, and Tenants in Capite, should have ever Power to lay a general Tax upon the whole Kingdom, nor the Tenth Part of which did then hold of them by Knights Service. So that nothing seems plainer to me, than that there was (as our Ancient Historians tell us) a difficult Court, which was held annually three Times every Year, viz. at Exeter, White-Ford, and Crouchiton; and then the King was attended by all the Bishops, great Lords, and other Tenants in Capite, and this was called Curia, or Consilium Regni; and if any Difference of Right did arise between the King and his Tenants, or between Tenant and Tenant, here it was to be heard and determined, and many other Things were there ailed and done, in relation to the Kings Barons, or Tenants in Capite only.

But under Favour, this was not the Common Consilium toius Regni, or Parliament (as we now call it) for the King held this Court ex More, or by Custom, without any particular Summons, as Simon of Darum, and Florence of Worcefts, and divers other Writers of the Lives of our right Norman Kongs, doth us tell. But when they take notice of the meeting of the Common Consilium toius Regni, their Expressions alter, and then they say, that, *Rex ex curreilet, as it is in *Ordinarius.*

Ex precepto Regis convenerunt: et sic bodement ... Rex Summante suas advenisse ... And that is the most ordinary practice of the Times takes notice of this Union, or Meeting of this Curia, or Assembly of Tenants in Capite, together with the Great Council or Parliament, in his History of Hen. III. Where relating how the King again confirmed the great Charter in a Parliament, *Anno Dominii 1252,* being the 37th of his Reign, he hath these Words, *In quandam Psalmam (adversus magnum Parliamentum, etc.)* So that it seems plain to me, that by this uniting of the great or whole Parliament, must be understood the Combination of both Councils together; and therefore, when this Council of Tenants in Capite, that thus met ex More took upon them to affect Eiuseage, and transact other Matters of Consequence, without the Consent of the major Part of the Tenants in Capite, who often failed to appear at those Courts, or Assemblies held ex More, it was then and not before, expressly provided by this Charter of King John, that Eiuseage should not be affected for the future, without Summons, or Notice given of it to all the Tenants in Capite, that had Right to be there.

*I.* I see you would fain prove that there was a Council or Assembly of great Lords and Tenants in Capite, distinct from the Parliament, and which met ex More, and that there were the Perfoms, who were by this Charter to dispose for the afflicting of Eiuseage; which is a most precarious Hypothecis, nor can you, or others, from whom you borrow this Notice, make it out from any good Authority.
for I have already proved, that the Barons Regis & Regni, were the same Per-
sons, and that usually the Barons or Tenants in Capite of what Quality soever, did 
repair to the King's Court at Christmas, Easter, and Whitsunday, doth appear to 
have been the Custode of those Times, from the Testimonies of our ancient Histori-
rians, and which you your self also allege.

But to prove by examples out of the Authors you have made use of, that the 
Bishops, great Barons, and Tenants in Capite, were then alone the great Council 
of the Kingdom, pray read Eadmerus speaking thus: Celebratissimum Concilium in 
Ecclesiis Beati Petri in occidentali parte juxta Londinum fuit, Comitum Concordis 
Epicoporum, Abbatis, & Principum totius Regni, & hos Convites afferrantur 
Primates Regni utriusque ordinis. And at this Meeting were present, the Prime 
Men of the whole Kingdom of both Orders: In this Council the Bishops and Bar-
ons are called the Principal or Chief Men of the Kingdom; yet, these were all the 
King's Barons, they all held of him in Capite, as did all the Chief Men of the 
Kingdom. So likewise in another Meeting under this King Hen. I. when Arch-
bishop Ansefan was to give his Answer to the King, according to the Advice 
of the Bishops, and chief Men of the Kingdom, the same Author tells us of An-
sefan, that at Easter, ad Cursum venit, Communis Concilii vocem accipit, &c. Now 
pray tell me what Common Council this was, of the Bishops and Chief Men of 
the Kingdom, that Ansefan referred himself to? Was it not ex More, by Cu-
stom? You cannot find in Eadmerus any Summons to it, neither Rex aetatus, 
or precepto Regis commorantur, nor Rex funditum sua adunantur. In short, not to 
multiply Examples, look where you will in Eadmerus, or any other of the an-
cient Authors, you have cited; and you will find, that the Persons who met 
ex More, and without any Summons, were the same who assembled by the 
King's Summons at other Times, that is, the Principes, and Episcopi Regni or Terrae, called 
generally more, Primates utriusque ordinis, or the Barones, or Majores Regni, 
who did at these great Feasts pro more, go to Court, and there hold a solemn Cu-
rion, or great Council; and that they made up the Universy, or whole Bo-
dy of the Kingdom; pray see what Mat. Paris says of such an Assembly. In die 
Foresepties Dominus Rex Anglorum Laudinii Veniam tenens magnum, & serenissi-
mum, tum compositus per Regni Universitatem elegantissimum, &c. This was about 
the Pope's Exactions, as hath been before delivered: And Hen. III. in his Letter to 
the Pope, calls the same Persons Magnates Anglie, which in his Letter to 
the Cardinals about the same Matter, he calls Magnates Nofiri, as you may 
see in the former Citations of them.

But pray give me leave to ask you this Question; Might not our first Norman 
Kings often summon the Common Council of the Kingdom at one of the fald 
usual Feasts, since it was so much for the Conveniency of the Bishops, great Lords, 
and Tenants in Capite, (who grant, were then all Members of the Great Coun-
cil) to meet all the rest of the Kingdom, or Representatives of the Commons, at 
the same Time, though the Writers you have quoted may not mention their 
being summoned at all? And as for the Writs of Summons, thofe of much 
latter Parliaments being loft, how can it be expected we should now prove their 
being summoned to many Years before?

I confess it might be so, that upon extraordinary Busines, and when the 
Occasion was great, and the King desired a greater and fuller Appearance, they 
might also receive an express Summons at those Times. But then I must define 
you to give me any mention of a Summons to any of these Common Councils, 
which when called at other Times, are most constantly mentioned in this Au-
thor. And I define to know of you, what you will say to those Words pro more 
convenit,which is spoken of the most general Councils, when the Community of the 
Kingdom met at the King's Court? You cannot deny, but that the Tenants in Ca-
pite, were the King's Barones, Milites, Magnates, &c. Upon this we will joyn If-
tie; and I affirm (without bringing Proofs which are infinite in this Cafe) that 
all the Bishops, Earls, and Barons of England, did hold their Lands, Earls-
doms, and Barons of the Crown, or (which is all one) of the King, as of 
his Person, and that was in Capite.

William the Conqueror, as I said before, divided most of the Lands in England 
amongst his great Followers, to hold of him; he made Earls and Barons, such as 
he pleased: They and their Descendants held upon the same Terms with the first 
Grannors, which was, to hold so many Horse and Arms, and do justice and such Ser-

ices,
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vices; both Titles and Lands were forfeitable for Treason or Felony to the King; did Homage for them; and every Bishop, Earl and Baron of England, was in thofe Circumstances, and held of the King after this manner.

Other Lands were given to other Persons for meaner Services; as to his Woodwards, Foresters, Huntsmen, Falconers, Cooks, Chamberlains, Goldsmiths, Bailiffs of Manors in his own Hands, and many other Officers, which in Doomsday-Book, are called, Terra Tenorium Regis, and sometimes Servientium Regis; And I doubt not, whatever the Notion of Petyt Sergeanty now is, but that originally, this holding of Lands was the true Tenure, not but presenting the Lord with a Bow and Arrow, a pair of Spurs every Year, &c. might also be called Petyt Sergeanty, though not to properly as the other.

F. Not to multiply Words to no purpose, I think your Reply is far from being satisfactory; for in the first place, it is very unreasonable to demand that we should now shew the express Summons to thefe Common Councils which were not held de more; since you know that all ancient Records of that kind are destroy’d and loot’d, for if we could produce them at this Day, the difference between us and thofe of your Opinion, would quickly be at an end; as appears by thofe great Councils, which are said expressly by the Historians I have cited, to have been summoned, and yet no such Writs of Summons are to be found; nor is it any good Argument, that because our ancient Historians mention no different Summons to the great Councils, when met at the usual Times of the meeting of the Tenants in Capite, that therefore there were none such, since we find they often pass by much more material Matters than this.

And though I grant that the Tenants in Capite were then part of the great Council of the Barons, Ministers, &c. Magnates Regii; yet does it not follow from all this, that none but the King’s Barons, and Tenants in Capite, were Members of the great Council of the Kingdom; since there might be in thofe Times other considerable Freeholders, who (though they held their Lands of the Tenants in Capite, yet) might be there as Knights of Shires, or else appear in Perfon at thofe Assemblies as well as the other; and besides, there were others, who, though they did not hold of the King in Capite, but of some great Honour or Castle, or else of some Abbey or Priory, were Men of very great Eftates, and very numerous; all which must otherwise have had their Lands tax’d, and Laws made for them, without the Consent of themfelves, or any to represent them. Nor is your Attention at all true, That William the Conqueror divided most of the Lands in England to be held of him in Capite. For besides thofe Servants and Officers you laſt mentioned, near Two thirds of the Lands of the Abbies and Priorities in England were not held, as also much other Lands in Kent, and other Countries, per Baroniam, or Knights Service, but in libera eademfina only, or Soccage, as I have already prov’d; and consequently neither they nor thofe Tenants could, according to your Hypothefis, have any Representatives in Parliament.

And farther, you your felf grant, that thofe Lands you mention, which were given out by your Conqueror, to his Woodwards, Foresters, &c. did not capacitate thofe to appear in Parliament, since their Tenure was only by Petit Sergeanty, and not by Knights Service: Nor could they become the King’s Tenants in ancient Demefne, because fuch Tenants held wholly by Soccage Tenure; whereas it appears plainly by Liddleton, that Tenants in Petit Sergeanty were subject to WardSHIP, Marriage, and Relief. So that whoever will but confider, that near half the Lands in England were held by Bishopfs, Abbots, Priors, &c. and of whom not a Third Part held by Knights Service of the Crown; and will then likewise confider what a vaft number of Tenants thofe Abbots, Priors, Deans and Chappers (who were not Tenants in Capite at all) must have had; and who either held Eftates in Fee, or else for Life under them in Soccage, as well as by Knights Service; as also all the other fort of Tenures I have already mentioned, which either held of the King as of some Honour or Castle, or else of other Mefie Lords by other Tenures than Knight’s Service, must certainly conclude, that not above one half of the Lands of the whole Kingdom was held either immediately of the King, or else of other Mefie Lords by that Tenure. So that if all thofe Perfon, which were at the greater Number of the Free-holders in England, should have been thus excluded from having any thing to do in our great Councils; I doubt not but we should have found sufficient Clamour in our Histories against fo unjust a Conftitution; and when the whole
whole Body of the Kingdom was in Arms against King John at Runnymede, they would likewise have inferred a Clause for themselves, if they had not had their Suffrages there before, either by themselves in their own Person, or by their Lawful Representatives. And therefore upon the whole Matter, I durst leave it to the Consideration of any unprejudiced Man, whether it is not much more probable, that the Constitution of Knights of Shires, Citizens and Burgesses, appearing in Parliament, should be much more ancient than the Time you assign ; than that fo small a Body of Men as the Bishops, Lords, and Tenants in Copite, should represent all the rest of the Freeholders and People of England, who never held of them by Knights Service at all. Nor have you yet anwered the Quotation I have brought out of Bradton in my last Difficourse to the contrary. And whoever will but consider that Author in his Chapter of Tenures, will find, that the Tenants in Copite were so far from having a Power of charging all the Medie Tenants at their Pleasure, that in his Chapter of Tenures, it appears, that a Medie Tenet in Copite having purchased an Estate for a valuable Consideration, was liable to no other Services and Conditions, than what his Tenure express'd, which once performed, the Lord had no more to say to him: And if so be he laid any further Burthens upon him, he might have had a Writ of Acquittal out of the King's Court against him directed to the Sheriffs; several Forms of which you may see in Glamis, and in the old Register.

M. We are not to rest upon meer Probabilities; for some things that now appear to us unreaonable at this Time, might then be very just. For if the Feudatory Tenants of the Bishops, Barons, and other Tenants in Copite, were well enough contented with the Constitution of the Kingdom as it then was, and that it plainly appears by matter of Fact, that there was but one Common Council for the whole Kingdom; and that, of the Bishops, Abbots, Great Lords and Leis Tenants in Copite only, it is in vain to argue of any Unreaonablebleness in, or Inconveniences that might arise from such a Constitution, though perhaps a great part of the Kingdom did not hold in Copite, nor yet by Knight's Service; and therefore through the Feudatory Tenants of the Tenants in Copite, were upon the Performance of their Services acquitted of all other Charges; yet this was still to be understood only of such Ordinary Services as those Tenants were to perform by virtue of their Tenures, such as was Scutage Service, or the attending upon their Lords when they went out to War along with the King; but did not extend to such Scutages as were granted in Parliament, or as a Tax upon Land by the common Consent of the Nation; for then the Tenants in Copite were not only the Grantors, but the Collectors too, of such Scutage Tax, from their Military Tenants; and the Writs to the Sheriffs were different from those for Scutage Service. And for proof of this, I desire you would peruse that Writ which the Doctor quotes of the 19th of Henry III. which is still to be seen in the Clofe Roll of that Year. 

Cl. 10. R. 3. 

* This Mandate was not given him as Chancellor, but as a Tenant in Copite.
of not only those Knights Fees they held in their Hands, but also all those Subtenariat Tenants called here Freeholders, who held of them by Knight's Service, were likewise charged for every Knight's Fee he held, the like Sum of two Marks. Now I think nothing can be more plain from this Record, than that this was a Common Council of the whole Kingdom, and yet conflated of Tenants in Capite only; and therefore I desire you to shew me some better Proofs than you yet have done, that these Tenants in Capite ever made a distinct Council, different from the Common Council of the whole Kingdom.

F I grant this seems at first sight to be a good Authority for you; but I doubt not for all that, to prove, that it makes wholly against you; and will, together with those other Proofs I shall urge, make out this difference between the two sorts of Councils, I have already alleged; and therefore I must tell you, that there is no necessity of understanding the Words de Confidio Illorum (mentioned in this Record) to refer to the Common Council of the whole Kingdom, it not being here said to be granted per Commune Concilium totius Regni; and then there can no more be proved from this Record, than that a Common Council of the Tenants in Capite, took upon themselves an unusual Power, sine confutisdestine, as the Writ here mentions, in those Times, to charge not only themselves, but their Under-Tenants also: And that even this was an Encroachment, appears by the Statute, De tallaggio non concedendo, made 25th of Edward I. whereby it is expressly forbid that any Tallage or Subsidy should be laid upon the Kingdom sine volutate & afferend Archiepiscoporum, Episcoporum, Comitum, Baronum, Militum, Burgenjum; & aliorum liberorum dominium de Regno nostri. Now pray read my Lord Coke's Reaon in his 2d Inst. why this Statute was made. For the ad Caute (says he) was, that the King the Year before, had taken a Tallage of all Cities and Boroughs, without Assent of Parliament, whereupon arose a great Murmuring and Discontent among the Commons: For pacifying which Discontent between the King and his Nobles, and for the quieting of the Commons, and for a perpetual and constant Law for ever after, both in this and other-like Cases, this Act was made, &c. being no other (as the same Author tells us in the Conclusion of his Comment on this Statute,) than a Restitution General to the Subiects, of all their Laws, Liberties, and free Custom, as freely and wholly as at any time before, in better and fuller manner than they used to have the fame. But yet, that this was no general Scutage or Tax upon the whole Kingdom, but upon the Tenants in Capite, and their Tenants by Knight's Service alone, appears by the Writ it felt. So that not only all the Persons I have already mentioned, who being Tenants to Monasteries and Priories, did not hold by Knight's Service, and all Tenants in Petty Sergeanty, and all Cities and Boroughs, who did not hold in Capite (who it they had not then Representatives in the great Council, were wholly Free from this Tax,) and not only these, but all Tenants in Fee Soccage, whether holding of the King, or of other Mefin Lords, were wholly exempt from this Scutage. So that nothing seems plainer to me, than that this Assembly that gave the King this Tax for themselves and their Tenants, was a Common Council only of Tenants in Capite, charging themselves and their Tenants only, and not the whole Kingdom; and that done in a Cafe of great necessity, sine confutindestina: For if it had included all the rest of the Kingdom, there would certainly have been some mention made, how all the rest of the Kingdom (which did not hold by Knight's Service) should be Taxed.

And that this was a Council conflating of the Tenants in Capite only, may appear by a Record of the 42d. of this King, which I pray read. Rex Bar. &c. Quia per Commune Concilium Comitum, Baronon, & aliorum Magnatum nobisivum in Wallia nuper existentium, provisum est, & quod nos, & ipsi qui servium nostum fecerunt, ibidem habebamus Scutagnum nostrum, viz. De Scuto 40 Sol. pro Excipitu nostro Wall. Anno Regni 41. Vobis mandamus, quod de omnibus feodo Militium quae tenentur de Nobis in Capite, vel de Wardis in manu nostra existertibus, exceptis Procelliorum quae breviss noja nostra habeantur de Scutag, sine habendo) vocari fie. Scutag. Nostrum. From which Writ it appears, that this was only a Common Council of Tenants in Capite, who had attended on the King, and done their Service in this
Dialogue the Seventh.

Welth Expedition; and concern'd none else but fuch Tenants by Knights Service, and their Tenants who had fail'd to do their Service; and is such a Tax as is expressly referred by the late Claufe of King John's Charter, which is before cited; where- by Scutage is to be affixed by all the Tenants in Capite.

And that not only the Spiritual and Temporal Barons, and Tenants in Capite, did thus meet, and hold different Councils or Affembles for the granting of Scu- tage, but also that the Spiritual Barons, and other Ecclefiaftical Tenants in Capite, did alfo sometimes hold separate Affembles, appears by the Patent-Roll of the 15th of this King, thus: Cum pateremus a Preliuis Angliae quod nobis auxilium facerent, pro magnâ necessitate nofrâ de quid eis confabat; viz. Episcopis, Abbatisus, Abbatisia, Prioribus & Prioriffa, qui de Nolob tenent in Capite, ipfi Nobis liberaliter concurrerent Auxilium tale; viz. De singulis Feodis Miltium fuorurn 40 s. de tot Feodis, de quos ipfi tenentur nobis respondiere, quando nobis faciunt Servitium Militari. Where you fee, not only the Bishopfs and Abbots, but the Abbefles and Priorifles granted a Scutage of 40 s. upon every Knight's Fee, for which they were accountable to the King. And tho' I do not fuppofe that thefe Women left their Nunneries, and appear'd in Perfons at fuch Meetings; yet they might very well do it by their Occafions, or Stewards, as their Lawful Proxies for Affembles of that Nature. But when a General Tax or Aid was granted by the whole Kingdom, the Stile of thefe Councils runs much otherwife; as appears by the Clofe-Roll of the 4th of this King, where it is recited in the Record, that Omnès Magnates & Eledores Rot. Clauf. 4. rotius Regni nofrî, grandad de omniabet caruerat duos solidos. Now it hence ap- pears, that a Grant of Caruage, which now is an officia1 Service, and yet a Scutage-Tax, was therefore to be granted by the Common Council of the whole Kingdom, affhed not only upon Tenants in Capite, and their Feudatory Tenants, but upon each Plough-Land of the whole Kingdom, must have been granted (as I have already prov'd out of Bradton, speaking of this Caruage) de Confiens & communi Confinu rotius Regni; for otherwife thefe Tenants in Capite could never have charged all the other Lands of England which were not held by Military Tenure. And to make it yet plainer by other Records, pray fee another of the 16th of this King, in thefe Words: Rex Viccomiti Deum Salutem. Scitatis quod Archiprefopis, Episcopis, Abbates, Prioris, & Clerici terras habebant, que ad Eccles. 16. fias suas non pertinent, Comites, Barones, Militia, Liber Hiemini, & Villani de Regno nofrir, concurrerent nobis in auxilium, quadragesimam partem omnium Mobili- um fuorum. So that it is plain here who made the Commune Confinium Regni, and gave this Aid of a 40th Part of their Goods;viz. the Archbishops, Bishops, Abbots, Priores, Inferior Landed Clergymen, the Earls, Barons, Knights, Freemen, &c. which was a Subsidy granted upon Goods, or Personal Eftsates, and not laid upon Land, and could not be granted by the Tenants in Capite alone. And that it may possibly expris all the Parties to the Grant, the Record tells us, there were also the Villani, the Inhabitants of the Villages or Borough-Towns. And to let you fee that our Ancient Manuscript Chronicles of this Age give the fame Senfe to the Exprefions of this Record, and that in the fame Terms; pray read this Quotation, which a Friend of mine took out of an Ancient Manuscript, called Chronica sub Efficie Monoflerj de Hagemy, in the Cottonian Library, as ancient as the Times we are at. I prefume, B. now treating on. The Words are these: Ane 17. Henrici Regis Saxoni. (Where 11. fol. 20. note that the Year is miftaken for the 16th, but the King is the fame. Henry the Third being often in that Age called the Fourth, in refpeét to King Henry, Son to Henry the Second.) Ideo Rex acceptis ab Archiprefopis, Episcopis, Abbatibus, Prioribus, Clerici terras habebant, que ad Eccles. suas non pertinent, & ab Comitis, Baronis, Militia, Liber Hiemini, & Villani de Regno Angliae, in Auxilium quadragesimam partem omnium Mobilium fuorum. And to let you fee that this Author makes a plain Diftinguith between the Tenants in Capite, and the reft of the Kingdom, pray observe what immediately follows in the fame place; [ut] (An- no ejus obvius) in quo omnium Comitatus, & villarum Magnatum fuorum, quam aliorum Laicorum: Rotius Regni, quasdem Catarum fuorum universali accepti. Where note, by accept, is still to be understood he received it, after the Peoples Grant of it, as before in the Record of the 16th; and that by Mag- natum fuorum, is meant the Great Lords and Tenants in Capite; and by aliorum Laicorum, (put here as diffiCult from them) all other Orders or Degrees of Men. To Now
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Now pray, how could they thefe Taxes upon the Goods of the whole Kingdom have ever been given, but by the General Representatives thereof, (since all could not be there in Person) unless you can shew me, that Men in thofe Days held their very Goods and Chateels by Tenure in Capite.

M. I think you and I may fo far agree, that this Council I inflamed in, conflated of Tenants in Capite only, and likewise that they imposed Scutage upon no others than the Tenants by Knight Service; yet doth it not therefore follow, that they were not the Common Council of the whole Kingdom, or might not have Tax'd all others, tho' they were not their immediate Tenants, as well as they did thofe that were: And therefore I am not convinced, but that thefe Perfon mentioned in the Records you have cited, (which you grant constituted a Common Council of the Kingdom) were no other than the fame Tenants in Capite already mentioned: For as for the Fideles, mentioned in the Record of the 4th of Henry the Illd. I think the Doctor hath very well proved, both in his Anfwer to Mr. P. as also in his Gloryal, that they were no other than the King's Tenants in Capite: And for this, pray confider the Authorities he there gives us. For tho' I agree with you, that the Word Fideles doth sometimes signify (generally) all thofe who are under the Power or Subjeéion of their Prince; yet Hotman alfo tells us, That, Fideles interdum specialiter dicuntur idem qui Vajfla: Qui Feudo accepit in Patroni Vite, & Clientela sunt, vicimique suam et certi obsequii nomine Vitem annuareunt. And in this Sense, I suppose, this Word is to be taken in moft of our Afftrories and Records. I shall therefore give you one, which will sufficiently clear the true Signification not only of the Word Fideles, but of Liber Homines too. It is in William Malmesbury, in their Words: William fito foo, cum vel 12. A cunlucen eft, annes Liberis Homines, & cunlucen Ordinis & Dignitatis, cunlucen Dominis Fideles, Manibus & Sacramento fi dedere coecli sunt. By which you may fee, that by the Words Liberis Homines & Fideles, are here meant only the Feudal, or Military Tenants, either of the King, or of any other Lord. And to prove it farther by Records, pray you here thofe that the Doctor hath given us in the fame place. The drift is that of the Patent-Rolls of the 15th of King John: Rex Baronibus, Militibus, & omnibus Videlibus totius Angliae, Subiecit. They were to hear what the Bishop of Winchfilef was to fay to them about the Releafe the Interdict; and that thefe Milites and Fideles were only the King's Tenants in Capite, is clear from the latter Part of this Record: Uniqueque vexillum, fi fieri potest, Literas nostras super hoc transmissemus, sed Negolitum majori Festinatione, &c. Tefe Meipso audivi Repe, &c.

The King had writ to them all particularly, but that the Bifhops required greater Hafle. It feems, before the Granting of Magna Charta, this King lent special Summons, and particular Letters to his Baroafs, and other Tenants in Capite, to meet upon any Occafion. So likewife in these Writs there mentioned to the Tenants in Capite of several Counties, as they are found in the Clofe-Roll there cited: Rex omnibus Comitibus, Baronibus, Militibus, & alius fidelibus fuos de Com. Ebor. Northumb. &c. &c. Vobis mandamus quod Prompti fitis, & Parrati cum Equis & Armis, &c. Thofe were the Feudatories and Tenants in Military Service.

But to speak Somewhat of the Clerici Terras habentes, &c. as also of the Liber Homines & Villam, mentioned in the Records of Henry III. you have now cited: I cannot allow your Verfion of thofe Words Clerici Terras habentes, quas ad Ecclesias fuerunt non pertinent, by interior Landed Clergy-men, since 'tis more than you can make out; for I take them to be fuch Clerks, as had Manners and Military Fees not belonging to their Benefices, and that were held of the King in Capite, the Fee whereof was in the Crown, and not in the Church, and therefore did not belong to it.

But Mat. Paris, fol. 377, informs us better who they were that gave this Tax, when he speaks concerning this very Council you mention: --- Ad Colloquium eorum Regis concenervorum Epifcopi, & aliarum Ecclesiarum Prelati, cum Fratibus Regni, concessa efi Regi quadragesima pars honorum.

Now what the Liber Homines were in this Record you have cited, we may easily guess from the other Records I have made use of, in the 19th of Henry III. viz. such of thofe, Omnes efi qui de Nobis tenent in Capite; which were not Milites in a strict Sense, as not having received the Order of Knighthood. And I shall
Dialogue the Seventh.

I shall make out this Sense of the Words, as also of the true Meaning of the Villani, by another Record, dated but Two Years after this of yours, viz. 21 Hen. III. Rex Vic. Cant. Salut. Scias, cum eftavis Sancti Hillarii, &c. ad mandatum niifrum conveniret opud Wesim. Archiepiscopi, Epiftopi, Abbatue, Priorum, Comites & Barones totius Regni niifri ut tradarum haberebant noticiam de fta. niifro, & Regni niifri, idem Archiepiscopi, Epiftopi, Abbatue, Priorum & Clericis Terrae habentis, qua ad Ecclesias non pertinent, Comites, Barones, Milites & Liberi Homines pro fe & fuis Villanis nobis concederum in Auxilium Tracieffnum partem bonorum.

From this Record we may observe, 1. That the King's Writ was only ifi- ed to the Archbishops, Bishops, &c. Earls, Barons of the whole Kingdom. Pat. 221.

2. That in the Recital of this Tax, the Sheriff is told, firft, That the Archbishops, Bishops, &c. and the Clergy which had Land not belonging to their Churches (a certain Sign that they granted by themselves, and out of nothing else but that) and then that the Earls, Barons, Knights and Freemen for themselves and their Villains granted a Thirtieth Part of their Moveables.

And from this Record it is alfo manifest, thefe Liberi Homines had Villa- nos (if not Bondmen) Villagers or Rufficks, Colonos, or Husbandmen at leaf; of which Eftates by publick Affent, and for the publick Benefit, they might in part difpofe; which Liberi Homines, according to the Tenor of all our Records and Hiftories, were Tenants in Capite; and that the Villani mentioned in the other Record of 16 Hen. III. to have given a Fortieth Part of their Moveables, did grant by their Lords; that is, their Lords Paramount, that were thefe Tenants in Capite, did grant for them, tho' they held it not immediately of them, but of other Tenants in Military Service, which immediately held of the Tenants in Capite who did charge them by publick Taxes, hath been fhewn from divers Records: So that it was frequent in thofe Times to fay, Such, and fuch, concederunt, granted fuch a Tax, that is, by thofe who had Power and Authority to do it for them; and without their Consent too, when thofe for whom they granted were not capable of being Members of Parliament themselves. I could give you more Examples of the like Nature, but I will not tire you.

F. I pray, Sir, give me leave to anfwer this long Speech, and to begin with your Interpretation of this Word Fides. Firft then, we are fo far agreed, that the Word Fides had two or three different Significations. Firft, it signified all the Subjects in general; in the next place, all Vaffals, or Feudatory Tenants whatever, whether of the King, or any other Lord, as appears by the Pallage you have cited out of William of Malmesbury, as alfo divers ancient Charters, particularly thofe of King William I. and Maud the Emprefs, and King Stephen, which are divers of them directed, Fidelibus suis, Francisc & Anglia, which cannot mean Tenants in Capite, fince the Doctor and your felf will fcarce allow any Englifhmen to have then held Lands in Capite of the Crown. Laitly I grant this Word Fides may fometimes signify the Tenants in Capite of the King; all which being fo, I think you cannot deny, that it is not the bare Word, but the Sense it bears in the Place where it is used, that muft direct us to its true Signification; and that the Fides there mentioned to have granted Caravage in the 4th of Hen. III. could not be the King's Tenants in Capite only, I have given you a fufficient Reafon which you do not think fit to anfwer, viz. That Caravage was a general Tax imposed upon all the Lands of the Kingdom, as well what was held by Knight's Service, as what was not, and how your Tenants in Capite could Tax tho'fe Lands which were never held by Knight's Service, I defire you would resolve me. And therefore by the Fides here mentioned in this and many other Records, are not to be understood the Tenants in Capite only, but all other Subjects who owed Fealty; who, though they could not all appear in Perfon in our great Councils or Parliaments, yet were there by their Representative the great Freeholders, Lords of Manors, or elfe by the Knights, Citizens and Burgefles.

But I muft now make some Remarks upon your Interpretation of the Writs of the 16th and 21ft of Hen. III. wherein you have certainly very much mistaken the Sense of all the main Words. For in the firft Place, as for the
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Clerici terrarum habentes non ad Ecclesiæ pertinentes, which you interpret to have been Clerks having Manors and Military Fees not belonging to their Benefices, but held of the King in Capite, seems to be altogether forced. For whoever heard of Clerks (that is, inferior Clergymen) Parsons, or Vicars, or Churchmen, who held Benefices of the King in Capite, and not in Franc Almagnam? Or if they had any such, that therefore those Lands so held should be called Lands not belonging to their Churches, for at this Rate the Lands of Bishops, all Abbots, Priors, &c. which held of the King in Capite, would have been in your Senfe, Lands not belonging to the Church; but who but you and your Doctor ever gave such an unreasonable Comment on those Words?

Nor will that Passage you cite out of Mat. Paris, at all favour your Interpretation; for either those Bishops and Prelates there mentioned, gave this Fortieth Part of their Moveables in Parliament, with the rest of the Kingdom, or else as Clergymen in Convocation: If the former, then these Clerici could have no Votes there in Person; for I believe it would puzzle you to prove, that at this Time any Ecclesiastical Person, below the Degree of an Abbot or Prior, had any Place in Parliament, by reason of his Tenure by Knight's Service in Capite, for those Lands he held in Right of his Church; but if you'll have this Tax to be granted by the whole Clergy in Convocation, then such Clerks as you mention could not be there in Person: First, because they are said to be such as had Lands, quæ ad Ecclesiæ sive non pertinent, and so could not have any Place there as Clergymen; nor could they be included under the Prelati, since that Word takes in none beneath the Degree of a Dean. And therefore if those Clerks gave any Thing in Parliament, they must do it by their lawful Representatives in Convocation, the Clerks of the Lower House, then called Procuratores Cleri: So that take it which way you will, those Clerks could not be present themselves at those Parliaments, when those Taxes of the 30th and 40th Part of their Moveables were given to the King, and therefore either as Laymen or Clergymen, must be Taxed by their Representatives; But indeed the Words Proceres Regni, which immediately come after Episcopi & Prelati in Matt. Paris, sufficiently shews this Grant was made in Parliament. That the Word Proceres often includes, not only the Knights of Shires, but Citizens and Burgeeles too, I have already proved, when I spoke of the various Significations of that Word. Nor is your Interpretation of Liberis Homines, for Tenants in Capite, who Taxed their Villani, any other than a mere wringing of those Words; for if they were only those who gave for themselves and their Villains, whom you suppose were either their Bondmen, or else their Rufficks or Husbandmen, it is absolutely contrary both to Law and Reason; for who ever heard that Villains or Bondmen, who had no Property either in Lands or Goods, ever paid Taxes? And if you suppose that those Villani were only the Ruffick Tenants in Saccage by Villain Service of the Tenants in Capite, then it is plain that all the Military or Feudatory Tenants of the Tenants in Capite, and all Tenants in Free Saccage by certain Rent, were exempt from both these Taxes, since they are not so much as once mentioned in thes Writs, neither can be comprehended under these Villani, as your self must acknowledge: For if those Villani were meer Rufficks, pray tell me what Reafon there was to put them in the Class by Jole with their Lords, as they are in the Record of the 16th of Hen. III. as if they had given by themselves, as well as the rest of the Freemen of the Kingdom? Or what Reafon is there why the Lords (as the Words are in your Record) gave profe suis Villanis, if the Liberis Homines there mentioned, had not represented them? Which could never have been said with any Senfe, had they been only so many Matters over their Villains: Whereas it here appears, every one of these Orders or Degrees of Men here mentioned, had an equal independent Power to give for themselves, and not one for another. Or else this Word may be meant in a larger Sense, as in the Record of the 16th of Hen. III. where they are put in the Nominative Case (as equal to the rest of the Orders of Men there recited) and so could not be Husbandmen, or meer Villagers, but the Inhabitants of Cities and Boroughs. And which Senfe Sir Henry Spelman allows in his Glossary: Villanums eff quis in Villa habitat, ut Urbanus ab Urbe, &c. Villa autem prorsa notat Viciulum Rusticum, sed ex more Gallitici idiomatis traductum.
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ad ingensoppida, & ad infra Urbes; but take it in what Sense you please, it is plain it could not here mean meer Villagers; nor could all your Liberi Homines be only Tenants in Capite; for then the Record would have concluded thus, & Liberi Homines, qui de nobis tenent in Capite, as it is in the Records you have cited of the 10th of Hen. III. to the Sheriff of Suffolk, and may be found in many other Records, which respect only Tenants in Capite.

And for further Proof of this Sense of the Word Villani, we need go no farther than the very Records themselves, of the 16th and 21st of Hen. III. which you and I have now made use of, in both which Writs there are certain Perfons appointed to afford and collect the Aids in every County, and who, by virtue of these Writs, did cause to be elected Four of the best and most lawful Men, de singulis Villis of each Hundred in the Counties there mentioned; and then the Villani will signify in these Writs, not Villains or mere Rufficks who were not then reckoned inter Legales homines. And though 'tis true you have brought some Prefidents to prove, that the Tenants in Capite gave Taxes for their feudatory Tenants; yet that was only where the Tax was raised upon Knight's Fees alone, and not upon all the Lands of the Kingdom in general, much less upon Goods and Chattels. So that either the Liberi Homines mentioned in these Records, must mean all the Freemen of England, who by their Representatives gave these Taxes of a 40th or 50th Part for themselves, and all such of their Tenants, who held Estates of Copyhold Leaves, for Years, or at Will, or had Estates in Stock, Money, or other Chattels; for otherwise the Taxes could never have been general, nor charged upon movable Goods of the whole Kingdom.

I have but one thing more to remark upon your Observations of this Writ, which is, that whereas you take notice that the King's Summons was directed to none of the Laiety, but the Earls and Barons of the Kingdom; and if so, I desire you to prove to me, that your left Tenants in Capite were at all present at those Parliaments; for you have already granted that they were no Barons, and consequently could not be included under that Title; so that if these Liberi Homines who granted this Tax for themselves and their Tenants, were not only Tenants in Capite, but their Under-Tenants also by Military Services; or the Doctor himself grants in his Answer to Agrumentum Antonomanticum, p. 25. as also in his Glossary, p. 51. then it will follow by his own Conception, that others besides Tenants in Capite were under the Title of Liberi Homines were Parties to the granting this Tax in Parliament; which is that I contend for. So that unless you can prove that your Liberi Homines were all Tenants in Capite, you will never make out that none but they had a Right under that Title to appear at our great Councils or Parliaments; and to grant Aids, and join in the making of Laws for themselves, and the rest of the Nation, before the Times you allow. To conclude, unless you can also prove that there was a Tenure in Capite of Goods and Chattels, as well as of Lands, it will appear by these Aids granted in Parliament of Personal Estates, that all Freemen or Freeholders were alike Free, and consequently had the same Right to appear in Parliament, either by themselves, or their Representatives.

M. But pray make out if you can, by some more evident Proofs, that any other besides Tenants in Capite, were admitted into our great Councils; and that these Liberi Homines were not Tenants in Capite.

F. I think I need go no further than the first Words of the Agreement between King John and the Barons, which is still extant on the Close Rolls of the 17th of this King. (m. 2. doro) beginning thus, Hac & conventio inter Dominum Johannis Regem Anglie ex una parte, & Robertum Filii Walteri, Marquisalni exercitus Dei, & Sancte Ecclesie Anglie, & Rich. Comitem de Clare, &c. and here follow the Names of divers of the rest of the Earls and Barons, & alios Comites & Baronnes, & Liberos Homines totius Anglie; so that it is clear this Charter was granted in a great Council of the whole Nation, in which were assembled, not only the Bishops, Earls and Barons, with all your left Tenants in Capite, but also all the Clergy, as well the Inferior as Superior, and all the Freemen or considerable Freeholders of the whole Kingdom by whatsoever Tenure; or, as Mr. Selden words it in his Titles of Honour, Fol. 586, 587. it was made by the King and his Barons, and all the Freemen of the King-
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dom, which Assembly Matt. Paris expresseth more succinctly by these Words, tita Nobilitas Anglie in unum collecta, quasi sub numero non cadebat; so that nothing can be plainer, than that many other, besides your Tenants in Capite, appeared at this great Council.

M. In the first Place, before I answer the main of your Argument, give me leave to tell you, That I cannot allow this Assembly at Runnymede to have been truly a Great Council of the Nation, but rather a Rebellious Armed Rout met together without the King's Writs of Summons, and indeed, whether he would or no; and I suppose you will not assert that any Representatives had Votes therein; nor can you shew me that any Knights, Citizens, or Burgesses were summoned to it.

F. I grant indeed that that Assembly was not properly a Parliament, I mean such as we have at this Day, as not being called by the King's Writs; yet since almost all the Bishops, Earls, Barons, Tenants in Capite, and all the rest of the Kingdom were then in Arms; it may very well be reckon'd a Common Council or Solemn Convention of all the Freeman of the whole Nation, and that after the most ancient Manner; since all, or the greatest part of the Freeholders of the Kingdom were there present in Parliament. And that this Council is look'd upon as a Parliament in the Eye of the Law, appears by a Writ to the Sheriff of Northamptonshire, which is found in the Clole Rolls in the 28th of Henry III. to this Effect, That he should not permit any one in his Bailiwick to use any Liberties belonging to the Crown, unless they had formerly been used, ad Tempus Parliamenti de Runne Meado; quod fuit inter Dominum Johanne Regem Patent noturium, & Barones suos Anglie.

M. I see that you are forced to confess, that this Assembly was no Parliament in the Sense we now take that Word, nor indeed could be any more than a Rebellious Rout there met, whether the King would or no. And therefore the Word Parliament is not to be understood in this Record in the Sense we now take it, since that Word came not in Use here (instead of Magnum Concilium, & Commune Concilium & Colloquium, a Conference) until about the Middle of Henry III's Reign; and doth no more point out the Conspicuous Members of it, than that Word did at that Time. And so the meaning of the Word Parliament is to be taken in this Record.

F. I think I have a very good Reason, notwithstanding what you have now said, to affirm, That this was a great Council of Parliament according to the Mode of those Times: And tho' I grant it was not called by the King's Writs, since it is certain he avoided calling any, because he utterly refused to grant this Charter at all; yet that is not material; since they being a general and full Assembly, or Convention of all the Eftates of the whole Nation, had a just Right to meet, and vindicate their Liberties then outrageously opprrett, and trodden under Foot by the King. And the King himself owned them as a lawful Assembly, by lending to them, and appointing them to meet in Runnymede, between Staines and Windsor, on the 15th of June, which our Historians tell us they joyfully obeyed; so that he himself admitted them to be a Lawfull Assembly of Eftates, and consequently for his Parliament, as appears by the Agreement now cited.

M. I shall not much trouble my self, whether this was properly the great Council or not. But however, I cannot see how Mr. Selden could make out, that this Charter was made, or to all the Freeman of England: for it seems to me that there was not the least ground for it. For if under the Words Liberi Homines, all the Freeman, or Free-Tenants of what Condition ever, were comprehended; yet here is nothing in this Record that any way proves that they had any Hand in making this Charter; but the true Liberi Homines here were only those whom the King calls Liberi Homines Nofri in his Charter, and immediately grants them several Relaxations of their rigid Feudal Tenures, by which 'tis apparent, these Liberi Homines, were the Tenants in Capite, and yet neither was the Charter made by them, as is before intimated: Tho' I confess these were the Freeman which made such a Cry for their Liberties (most of which were but an Abatement of the Rigor, and a Relaxation of the Feudal Tenures, as appears by the Charter it self;) the rest were only Followers, and helped to augment the Noise; they were no Law-makers as you imagine; For

B.A. P. 71.


B.A. Gp. 155.

B. G. pag. 51.
Dialoge the Seventh.

'tis not probable, that those Men that had the Force of the Nation in their Hands, would permit Men of so small Reputation to share with them in Law-making. Those that had the Power of this and other Nations de Feste, always did give Laws and Tax the People.

F Supposing this, (as I have already proved it,) to be a Lawful Common Council, or Parliament of the whole Kingdom, I think I may still affirm that this Charter was made, not only by the King, but by the Bishops, Earls, Barons, and all the Freeman of the Kingdom, who certainly gave their Affent to it, by drawing it up into Form, and by accepting it from the King when paid under his Seal, as truly as the Magna Charta's of King Henry III, and Edw. I. are called Statutes, for the fame Reason as I have already proved to you; or as much as the Petition of Right granted by King Charles I. was a Statute, tho' past under no other Form.

Nor were the Liberis Homines totius Regni, to whom King John granted this Charter, no other than the Tenants in Capite, as you suppose, since in the Time of Henry II. this King's Father, the Word Liber Hono was taken in a much larger Sense, as appears by the Affite of Arms ordained by this King (as it is recited in Hovenden's History) where after it is appointed, what Coatlets, Helmets, and other Arms every Tenant in Capite should find, it immediately follows thus: Quicunque liber Lucus babueris in Catello vel in redditu ad Valentiam 16 Marcarum habeat Loricam, & Cofidam, & Copeam, & Lanceam; Quicunque Liber Lucus babueris in Catello ad Valentiam 10 Marcarum habeat Harbergellam, & Capelit Ferri, & Lanceam: Et omnes Burgenjes, et tota Communia liberorum hominum habebant Wambus, & Capelit Ferri & Lanceam: Where you may observe, that every Freeman who was worth in Rent or Goods, to the Value of 16 Marks, was to find as much Arms for the Defence of the Kingdom, as he that polleped a whole Knight's Fee; and the meaneft Townsman, and the whole Commonalty of Freeman (for fo I translate the Words, Communia Liberorum hominum) were to find a Caplet or Head-piece of Iron, besides other Weapons. And the 2d Article of King John's Charter says expressly, Consecratus etiam & omnibus Liberis Hominibus Noftris Regni Anglia, pro Nobis & Hereditibus Noftris in perpetuum omnes Liberates subscriventes, hanelden & tenendes eis, & hereditibus Ius de Nobis & Hereditibus Noftris. Which the Doctor himself renders thus: We have also granted to all our Freeman of the Kingdom of England, &c. And sure then this Charter could not be made to none but Tenants in Capite, unless you will suppose that none but they were Freeman, and all the rest Slaves.

Nor was this Charter only made to relax the Severity of the Feudal Tenures, as you suppose; since there are divers other Clauses in it which concern all the rest of the Freeman, and Freeholders in England, as well as they. For besides the First and Second Chapters of this Charter, which grants and confirms to the Church of England, and to all the Freeman of the Nation, their Rights and Liberties; if you please better to consider it, you will find that there are several other Chapters in this Charter, by which all other Freeman, as well as the Tenants in Capite, have an Interest in the Liberties there granted, as you may see by the 10, 11, 12, 13, 15, 16, 22, 23, 24, 25, and above 30 other Chapters or Clauses therein express'd, which are granted, not to Tenants in Capite alone; but either to Ecclesiastics, or other Lay Freeman of the whole Kingdom. But to prove this a little further, I shall give you but one or two Inferences out of this Magna Charta; and that too in the Doctor's own Translation: Article 48. 'No Freeman (shall be) taken, or imprisoned, or disfranchised of his Free Tenement, or Liberties, or Free Culfoms, or Outlawed, or Banished, or any ways Destroy'd, nor will we pass upon him, or commit him to Prifon, unless by the Legal Judgment of his Peers, or by the Law of the Land (i.e. by Legal Proceeds.) The other is the 49th Article of this Charter, That we will not sell to any Man, we will not deny any Man, or delay Right or Justice: Now judge your self, whether these two Articles were made to the Tenants in Capite alone, or to all Freeman of the whole Kingdom.

And hence it also plainly appears, that the same Body of Freeman to whom this Charter was made, were likewise present, and gave their Affents to the making
making of it: Not were Vassals, or Feudatory Tenants of the Bishops, Abbots, Great Lords, and other Tenants in Capite, Perions so inconsiderable as you would make them, that they only should come hither but as Followers, to augment the Nolf; since I have already proved from Bradf. that there were divers of them Men of great Estates and Power in their Countries; besides the Tenants of thofe Abbots and Priors, who (as I have already mentioned) did not hold in Capite of the King at all, and yet made a great Part of the Kingdom; besides Tenants in Pefy Serjeanty, and thofe that held of great Honours, or Manors, who could never be represented by the Tenants in Capite at all. And therefore I must (notwithstanding what you affirm to the contrary) look upon all these Perions for as good Law-makers, as the greatest Lords or Tenants in Capite of them all; since the main Force of the Nation did not lye in them, but in their Feudatory Tenants, who would never have followed their Lords in this Assembly, if they had not look’d upon themselves as having as good an Interest in the Rights and Liberties they demanded, (as appears by the like Salvo of all their Liberties) as their Lords themselves; and also as good a Right as they, in giving their Affent to them, when they were to be pass’d into a Law, as they were by this Charter; since these Feudatory Tenants were not at all oblig’d by their Tenure to obey their Lords Summons at any other Warlike Expeditions, but where the King, or his Lieutenants, went out in Person.

M. I am very well satisfied that this could be no Parliament, for the Reasons already given: And do I grant that these Charters were made to; and in the Presence of the greatest Part of the Clergy, Earls, Barons, and Freemen of the Kingdom; yet this proves not that they had any Vote, or Suffrage, in making of them; nor indeed could they, for the Great Charters were only the Perions, drawn into the Form of a Charter, and pass’d under the King’s Seal, as his mere voluntary Free Grants and Concessions, without any Votes or Authority from the People. And therefore the Great Charters of Henry III. requires them to have been made of his mere Grace and Free Will; as it is in the Preface to it. But pray anfwer me a few plain Questions, concerning King John’s Charter; which if you can resolve, I may be inclined to believe there might be some other Great Council, besides that of Tenants in Capite. The first is, If this Common Council of Tenants in Capite, were for Affenting of Aids and Eneaux only, (as you suppose it is provided by the last Clause of this Charter) why was the Affent of the Meeting to be declared in every Writ of Summons, to the Great Barons, and Tenants in Capite? If they were only summoned about Aids and Eneaux, or other ordinary Bvines of Courfe; sure then the Affent of Summons need not to have been declared as it is here provided; in omnibus litteris Subnumitionum, cum omnibus Subnumitionibus illius exponens.

F. I will give you an Answer to this Question immediately; but before I do it, let me tell you that you are much mistaken, in saying, that the Great Charters (because they were the King’s Free Concessions) were therefore pass’d without any Votes, Suffrages, or Authority of the People of England; since I have already proved, in our Diffour concerning the Legislative Power, that the Matter of those Charters was no more than an Affirmative of the Common Law of England, long before your Conquest; and that the Peoples Consent and Suffrage was sufficiently given, in their drawing them up, and offering them to the King to be seal’d, and accepting them from him when he had done it; And therefore the Great Charters are always called Statutes, in our Ancient Records, and Acts of Parliament. But to anffwer your Question; I suppose that the King, besides the ordinary Bvines of their Affenting Eneaux, had often other Affairs of Moment to be transfer’d with, and communicated to his Bishops, Great Lords, and Tenants in Capite, in which the reft of the Kingdom were not at all concern’d; such as giving the King their Advice, as a Great Council, concerning divers weighty Affairs, (as in the Bvines of Sicily, mentioned in the first Record I have cited) as afo about undertaking Foreign Wars against France, Scotland, Wales, &c. in which they were bound to follow, and affift him, together with their Under Tenants, according to their respective Tenures; and therefore it was but Reason that they should have timely Notice, that they might give their Advice in it; as afo that they might either come, or be lay away, according to the Greatness or Urgency of the Occasion; and might afo give their Under Tenants...
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Notice, to provide themselves with Horfes and Arms, and all Things necessary, in case a War should be agreed on: Which, I think, are sufficient Reasons for thus expressing the Causes of their Meeting in the Writs of Summons.

M. Admit this were so; (which I shall yet take further Time to consider of) pray tell me, in the next place, if all your Inferior Barons, Vassals, or Lords of Manors, &c, supposing them either to have appeared in Person, or else as chosen for Knights of Shires, who were the Members of the Great Council of the Nation; I pray tell me, why there should not have been the same Care taken, that they might be also summoned as well as the Tenants in Capite? Certainly they came not to them by Infallible; nor is it scarce probable that they would leave their Country-Business, to travel from one remote Part of England to another, to those Great Councils, (which seldom continued above three or four Days) if they had not had a Right so to do.

F. I shall answer you in few Words; because it was not at all necessary to express that Clause you mention for them all, since it was sufficient therein to follow the old Course of Summoning the Common Council of the Kingdom; for doing which, it had always been the Custom to give sufficient Notice by Writs of Summons of their Meetings: Whereas in this Council of Tenants in Capite, B.A.P. p. 68, since there was by this Charter some Alteration in the Manner of their Summoning, so there was also for expressing the Cause of their Meeting: For whereas before that (as the Doctors himself allows) all the Lesser Tenants in Capite had particular Letters, or Writs of Summons, expressing the Cause of their Meeting; they were for the future to be summoned by General Writs directed to the Sheriffs; and therefore it was but Reason, that there should be a particular Clause referred for their General Summoning, which there was no need of in those Writs that were illused for the Summoning the rest of the People, or Commons, to the Great Council, or Parliament; as I doubt not but it would appear, in case we had those Writs to produce: In which likewise there was ancienly often expressed the particular Cause of their Meeting; as there was, for instance, in those famous Writs to the Lords and Commons of the 49th of Henry III. which the Dr. hath given us in his Answer to Mr. P. B.A. P. 137.

M. But I have still a greater Objection behind than either of the former. You cannot deny, but that the first Clause of King John's Charter, (which I have made use of) all Aids, and Exigues, were to be imposed by the Common Council of the Kingdom: And Littleton himself tells us, in the Second Book of his Tenures, That Exigus is always to be assessed by Parliament, upon those that failed to do their Services, after the Expedition was ended.

Now if this had not been a Right Inherent to the Great, or Common Council of the Kingdom, but that the Tenants in Capite alone assessed it in King John's Time; how came they to lose that Privilege, and the Great Council of the Kingdom (or Parliament) to get it, if the former had not been the Only Great Council at the first?

F. I hope to give you as satisfactory an Answer to this, as I have to the rest of your Demands. This Alteration might have fallen out two ways; either according to Cambden's old Manuscript Author, cited in his Introduction to his Britannia, the Sum of which is, That when King Henry III. after his great Wars with Sim. Montford, and the Barons, had ruined many of them; he, out of so great a Multitude, (which was before didious and turbulent) called the left and chiefest of them only by Writ to Parliament; who, after that Time, became Barons by Writ, and not by Tenure, as they were before. And as for the Lever Sort of them, called Barones Minores, they might be wholly revol'd into the Body of the Commons, or ordinary Sort of Freeholders: And the King being fearful of any farther Increase of Power in these Barons and Tenants in Capite, might no more define their Company at the usual Feasts of the Year, whither before they used to come et loco; and so their Power fell of course to the Council, or Parliament, of which before they only made a Part.

Or else it might happen from the Negligence of the Tenants in Capite themselves; who growing weary of their Attendance, might neglect to come to those Common Councils held of course, because of the great Trouble and Charge of those Journeys; and the King being as willing to disperse with their Presence, this Court was lost by Non-usage; and so the Judicial Part of it remained in
the Houfe of Peers, and that of affeding Eficura, and advising and giving Aids in matters of War, fell wholly to the Great Council of the Kingdom; of which these Tenants in Capite, by their being capable of being Eled Knights of Shires, soon became the Principal Members.

But that I may have my turn to ask Questions; Pray tell me, if your Common Council of Tenants in Capite, were the folc Council of the Kingdom, or Parliament as it is now called, why are there no other Rights or Privileges referred to this Council, but this of affeding Eficura? Were not the Powers of granting other Taxes (which could not be included under the Word Eficura,) and also of giving their Affent to Laws, things of as great (nay greater) moment than this of affeding Eficura?

M. I shall give you as short and satisfactory an Answer as I can to your Query. There was no need of inferring any Clause to this Charter, of referring or conferring any Power to this Common Council of granting Taxes, and giving their Affent to Laws, because they were things which at that Time they had no reason to complain of; since we do not read that King John (as Arbitrary as he was) ever took upon him to make any new Laws without their Consents; and besides, it was implicitly referred to them by the latr Clause of this Charter, viz. Saving to the Archbishops, Bishops, &c. Earls, Barons, Knights, and all others, &c. the Liberties and Free Customs which they had before. So that there was no need of any other Clause than this, because it had been not only the Custom but the Law of the Kingdom, for the King to lay Taxes and affeds Eficura upon the Nation, without the Consent or Assistance of this great Council; which grew now so great a Grievance, that they would not be contented, until the King by this Charter had renounced it.

F. I shall not now trouble my self or you, to confute this mistake of yours, That the Kings of England could legally raise Taxes upon all their Subjects without Consent of their great Council, or that they ever exercised such a Prerogative, unless it were in the violent Reigns of the Two Williams; and then if it was ever done, it was only upon their English, and not their Norman Subjects; the latter being exempt from it by the very Magna Carta of King William I, by your own Confession. Nor would they, I believe, have born it at his Hands; but I shall speak more particularly of this another Time. Only pray give me leave to ask you this one Question. If this Charter of King John had been intended as a confiant standing Rule or Form, not only for this, but all succeeding Common Councils or Parliaments; what could be the reason that this Clause you fo much insist upon, of Summoning all Bishops, Abbots, Earls, Barons, and all the rest of the Tenants in Capite, should be omitted in the great Charter of Henry III. granted in the 2d Year of his Reign; and but Three Years after the 17th of King John (when the Charters were first granted) as also when it was again confirmed in the 28th of Henry III. For can any one of Sensi imagine that fo material a Clause as this, and fo express for the Rights and Privileges of the whole Body of Tenants in Capite, as the sole Representatives of the whole Nation, could have been omitted, had they alone in those Times constituted the Common Great Council of the whole Kingdom? How then comes it to pass, that in all the Records of Henry III.‘s Reign, wherein this Charter is mentioned, it is always recited Magna Carta Noftra, viz. his own Charter, without taking notice of his Father’s? I should be glad to receive a satisfactory Answer to this Question from your self or any other intelligent Perfon.

M. I hope I may give you a satisfactory Answer to this Scruple, which I think may be thus satisfied. I conceive that the first Great Charter we have, which is commonly attributed to Henry III. and filled his Charter in our Statute Books, was properly the Charter of Edward I. or perhaps, rather his Explication or Enlargement of those Charters of King John and Henry III. For we find not the Great Charter, either of that or King John’s, in any of the Rolls, until the 25th of Edward I. and he had a greater Sum of Money for confirming this Charter, than Henry III. had. Now in this Charter then confirmed, there is no Provision made for any Summons to Great Councils or Parliaments; and the Reason may well be, because the Constitution of Great Councils or Parliaments was lately changed from what it was in the beginning of
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of King John's Time, and till the 49th of Henry III.; nor perhaps was it so fixed, and peremptorily resolved on at this Time, what it should exactly be for the future, as to have made it an Article of the Charter. And to this Conjecture the frequent Variations of Summons to Parliaments in those Times, do give a probable Confirmation.

F. I am not at all satisfied with this Supposition of yours. For I doubt not but to prove that it is altogether vain, and grounded upon no good Authorities, either from History or Records; but I shall shew you before I have done, that the Magna Charta which we have still upon Record, by Injuximus of Edw. I. is the very same Word for Word, in all the material Parts of it, with that of Henry III. both of the 24th and 49th Year of his Reign; and that there was no Alteration at all made as to the manner of it, as summoning or chusing Members of Parliaments from the beginning of this King's Reign to the very end of it. Nor yet in the Time of Edward I. as you suppose.

M. I should not be displeased to see that proved, though I think I am able to shew you the contrary. But before we proceed to that, I must needs tell you, I am not yet satisfied that there ever were anctently Two Councils; one of the Tenants in Capite, and the other of the whole Kingdom; for methinks not only your self, but Mr. Petyt, and Mr. Arundel his Second, have fallen very short of their Proofs they have brought in this Point; and there is nothing in the Debate, whole Answer to them, in which (in my Opinion) he hath obtained a clearer Victory, therefore pray give me some better Proofs of this Divinefiton, if you have any.

F. I did not imagine I should have needed to have spoken any further upon that Head; yet since you now require it, I shall obey your Commands. Since therefore you tell me that the Times before your Conquest are obscure, and the Authorities uncertain, I will give you a short History of these Councils, beginning with King William I. and so going down as low as Henry III. So far then we are agreed, that the Council of Tenants in Capite, met ex more at the great Festis of the Year; and that they also granted the King Aids, or Subsidies, to be Levied upon themselves alone; as I grant, appears by the Writ of 19th of Henry III. which you have but now cited, directed to the Sheriff of Suffolk.

But that this Council which was thus held ex more, was also often Summoned to meet at other Times when the King's Occasions required it, is also as certain; as appears by this Writ of the 26th of the same King, which I shall read to you, Rex Vice-comitis Northampston, &c. Pracipimvs tibi licet alius Pracipi- mens, quod Summiniari facias Archbispobus, Episcopos, Comites, Barones, Abbatis, Priorés, Morte, & liberos homines qui de nobis Tenent in Capite, eodem modo scribitus omnibus Vice-comitis Anglia: Which Writ extending only to those who held in Capite, could never be a Summons to the Common Council of the whole Kingdom: for then this Restription had been needless, qui de nobis Tenent in Capite, and it would have been known who had a Right to come to this Council, if these Words had not been inferred; so that this seems to make a plain Difference between these Liberis homines qui de nobis Tenent in Capite, and the rest of the Freeman of the whole Kingdom.

But when Eadmerus and other Ancient Historians mention the great or Common Council of the whole Kingdom (afterwards called the Parliament,) then their Expressions are more general and comprehensive; for proof of which, pray consult the Old English Saxon Annals, continued down to the Time of Henry I. wherein anno Dom. 1085. (being the last Year of William I.) there is a remarkable Passage which I shall here give you in English. 4 At Christmas, the 4th King (viz. William I.) was at Gloucester with his Nobles, and there held his 4 Court or Cour (in Saxon his Hired) Five Days; (and immediately after it followed thus:) Presently after this he held a Great Council [in Saxon. Mycel 4 Godholte] where he had many great Discourses with the Nobles, &c. Now it seems plain to me, that this ordinary Court (here called his Hired) could not be the Great Council of the Kingdom; for to what purpose should it meet again so quickly, if it had been the Common Council of the whole Kingdom? Or, why are they here called by different Titles, the one his Hired, or Court, and the other...
other the Mycel Gerbe, the Great Council, which is also called commune Concillium totius Regni, in Sir Henry Spelman’s Councils in this very Year.

And as you are more plainly the Difference between this Great Council of the whole Kingdom, and the Leffer Council of the King’s Barons and Tenants in Capite, pray see Eadmerus, who relating what was done in a great Council held at Eafter, immediately before the Invasion of Robert Duke of Normandy, in the 20th Year of Henry I. SAYS, there met tota Anglia Nobilitas, cum Populi numero, and then Archbishop Anselm engaged for the King, that he should Govern the Kingdom according to the just Laws thereof. Where you see, that besides the Noblemen and Gentlemen, here called, Regni Nobilitas, there was also a great Number of the Commons, here termed in the Barbarous Latin of that Age, Populi numero,

But when the King held his Curia of the Great Lords and Tenants in Capite alone, the Expressions are more particular as may appear by many Charters of our first Norman Kings to several Abbeys of their own Foundation, which are said to be made Confoilo & Affenius Barorum Noporum tam piritum quam laicorum; as you will (for Example) find it in the Charter of Henry I. to the Abbey of Abington, as it is exemplified in the Ancient Manuscript Register of that Abbey, now in the Cottonian Library, in which Book you will find more of the like Nature, which plainly make out this Difference between this Lefs Council of the King’s Barons and Tenants in Capite, and the Great Council of the Kingdom.

And for a further Proof of this, pray see the Infrumpntion of King John’s Resignation of his Crown to the Pope, as you will find it at the end of Doctor &c’s compleat History, which is recited to have been done Commune Concile Baronum Noporum, that is, by the Common Council of the King’s Barons and Tenants in Capite, a great Number of whom were there present in Arms against the Landing of the French King, then expected. And yet this was never looked upon to have been done per Commune Concilium Regni, since this Resignation was declared void by the Bishops, Lords, and Commons in full Parliament, in the 40th of Edward III. because done sine lavo Affenti, as it is in the Parliament Roll of that Year.

But whenever the whole Great Council or Parliament was summoned to assemble, then this Leffer Council of the Tenants in Capite, must needs meet also, as being a principal part of it. And then the Expressions were more comprehensive, as I have already noted; and our Ancient Historians do, in my Opinion, by their Expressions, plainly signify an Union of both these Councils to make up the Common Council of the Kingdom; as appears by the Letters which the Prior of Canterbury wrote to the Pope, upon the Election of Ralph Bishop of Rochester, in the 14th of Henry I. to the See of Canterbury, as you find them in Eadmerus, (Lib. 2. Fol. 314,) and which is there said to have been made ad consistere Consilium simplici; that is, in the united Assembly of all England, viz. as it follows immediately, the Episcopi, abbates & principes Regni, & ingenii Populi multitudine. So likewise Hoveden in his History, (Vol. 273.) Anno 1121. (being the 15th of Henry I.) relates the King’s Marriage with the Lady Adeliza, Daughter to the Duke of Louvain, to have been celebrated at Windsor, ad consistere Consilium Regni, i.e. in the United Council of the whole Kingdom.

I am not yet satisfied with your Proofs; And I doubt not but to show you that this Division of your Friends Mr. P. and Mr. A. his Second, between the Common Council of the Kingdom, and the Council of the Great Lords and Tenants in Capite, will prove but a meer Chimera of those Gentlemen, from whom you have borrowed it; for there was indeed but one Common Council of the Kingdom in those Times, viz. that of the Bishops, Earls, Barons, and other Tenants in Capite.

And therefore in answer to your First Authority from the Saxen Chronicle, I shall give you another of the same King’s Reign, which will shew the different Expressions of this great Council by Hired, and Miscel Gerbe, to have been the particular Macy of that Monkish Writer, and it is from Gertrude Dorobornenge, de Alien Pontificum Canturiensis. Ecclesie, where you may see in the Decem Scriptores, this Paffage, Anno 4. Regis Wilhelmi 1. Anno Dom. 1070. 2

Lanfrancus
Dialogue the Seventh.

Lanfrancus Cadomensis Abbas electus fuit Archiepiscopus Cantuarensis a Senioribus ejusdem Ecclesiae cum Episcopis, & Principibus, Clero, & Populo Anglice in Caria Regis in Assumptione Sancta Maria, where you may fee that this Confirmation of the Archbishops was made in the great Council of the Kingdom, which is nowhere called collectively, or all together, (and not one Part of it only) Caria Regis. As for the Words which make up the constituent Parts of this Council, we have sufficiently debated them, and therefore I need say nothing more concerning them.

But tho’ the Dr. has given us more Authorities to prove this, yet I shall make use of but one more from Eadmerus, it is in the Reign of Henry I. R. 123. thus, in Subsequenti Nativitate Dom. a Christi Regnum Angliae ad Cariam Regi Laudam in pro more convenient, & magna Solemnitate habita eft, &c. This Infallence is full in all Points; here is the whole Kingdom, that is, the whole Barony or University of England, (for Brandon tells us, the whole Kingdom confined of Earldoms and Barones) who met according to Cutham, at the King’s Court: And hence it is manifest, that at those Times the Common Council of the Kingdom was held, and from this also, as from the former Instances, that the Barones, Principes, & Optimates, & Majores Regni, did at those great Feasts, pro More, according to the Custom, frequent the King’s Court, and were the only Persons that constituted that great Assembly.

F. But pray give me leave to interrupt you a little. Did I not tell you but P. R. C. that the King did often convene the Common Council of the whole Kingdom to meet the Bishops, great Lords, and Tenants in Capite, at one of these Feasts, and so it might be an Assembly ex More in respect of them, but extraordinary to all the rest of the Kingdom; and this often happened at other Times as well as at these Feasts, according as the King’s Occasions required, when all the others were summoned on purpose.

M. I have already answered that Objection; and granting it might be so, it does not prove it was so. But I desire you to tell me what you can say to this Exposition in the Authority I have now made use of from Eadmerus, Regnum pro more convenient, which is spoken of the most general Council when ad. 50. the Kingdom of England then met at the King’s Court. So that your small Criticism upon the Words adunato Concilio or Concilio, as if they signified this Union or Combination of two Councils into one, is but a meet Fancy of your Authors, those Words signifying no more than a gathering or meeting together of all the Persons that constituted that Assembly, as appears by the Words In Eadmerus, Adunatus (without either Praepoto or Solemnon Regni) ad Curiam ejus in praecepta Terra Principibus, i.e., the chief Men of the Nation being assembled at his Court at Easter.

But as for your main Inference of King John’s Resigning his Crown to the Pope in a Common Council of the great Lords and Tenants in Capite, but not of the Common Council of the Kingdom, I confess it were very considerable if it were true; for tho’ in all the Charters of this King’s Resignation, the Words you mention, viz. Communi Concilio Barorum nosterorum are inserted, yet it could not be a great Council; since tho’ I grant that all the Tenants in Capite were at that Time summoned to appear in Arms against the King B. A. 9. of France, yet it being a Military Summons for the gathering together of an Army, and not for the Meeting of a great Council; for the five professed Bishops were in France, and the Barons that sided with them, fled beyond Sea, nor daring to appear; so that this Resignation having been Executed before so small a Number of Barons as appears by the Witnesses to it, viz. but Two Bishops, the chief Judicature, Seven Earls, and Three Barons, without subjoining & ads Episcopos, Comitibus, & Baronibus, or & Communitate, or tota Communitate, it does not appear that there were any more present; so that this could not be such a Council as was constituted by King John’s Charter, that is, it was not a Parliamentory Council, or general Representative of the whole Nation; and therefore the Parliament in the 40th of Edward III. might very well say, the Resignation was made without their Assent; and so I think this great Argument of yours comes to nothing.

F. Pray do not triumph before the Victory. For I doubt not but to prove, notwithstanding what you have said, that this was a real Common Council of the
the Barons and Tenants in Capite, in which King John resigned his Crown, tho' not of the Kingdom, which I prove thus. First, it appears by all our Historians, that King John had put to mount all the Earls, Barons, Knights, and Freemen of the Kingdom, wherever they were, and of whomsoever they held, to appear in Arms, which made so vast an Army, that after all the ordinary Rabbles were sent home, Matt. Paris tells us, that the Knights, Esquires, and Freemen that they had behind, made an Army of Sixty Thousand Men, who were encamped at Barham Down, not far from Dover, where this Resignation was executed: So that this being almost as great a Meeting as that at Runne Head, the King might about the same Time very well have summoned at last a great Council of all his Tenants in Capite, to countenance this Resignation, and that he did do so, the Charter it self says expressly, which had it been otherwise, would have appeared a notorious Liye to the whole World. Nor are your Objections to the contrary confiderable. For, you say this was only a Military Summons, and not to a Common Council, yet such a one as was constituted by this King's Charter, which sure could not be at this Time, when that Charter was not yet made till the Year after, before which, you grant, that the great Councils, might have met without the 40 Days Summons, expressing the Caufe of their Meeting; and if they could meet ex More, as you grant this Council did at the great Feals of the Year, without any Summons at all, sure they might as well meet now on such an Excipency: The King had, 'tis true, summoned them at first upon another Occasion; but say you, there was no small number of Barons at this Meeting, that it could not be a Common Council of the whole Kingdom, neither do I say it was, but the contrary; but how doth it appear it was not? Why say you, Five of the Bishops were then fled into France, with a great many of the Barons of their Party. The latter is not true in Fact; few or none of the Barons riding with the Bishops, but as for the Bishops, what if Five were absent? Were they not enough left to have made a Common Council of the rest of the Tenants in Capite? Well, but there were but Two Bishops present, and Seven Earls, and Three Barons, as appears by their Names at the End of this Charter, without any mention of more, or of the whole Communities being there. A special Reason, as if no more could be present at this Assembly than whose Names are to it; by this Rule, the great Charters of King John, and 9th of Hen. III. were not made in a great Council of the whole Kingdom; for there are no Witnesses Names expressed at the End of them, 'tis true, at the Beginning of these Charters it is said they were done by the Council of certain Bishops, Earls, and Barons, which yet were but a very few more of all Sorts than there are mentioned at the End of this Charter of King John's Resignation: So that this Appearance of the Bishops, Earls, and Barons, and Tenants in Capite is merely precarious; for if more might very well have been there, it is most likely they were, notwithstanding the Pauclity of the Witnesses to this Charter; since those were added only for Form sake, and were commonly those who were nearest the Throne when the Seal was put to it.

I confesse your first Objection is more material from Endemus, of the whole Kingdoms meeting the King at Christmas ex more, without any Summons mentioned, to which it may be replyed, that there might be a Summons to the whole Kingdom to meet, as well as to the Tenants in Capite, and this happening at Christmas, one of the usual Times of their Meeting, this Author might apply the Title of this Court to the Council of the whole Kingdom: And that this was so, will appear from an Anonymous Author who wrote in H. I. his Time, publifh'd by Mr. Sylas Taylor, in his History of Gavel-kind, (p. 194) who relates this Election of Archibishop Lanfranc to have been made Community Confecto & Confito omnium Barothum saxorum, omniumque Episcoporum, & Abbatum, totiusque Ecclesiae; which certain must mean somewhat more than your Council of Tenants in Capite alone.

And this also is confirmed by Matt. Paris, who has been so careful, as to mention a Summons to a great Council immediately after the holding of the Cartia of Tenants in Capite at Christmas; the Words are thus: Anno Dom. 1237. i.e. the 21st of Henry III. tenens Rex curiam suam ad natalis apud Winton mist, autem continuo per omnes fines Angliae Scripta Regali precipit omnibus ad Regnum spectantium, Archiepiscopos, Episcopos, Abbatibus, Prioribus, Comitis & Baronibus, ut omnes in octavo Epiphanii Londinum convenirent. Now gray
pray tell me, if this Curia held ex more at Christmas, had been the Great Council of the whole Kingdom, consisting of the Archbishops, Bishops, Abbots, Earls and Barons, and other Tenants in Capite, to what purpose should the King continuer, i.e. immediately after issue out his Writs for Summoning the very same Persons to meet him at London on the 24th of St. Hilary, when they were then all with the King at Winchester, and that he might then have communicated what he had pleased to them.

Or what have you to say to the Curia or Council held before, in the Ninth of this King, but Eleven Years after King John's Magna Charta, when the Great Charters were confirmed, and an Aid granted by the whole Kingdom? which Matt. Paris, Anno Dom. 1225. relates thus: (which tho' I gave you at our last meeting, it will not be amiss to repeat again:) Rex Henricus post natali tenet curiam suam apud Westminster, praeternim curam Clero & Populo cum Magnatibus Regni, which Words (as I have already urged) must comprehend some other Persons than your Tenants in Capite alone; otherwise the Word Populus had been altogether in vain. So that you see the Common Council of the whole Kingdom was often held at the same Time with the ordinary Curia, and is by way of Excellency called by the same Name as we at this Day call the Great Council of the Kingdom, the High Court of Parliament: And Curia and Court differ no more than a Latin Name from an English; which is likewise very well confirmed and explained in the Chronicle of Walter of Coventry (to be found in divers Libraries) who lived in the Reigns of King John and Henry III. and speaking of this very Council or Parliament (which though it might begin at Christmas with the Curia, yet it seems held on till Candlemas) when the Commons were joined to it; he says thus: In Purificatione beate Maria concepitur apud London, Procurae Anglie, ibid. triduum habito diffusoere, cum Clero, & Populo ibidem vocato, Rex concilia Liberae Domus Ecclesiae, quam Regni, quum fores, frater curiae suae sunt inde conciliis. Now I leave it to your self to judge, whether by these Words, Triduum diffusoibus cum Clero, & Populo, Etc. (put after the calling of the Proceres, i.e. Great Lords and Tenants in Capite), any thing can be meant but the inferior Clergy and Commons: All which being joined in one Body, made up the Convocatum Concilium Regni. And that this was so, appears by the date of this Great Charter it self, 11 February anno Henry III. But that the whole Council or Parliament when thus joined, was likewise called Curia Regis, I can prove by several Examples: Among, which fee the Stat. of Merton in 20 Henry III. beginning thus, Provisum est in curia Domini Regis Henrici, &c. cernam Will. Cant. Archepiscopo & Episcopo suffragiis fuis, & cernam majori parte Comitum & Baronum Anglie ibidem existimant pro Coronatione ejusdem Regis, pro qua omnes vocati fuerant, ina provisum fuit, & consecrant tam a predictis Archiepiscopis, Epi. Comitibus, Baronibus, quam ab ipso Rege, & Alia. Now who can these Abj mean, coming thus after Barones, but the Commons as now understood?

I confess these Authorities you have now brought carry some Colour of an Argument, but if they are look'd into will signify little. To begin with your first Quotation from Matt. Paris: Supposa I grant that there was a Curia ex more held at Westminster, at which there then appear'd at Court only a small number of the Bishops, Lords, and great Tenants in Capite: But the King not finding them enough for the great Affairs he had then to communicate to them, immediately issue out his Royal Writs to all the Orders of Men there mentioned, to appear at London on the 24th of St. Hilary; but how can you affirm there were any Commons then summoned in the Senfè in which they are now taken, the Barons being the lowest Order here expressly mentioned? But if you would but have read the Words that immediately follow in this place you have now cited, you would easily see that your Knights of Shires and Barons could not then be there; the Words are these, venit igiur die Sancti Hilarii Londoniæ incontinent Nobilium multitudo: How could these Representatives of the Commons have been elected and returned in so short a Time as between Christmas and Eight Days after Twelfth Tide? So that there could have been scarce Three Weeks Time from the Date of the Writs presently after Christmas-day, to the meeting of the Parliament. But the Truth is,
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by this infinita Nobilium Multitudo, who are here said to have come to London, is to be underfoot the great Number of the smaller Tenants in Capite, who all appeared at this Council according to King John's Charter: Whereas your Knights of Shires, Citizens and Burgesses, if they had all come at that Time, could not be called infinita Nobilium Multitudo, as not confilling this Day of 600 Persons; and sure would have been fewer then. But as for your other Authorities, if this be true I have now laid down, they will be as easily answer’d, since by the word Populus, (put before, and difficult from the Magnates, in the Palfage you have now quoted from Mat. Paris) these smaller Tenants in Capite are to be underfoot, and by Magnates, the Bishops and Great Lords. And this also explains the like Phrase you now cite from Walter of Coventry, where by Procres & Populus, are to be underfoot the same Orders of Men, as by Magnates & Populus, in Mat. Paris: So that it was with the Smaller Tenants in Capite, and the Inferior Clergy, with whom the King had this larger or more diffusive Treaty, as this Author words it.

F. I confess, you have now put a very fair Gloss upon these Places I have now made use of: But ’tis an hundred Pities that such a fine Hypothec should have no better Proofs, than late Surmises, to support it; for that is all the Authority that I can see you bring for your Sense of this Word Populus, for the smaller Tenants in Capite, and not for the rest of the People, but I see no good Authority as yet brought by you to prove it, except that Clause in King John’s Charter; which if (as I have lately shewed you) it will bear a quite different Interpretation, all that you have laid upon that Head will signify nothing. Therefore, as for the main Argument you raise from the Words, infinita Multitudo Nobilium, in Mat. Paris, that they could not be the Knights of Shires; together with the Citizens and Burgesses, because they could not be such an infinit Multitude as this Author here mentions to have met at London; as also because of the Shortness of the Time of the Summons: If these are material Objections against our Opinion, so it will be likewise against yours: For how could this be a great Council, according to King John’s Charter, which expressly provides for Forty Days Summons, for the Tenants in Capite to come to this Assembly? And if to be this Ulage was broken at this Time, upon some urgent Occasion, in respect of them; it might be so also as to all the rest of the Kingdom; for the Knights of Shires might be chosen at the next County-Court, and their Names returned immediately before, or together with their Meeting at London. And as to the Citizens and Burgesses, it was yet more easy for them to be chosen and returned in Three Weeks Time; since every body knows, the Cities might have called Common Councils; and the Towns and Boroughs, by the Notice of their proper Officers, to whom the Writs were deliver’d, might have assembled at their usual Places of Electing, immediately upon the Receipt of the Writs; and these, together with the Knights, Citizens and Burgesses, join’d with the Great Lords and Tenants in Capite, made up the infinita Nobilium Multitudo, mention’d by Mat. Paris.

But your main Objection, I confess, is behind; how these Representatives of the Commons, here called infinita Nobilium Multitudo, could be the Knights, Citizens and Burgesses; who Number could not be, at that Time, above 500 Persons? As for this, pray consider, if the Difficulty will not bear as hard upon you: For if your Tenants in Capite made such a vast Multitude; all those Difficulties will arise, that you prevail upon me; my Hypothec, of the Meeting of all the chief Freeholders (or Lords of Manors in England) in Parliament; before Knights of Shires were introduced in the room of them; viz. How it was possible for so great a Multitude to Debate, Vote, or do any Business; and what Room, or Church, was able to hold so many; and the like. So that granting all your smaller Tenants in Capite (some of whom had but one Knight’s Fee apiece) to have met there, theirs might have made a Body of Five or Six Thousand Men; which how they could have been managed any better than Ten Thousand, or Twenty Thousand, (which would have more than taken in all their Feudatory Tenants too) I desire you would resolve me, if you can. So that at last, from your own Hypothec, this Populus (the People) confilling of the Tenants in Capite, were as much Commoners, as the Knights of Shires at this Day. For as for the Word Nobilium, I have already proved, (and you must needs here...
grant it) that it takes in the Inferior Nobility or Gentry, under the Degree of Lords, as well as the Superior; and if so, why not all the Considerable Mience Tenants of thofe Tenants in Capite? So that you have hitherto brought no Proof, but your bare Allertion, that under this infinito Multitudo Nobilium & Popularis, must be underftood only the Great Lords, and Tenants in Capite; since either this Author speaks hyperbolically, or else all the Chief Gentry of England, of whatso- ever Tenure, might have as well appear’d at this Great and Extraordinary Affembly.

So that you are under this Dilemma; either this Cursa (which you confes met ex more) was the Great Council of the Kingdom, or it was not: If it was not, then there was some other Great Council besides that; but if it was, then it will plainly follow, (the you do all you can to mince the Matter) that this Great Council of the Kingdom, or Parliament, met of course by ancient Custom Three times in the Year, without any Summons at all from the King: Which, if I should have affirmed, you would have called it a Commonwealth Notion; since nothing can be a greater Proof, that this Affembly of the whole Nation in Parliament, did not, upon your Hypothesis, immediately depend on the King’s Writs of Summons, for their Affembly and Aeting when met.

M. Well, since you can bring no direc’t Proof, that these were any other be- sides the Tenants in Capite, who met at this Great Council; I have ill more Reason to fuppofe them to have been fo, than you can have for the contrary Opinion; therefore pray give me (if you can) fome cleaner and later Proofs, for this: Difference between the Two Councils.

F. I shall comply with your Dehires; and, in order to it, shall conclude with Two or Three of thofe very Authorities the Doctor has given us in his Anfwer to Mr. P. Where he gives us this Passage out of Mat. Paris, in the 28th of Henry III. (which plainly proves the Tenants in Capite not to have been the common University, or fole Reprefentative of the whole Kingdom,) pray read it: Eodem Anno convenerunt regia summiunione, convocati Laudiniun, Magnates totius Regni, Archiepiscopi, Episcopi, Abbates, Priores Comites & Barones; in quo Confoho pe- tittere Rex aux proprio, in praefentia Magnatur, (i.e. of all the Parties above-men- tioned,) in Refettorio Welmonflueriensi; Auxiliis fcrii pociundie, cui fuit refpon- fun: quod super hoc tractarent: Recedentque Magnates de Reffettorio, convenerunt Archiepiscopi, Episcopi, Abbates & Priores, fefetam per fe; superque hoc diligentem tractatur, tandem requefe fuerunt ex parte eorum, Comites & Barones, fi volent ulla unanimitet confentire in responfione & proponfione fuper his facendaris, qui reponentur, (fotinet Comites & Barones) quod fìne Communi Univer- sitate nihil fuerent; tunc de communi affenti elegend fuerunt ex parte Cleri, E- helios Cant. &c.

Now I think, here is as manifet a Diffinition as need to be between the Lords and Commons, as Members of the Great Council, and the Common University of the whole Kingdom: For it is obvious, that when all the Lay-Lords, Ears and Barons (to whom you may also add your Tenants in Capite, if you pleafe) being met together, were asked by the Bishops, Abbots and Priors then pre- fent, Whether they would agree with them, or not? The Ears and Barons an- answered for themselves, That they would do nothing without the Common Univer- sity, which could not poiffibly be only the Lords: Spiritual and Temporal, and Te- nants in Capite, since they were now all here, and referred themselves to ano- ther different Order of Men, different from themselves, (who were not there present) as also from the Bishops, Abbots and Priors, who demanded their Content to what they had agreed upon. Now if the Temporal Lords, and Tenants in Ca- pite, had concurred; here had been the Content of the Common University of Lords, and Tenants in Capite. But besides the Content of all these, there was, notwithstanding, (it seems) required the Content of another Body of Men, called here the Communi Universitas; by which must be meant the Commons, or no body, since otherwise they might have all agreed together without any more ado.

M. I confes, this Story out of Mat. Paris looks somewhat plausible at the first on your side; but I doubt not, if it be better confider’d, it will do you lit- tle Service: For what if by this Common University, is to be understood the whole Body of Leffer Tenants in Capite, who not fittting with the Lords at X that
that Time, they would do nothing without their Conents, till it was propo"sessed to them. But that they did afterwards all agree; Pray read the rell of this Narration, and it will make it clear enough, that this Common University of Tenants in Capite did also agree with the Lords, Bishops, and Lords: The Words immediately following in Mat. Paris, are these: Tunc de communis affer\n\nfus eleti fuerant ex parte Civii, Electus Contiurientes, Wintoniensis, Lincolniensis, & W grammatici Episcopi ex parte Lauarum, Riberdus Comes Frater Domini Regis, Comes Bigod, Comes Legr. S. de Monteforti, & Comes Marischallus ex parte verno Baratun Richardus de Montauchi & Johannes de Baudy, & de Sebastiani Edmundo, & Remesella Abbates; ut quod si duodecim procederent in communi resolvetur, nec aliquando dominio Regis offerenderetur Authoritatem duodecim nisi nonnun comm\nnus afferent inter se. From which last Pallage it appears plain to me, that in this Parliament the several Orders of Men that were the Conference of it, were only the Bishops, Abbots, Priors, Earls, and Barons: And that all these put together were termed the Common University, which is more comprehensive than University simply taken. Now if the Commons, as at this Day reported, I had been there, we must have had some Meeting in one way or other, as well as of the Committees of the other Orders which made up the general Committee of Twelve; so that it is plain beyond doubt, that the Commons were not part of the Common University.

F. Then pray tell me who they were, for the Hilkaron tells, that when all these Bishops, Abbots, Priors, had now met together, with the Earls and Barons, yet these last told them, that without the Common University they could do nothing, which had been Needful, if, as your Doctor supposes, the whole University or Community of the Kingdom had been all present.

M. I must confess this is a material Objection; but what if to help him out, I should tell you, that by the Common University here mentioned, is to be understood the Body of the Inferior Tenants in Capite, under the Degree of Barons; and this Common University of Tenants in Capite might not have been present, and far with the Earls and Barons at this Time, when the Bishops and Abbots made this Proposal: Therefore the Lords might very well answer, That till they had consulted the Common University, or Body of Tenants in Capite, they could do nothing. And though this Body of Tenants in Capite did not then actually sit with the Earls and Barons, yet dare it be followed, that they made a distinct Effort by themselves, different from that of the Lords or greater Tenants in Capite: For then the Archbishops, Bishops, Abbots, &c. (who are here expressly said to have consulted by themselves,) must have done so likewise: Therefore, though our Author is not so particular as he might have been, yet certainly this Common University were thereupon consulted, and gave their Assents to the Choice of this Committee of Twelve, who were to draw up their Answer to the King: For the Words are, Tunc ex communi afferent elei fuerant; which seem to relate to the Common University or Body of Tenants in Capite, or else the Lords Exeudo, as well as the Election of these Persons by the Bishops, Earls, &c. had been very insignificant.

F. This seems to me to be a precarious Assertion, and without any due Proof; for tho' the Words are Tunc ex communi afferent, yet I very much doubt whether these Words do refer to the Common University of the whole Kingdom or not. For you your self confess, that Mat. Paris is silent in this Point, and that it was not so, seems more likely to me by this material Circumstance, than not one Peron of the Twelve but was either a Bishop, Earl, or Great Baron.

(For that Richard de Montiefort, and John de Baudy were to, Sir William Plagdale had proved in his Baronage of England:) Whereas, if the University or Body of the Tenants in Capite had joined in this Election, it is not likely but they would have chosen some of their own Body to represent them in this Committee, who were not Earls or Barons. Since your self must confess, that there were a good Body of Men who were not Lords, nor Sit or Act jointly with the Lords, or greater Barons in this Assembly. And likewise it further seems highly probable, that this Common University of Tenants in Capite (take it in your Sense) did not give any Resolution in this Matter; since we do not find any Money given in Answer to the King's Request, but only

Complaints
Complaints of, and Orders about Redressing of Grievances, which was in those Days often done in a Great Council of the Biholders, Lords, and Tenants in Capite.

But I shall show you now by some other Records which the Doctor him- self hath made use of, that there often was a distinct Assembly or Council of Pages 197.

the Lords and Tenants in Capite, different from that of the Common or Community of the whole Kingdom. The first Record is to be found among the Patent Rolls of the 42 Henry III., beginning thus: Rex omnibus, &c. cum negavit nostrum arduus, nos et Regnum nostrum contingentibus, Procere, & Fides Regni nostri ad nos London. In Landoa Psiche proxime prateria susceremus convocari, & cum de Negatio supra dictis, & maxime de professione Negatio Siciliae diligentem cum ipsa transiremus, ac ipsi nobis responderunt quod si statum Regni nostri, per Consilium Fidelium Norforum ratificandum duxerimus, & Dominus Papa Conditiones circa fidem Siciliae appopitae meliorem per quod Negerum illud profetata fidelexerit cum effectu, ipsi diligentem fideliter oppriment antiqua Communitatem Regni nostri quod nobis Commune Auxilium ad loc prefissetur, &c.

The rest I shall not trouble you with, because it is not to our present purpose.

But you may here see, that taking the Words Procere and Fides in your own Sense, the former for the Biholders and Lords, &c. and the latter for the Tenants in Capite, who were called to consult about the Befees of Sicily (which Kingdom the King had before too rashly accepted of from the Pope.) Yet tho' they were all met, they could do nothing but give him Advice, and could give him no Commune Auxilium, i.e. common Aids or Subsidies, without the Consent of the Community or Commonwealth of the Kingdom. Now what can this Community signify but the Commons, for your Lords and Tenants in Capite were all met already, and if they alone made up the Common University or Body of the Kingdom (as you suppose,) why could they not have immediately granted the King the Assistance he desired (if they had a sufficient Power to do,) without putting him off with a Promife, that they would use their endeavours with the Community of the Kingdom, (as a distinct Order or Body of Men,) that this Aid or Subsidy should be given him. And upon this Condition it is, that at the end of this Record, the King promises them, that before Christmas, he would mende the State of the Kingdom, per Consilium Pro- horum & Fidelium Honinum nostrorum, which can mean nothing less than a Parliament. Which the next Record in the same Roll recites, was to meet at Oxford after the Feast of Pentecost. Which Record, since it not only recites the King's Oath, whereby he had bound himself to observe the Direction of a Committee of 24, Fidesi, i.e. Faithful or Loyal Men, Twelve of which were to be chosen out of the King's Council, and the other Twelve by the Procere or Magnates Regni, as I have already proved: may take in the Commons as well as the Lords. But whether by their Words were meant the Lords or Commons, the Conclusion of this Record sufficiently confirms my Argument from the precedent Record, that the Lords and Tenants in Capite, could not then Tax the whole Kingdom at their Pleasure, without the Consent of the Commons: Or else to what purpose are these Words: in the Conclusion of this last Record; Promerunt etiam nobis Commons, & Baronum Memorati, quod expletia Negatio suprema taliis, bona fide laborabant ad hoc quod Auxilium nobis Communis prefissetur a Communitate Regni nostri in capite rei, &c. Dat. 2 de Mai. And it appears by the Date, as also by the Entry on the Roll, that both these Records were perfected at once, and concerning the fame Befees. And further, to prove that the Parties appointed in the Record to be chosen ex parte Procere, were not chosen by the Great Lords, or Peers only, may be seen from a Patent Roll of the same 42 Henry III. whereby Henry de Wengham, M. 6. Dean of St. Martin le Grand, and then Keeper of the Great Seal, and John Manfet, Provost of Beverley, were two of the said Commissioners: tho' they were neither Barons nor Tenants in Capite (as I know of,) but only eminent Lawyers, and of the Great Abilities (and so were Commons.) Yet Master Fol. 361. Wimberley calls these Men Procere, as you may see by this Pallage, speaking of this whole Committee, Videentes erga Procere antedicti viginti quatuor, ad Regn. & Regni regimen sic Elefi, &c.

X x 2 I shall
I shall now only conclude with a French Record, which the Doctor himself hath also given us at large, and which refers to the said Committee of 24 above-mentioned: It begins thus, *Henri par la grace de Dieu Roy d'Englesterre,* &c. a tous ceux, &c. Sachez ce qui est du professe de nostre Rence & a la Requesse de nos bons Hommes é Prodes Hommes, è du Comme de nostre Rence, Oimez-nous, &c. quatre Hommes seuff pere, parque tout ce que l'on ordonnerent del Efet de nostre Rence fust fermes etable; the rest being very long, you may read at your leisure; only I shall take Notice of the date of this Letter, to which the King also put to his Seal: The Conclusion being thus: *Cette chose se fit faire a Landre lendemain prochain apres la saule bauz l'an de nosf chevroments quarente secunde.* And tho' the Doctor can make nothing of the Words *Gauda bauz,* this happened, I suppose, either from the bad Writing of the Record, or from the Ignorance or Mistake of the Transcriber; for it should be *Gauda de Auar,* that is, *the Aure of August,* which is a great Holiday in the Church of Rome upon the First of August, (called also St. Petri ad Vincula) in the Memory of St. Peter's Chains curing of a Roman Virgin by her Kissing them.

I shall farther oblige from this Record, that the *Hauz or Prodes Hommes* mentioned in this Record, being taken in the Doctor's own Sense for High and Wife Men, that is, the Earls, and Barons; yet the Words *è du Comme* that immediately follow them, must needs signify some Body of Men different from the former; for else it had been a notorious piece of Nonsense, for if the former Words had taken in all the Lords and Tenants in Capite, that is (in your Sense) the whole Community of the Kingdom; to what purpose are these Words *è du Comme,* that are immediately subjunctive; since the hauz or Prodes Hommes would have served to express all the Lords and Tenants in Capite, whether taken as Great or as Wife Men.

_M._ I confess what you have now said would carry some weight with it, were I not very well satisfied, that you impose upon your self, by taking (as I told you at our last Meeting) these Words *Communia,* *le Comme,* &c. in the wrong Sense, for the Commons as they are now; when indeed these Words before the 40th of Henry III. may the 18th of Edward I. (as the Learned Doctor shews us in his 2d Edition against Mr. F.) are always to be understood, either of the whole Representative Body of the Kingdom in general, consisting of the Bishops, Abbots, Earls, and Barons, together with all the Tenants in Capite, called by *Mar. Paria* and other Historians, *Communia Baroni,* or else for the Community of the Tenants in Capite alone, fitted *Communia Regni* in our Ancient Records. And this I think I can prove to you by undoubted Texts, but since you are now upon the proving Part, pray shew me that these Words I now mentioned did ever signify the Commons of England in the Sense they are now taken, before the Times we infight on. And I have the more Reason to define this from you, because it is chiefly from the mistaken Application of these Words, that the Gentlemen of your Opinion have imposed their False Notions upon the World.

_E._ I shall undertake what you define; and I hope if I cannot satisfy you, the Fault will not lie in my Authorities, but your Prejudices against them. In the first Place, therefore, let me mind you, how far you and I agreed at our last Meeting, where I granted you that those Words *Communia,* *le Comme,* &c. in the Community, now in Difpute, were very Equivocal, and were often taken in different Senses; as sometimes, you say true, for the whole Representative Body of the Kingdom; sometimes for the Community of the Barons, and sometimes for the Community of the Bishops and Clergy; but never as I know of for the Community of the Bishops, Lords, and Tenants in Capite, much less for the Body of Tenants in Capite alone; nor were you then able to prove to me, that those Words must necessarily be understood in your Sense, for the Community of the Tenants in Capite. And tho' you should prove them sometimes to be taken in that Sense, yet would it rather make against, than for your Opinion; since they must still signify a different Body of Men from your great Lords, and consequently as mere Commoners as your Knights of Shires at this Day, which is against your first general Affirmation, that by their Words are always understood the Community of the Baronage only.

But
Dialogue the Seventh.

But to come to my Proofs (which I shall divide in Two Parts;) First, I will prove that these Words Community, le Commune, and Commonalty, when coming immediately after Comites & Barones, or Counts and Barons, or Proceres, in our old Statutes and Records, do always signify the Commons in the same Sense in which they are now taken: And for Proof of this, I will begin with the Reign of Henry III, when these Words came first to be generally in Use, and so descend to his Descendants as low as Richard II. And if I can show you, that these Words (so put) always signify the Commons, as well before, as after that Time; I think you have Reason to be satisfied, that there was never once upon a Time such a Strange Alteration in the Conformity Parts of our great Councils, as you supposed; and yet none of our ancient Historians or Statutes should ever take any Notice of it, till these modern Antiquaries took upon them to disperse these Clouds.

To begin first, with the Words le Commune, pray remember the Patent Roll of the 49th of Henry III, which I mentioned at our last Meeting, viz. the Form of the Peace between this King, the Prince his Son, and the whole Body of the Kingdom Assembled in Parliament, the Title of which is thus: Hec est Forma pacis a Dom. Rege, & Dom. Edw. Filio suo, Proceris omnibus cum Comunitate tota Regni Angliae commissarum, & concorditer approbat. Now pray what can these Words Comunitate tota here signify, but another Body of Men distinct from the Earls and Barons, or else it would be a gross Tautology.

And pray compare this Form of the Peace now mentioned, with the Writs of Summons of the 49th of this King (when your Doctor grants the Commons were Summoned to Parliament after the same Manner as they are now,) and see if there be any Change in the Terms; and for Proof of this, we need go no further than the very Writ of Expenses (for the Wages of the Knights of Shires, which your Doctor himself has given us at large in his Answer to Mr. P.) it is the 49th of Hen. III. to the Sheriff of Yorkshire, wherein, after other Rectials, it follows thus, Conque Communitatis Comitiacum deditur us, & vice versa, hoc armis, faciunt praesiones ad defensionem Regni nostri, &c. He therefore commands the said Sheriff, quod duobus militiae qui pro Comunitate dicti Comitiatus prefato Parliamentis interfuerunt, &c. should be paid their reasonable Expenses, De Comunitatis Comitiatus praelit: For going to, and staying at, and returning from the said Parliament, &c. From whence it appears, that the Word Community and Comunitates in this Writ, cannot signify the Community of Tenants in Capite alone, but the Commons of the County in general; unless you can prove to me that none but Tenants in Capite had performed these copias praesiones in the Writ, and that none but they contributed to these Expenses of the Knights of Shires; otherwise the Words must plainly signify the Commons in general, as they did in the like Writ of the 28th of King Edward I. which I shall give you by and by. But I shall first give you a few other Records of this King's Reign, concerning the Word la Commune (which Mr. P. has given us;) they are in the Patent Roll of the 27th of this King, wherein by the Counsell and Affent of the King of the Romans, & des Comtes, & des Barones, & la Commune de la Terre. He pardons the Earl of Gloucester, and all his Company: So likewise in the same Roll, the King, by the Counsell and Affent of the said Comtes, and Barones, & de la Commune de la Terre, Fardons the City of London, all manner of Rancor and ill Will.

Now pray tell me a Reason, why should not the Word la Commune in these Acts of Pardon, signify the same Thing as the Word Comunitates in the Form of the Peace, and in the Writ of Expenses of the 49th now cited? Since they come immediately after the Comtes and Barones, and so must needs signify a Body of Men distinct from them. For there is the same Reason, why the Words la Commune de la Terre, should here signify the Commons of the Land; as that the Words Comunitates Comitiates, should signify the Community or Commons of the whole County.

M. Will you give me leave to answer this Question presently, because I confess it is very material, before you proceed farther? There may (in my Opinion) very good Reasons be given, 1. Why the Words Comunitates & la Commune,
Commune, may signify the Community of the Tenants in Capite, in the Form of the Peace, and Acts of Pardon; and yet signify the Commons of the County in general, in the Writ for Expenes you have now mentioned: As first, because the Subject Matter is different in the Form of the Peace, and Acts of Pardon, from that in the Writs of Expenes; the one being the Communitas Regni, and the other Communitas Comitatus only, called also in the Plural Number, Communitates Comitatum, and then I grant when thus used, it always signifies the Commons in general. And there may be likewise a sufficient Reason given, why this great Change might have been made in the constituent Parts of our great Councils, and yet no change of Phrases or Expressions might be made in our Records and Statutes, nor any Notice taken of it by our Historians; which is, because the first Knights of Shires, being chosen out of, and by the Tenants in Capite only; the Change was imperceivable at first, there being still Men of the same Order, appearing in Parliament, for the whole Body of those Tenants; the Difference being only in the Number, viz. Two, for a whole County, whereas before, all the Chief Tenants in Capite came in Person. And I am more inclined to be of this Opinion, because in this Writ of Expenes of the 49th of Henry III. (which you have now cited) there is no such Clause as is in the following Writs of like Nature, prosi in eis transmiti iuri confecerat, which shews it to have been a new Thing for the Knights of Shires to have their Expenes allowed them, that being the first Time of their Meeting in Parliament.

F. I confess what you say is very plausible, were there any Colour of a Proof brought by you for it; but I shall fly you further, that your Difficulties between the Communitas Regni, and the Communitas Comitatus, signifies nothing, unless you can prove that this Communitas Regni was not the Representative of the Communitas Comitatus mentioned in this Writ, and did not consist of Persons of the same Degree or Order; for the Writ of Summons of the 49th of Henry III. says no more than that these Knights should be de legatoribus et pristriibus militibus comitatus, without limiting them to Tenants in Capite. But as for your Reason, why these great Alterations might be made in our great Councils or Parliaments, without any Notice taken of it, it is altogether precocious; for you have not yet, nor can, I believe, give me any sufficient Authority (besides the Doctor's bare Affirmation) that ever none but Tenants in Capite were capable of being elected Knights of Shires, or that none but such Tenants by Military Service were the Electors.

Vid. Dial. 6th. And I think I have sufficiently confuted the Vanity of that Affirmation at our last Meeting, when I showed you the Elicited Interpretations you gave of those Statutes of the 7th of Henry IV. and 10th of Henry VI. whereby you would have proved, that there was some Alteration thereby made, as to the Electors of the Knights of Shires at the County Court: Whereas, indeed, before those Statutes, all Persons of whatsoever Tenure, and of howsoever small an Estate of Freethold, who owed Suit and Service to the County Court, were capable of being Electors; and consequently of choosing whom they pleased, as well Tenants in Capite, as others, to be Knights of the Shire, and that those who were not such Tenants were frequently chosen, in the Reigns of Edward the Third, and Richard the Second, I could bring sufficient Proofs, were it worth while to insist upon a Thing so certain.

But I shall go on to prove that the same Words, vis. Communitas le Com- mune, or la Commumate, were used in most of our Statutes and Records, to signify the Commons. I come therefore to the Reign of Edward the First, and I pray, in the first Place, remember, what I took Notice of at our last Meeting concerning the Statute of Wesminster the First, made in the Third Year of this King, beginning thus in French, per l'affectement des Archevesques, Evye- gues, Abbes, Priors, Comtes, Barons, & tout la Commumity de la Terre, Montongues Summonnes.

Now every one knows that Community is but French for the Latin Communitates, as appears by the first Writs we have left us (except that of the 49th of Henry the Third, now mentioned) de expensis Militum, being of the 28th of this King, directed to the Sheriff of Somersetshire, to levy the Expenes of the Knights for that County (who had served in the last Parliament) de Com- munitate.

See the Old French Statutes in Tottel.

Rot. Claus. 28th of Ed. 12, m. 12, 1er/s.
Dialogue the Seventh.

...munimente Comitatus prediis, i.e. of the Commons of the said County in general. The term Claude is also in the Wrists which were then influed for the Ex-

cences of the Citizens and Burgesses who served in this Parliament, which were
also to be levied de Comitante Comitatis vel Burri, which for must mean the
Commonal, or Commons of all those Cities and Boroughs there mentioned for
the Record is, Eadem modo scribatur Majestas, & Bururis pro Burgenibus Sub-
scriptis: And which is also more remarkable, these Wrists contain this Claude,
that the said Knights and Burgesses should have their Expenses allowed, pro
veniendo, manendo, & cedendo a Parliament prudii potu ab in Cura confes-
misi fieri confecurit; which Words relating to a former Custom, not then newly
began (as this Word confecurit in a legal Sense still imports) must needs relate to
some Time much more ancient than the 49th of Henry the Third, or the 13th of
this King; the former of which was but 26, and the latter but 10 Years before this
28th of Edward the First, in which Time there was not above Thirty Parliaments
called, so to many.

And further, that the Word Commonalty signified the Body of the Commons, and
not Tenants in Chief in the Reign of this King, appears by the Statute or
Ordinance (the the Year is uncertain) entitled, Concerning the Comm., which
you may see in French in Tylott's Collection, the Title of them is thus, Ceux
font les seigneurs les quers la Commonalty de Kent Clayment avoir en Tenements de
Gavel-kind. Now every body who knows any thing of Gavel-kind, knows also
it was generally a Soccage Tenure, there being but little of it held by Knight's
Service, and consequently the Owners of such Lands who were then the great-
pest Part of that County, are here called la Comm. de Kent. So likewise in the Reign of Edward the Second, the same Words are used in
the same Sense; as in the Statute of Pardon for the Death of Pierce Garen-
ston made in the Seventh of this King; which is granted per neus i.e. the
King himself) per Archi/interfaces, Ecques, Abbots, Priors, Counts, Barones, & la
Commonalty de notre Roineame et autres assemables.

So also in the Latin Records, as appears by an Act of Pardon granted by Parlia-
ment, in the 24th Year of this King: Concernentibus Praeditis, & Procursibus, &
Communitatis Regni. So likewise the Statute of York of the same Year, writ in French,
is recited to have been made per Affens des Prelats, Counts, Barons, & la Com-
monalty du Royaume et autres assemables. Where you see that the Latin Word Com-
monitas, and the French de Comune signify the same Order of Men.

In the Reign of Edward the Third, I can give you many remarkable Ex-
amples of the same Words in the Parliament Rolls. In the first of this King,
Andrew de Hartford, a principal Citizen of London, was de Afferfa Prale-
rum, Comitanum, & totius Communitatis Regni, pardoned all Homicides; which was
a Pardon by Act of Parliament. The very like Words are also used in the
59th name Roll in the Act of Pardon granted to the City of London.

I could enlargize in many more, but I shall only trouble you with one more
in this King's Reign (it is so remarkable I cannot omit it) of the 34th of this
King, and is to be found in the old Edition of Statutes printed in French;
the Title begins thus, Ceux font les Choses, quen de notre Seigneur le Roy, Pre-
lats, Signeurs & la Commune dont ordines & sbables.

To conclude with the Reign of King Richard the Second, the like Expressio
is found in the Parliament Roll of the 5th of Richard the Second, where the
Statute begins thus: Per Commune profite du Royaume d'Angleterre ecent faires
per notre Seigneur le Roy, Prelats, Signeurs, & la Commune de la Royaume
ejuvantes en ceste Parliament. From the Titles to which Two last Statutes, I pray
observe that the Word la Commune, is not only used for the Commons
in the same Sense as it was in the former King's Reigns; but also that these
Statutes were made by the joint Agents of the King, Lords and Commons.
So likewise in the same Roll are recited, Concordia, etc. Ordinazioni falshe de
Communis Afferfa Regni Procurum, & Magnatums, & Communaltatis Regni Anglia;
which I give you, to show that the Words Communitas & le Commune, always
signify the same Thing in our Statutes and Records, viz. The Commons as
now understood, different from your great Lords and Tenants; and if they are
to be taken in this Sense after the 18th of Edward the First. I would be glad
if you could shew me any sufficient Reason, why they should not be so under-
footh
deftood all along before that Time, as well as in the 49th of Henry the Third only.

M. Tho' I grant that these Words you mention are to be understood for the Commons, as now taken, in many Records and Acts of Parliament, after the 18th of Edward the Firtt; (and therefore you need not to have taken the Pains to have gone beyond that Time) yet notwithstanding, I think I can prove to you by very good Authorities, that the Word Communis, (which I grant is the same Thing with le Commune in French) when put after the Words Comites & Barones, does not signify the Commons of England in general, but the Community of the Tenants in Capite alone, or at least the Community of all Tenants by Military Service; and that as low as the Reign of Edward the 111d. But for Proof of this, I pray peruse this Writ, which the Doctor hath given us in his Answr to Mr. P. Rext Archiwpelopis, Episcopus, Abbatius, Prioribus, Comitibus, Baronisibus, Militibus, & omnibus alio de Comitatu Comit., Salutem. Scitis quod cum primo die Junii, Anno Regni nostri decimo octavo, Praedicti Comiti Barone, & ceteri Magnates de Regno nostro concorditer, pro se, & pro tota Comumitis ejusdem Regni, in pleno Parlamento nostro, nobis concesserunt quasdam Solida, de singulari Feodis Mutilum, in dicto Regno in Auxilium, ad primigenium Filiis nostris Maris/Shamsam, &c. Cujus guinid Auxilii levationi facienda, pro diete Comunis assistito hujusque superedimus gratiosi &c. By this Record it is clear, that such as paid Scutage, that is, Forty Shillings for a Knight's Fee, were then the tota Regni Communis, and no others: And of these the Tenants in Capite granted and paid it first for themselves and Tenants; and then their Tenants in Millites, in the virtue of the King's Precepte, paid it to them again for so many Fees as they held of them; so that this Tax being raised wholly upon Knights Fees, must be granted only by those that held by Knights-Service.

But further: That the Communis de Royaume, the Community of the King- dom, as represented by the Tenants in Capite, did still to continue as above-men- tion'd, till almost the Middle of King Edward the Third's Reign, is as clearly proved by another Record of that King: Rex diebus & sedibus suis Vicem comiti Wigornis, Thomas Beverle de Upton super Sebriam, Milit; & Thomas Culp de Wyhe, Salutem: Scitis quod cum in pleno Parlamento nostro apud Wilmotestium, ad diem Luna proximo poit Filius Naturitatis Beate Maria Virginis proximo prateritum tenui, Praedicti Comiti Barone, & ceteri Magnates de Regno nostro Anglie, &c. pro se, &c. tota Comumitis ejsdem Regni, nobis concesserunt quasdam Salida, de singulari Feodis Mutilum, in dicto Regno Anglie, &c. So that the whole Community of England, in this Record, were Military Men, such as held Knights Fees, or Parts of Knights Fees, and such as paid Scutage, and they were neither the ordinary Freemen or Freeholders, nor the Multitude or Rabbles.

F. I pray, Sir, give me Leave to answer your Arguments from these Records as you put them, left I forget what you have said. In the first place, as to this Record of the 30th of Edward the Firtt, which relates to a Tax given in the 18th Year of his Reign; and recites an Aid of 40s. upon every Knight's Fee through the whole Kingdom, to have been given by the Bishops, Earls, Barons, and other Magnates, (or Great Men of the Kingdom) in full Parliament, for themselves and the whole Community, to Marry the King's Daughter; and which Subsidy he had deferred to Levy till now: And therefore, because this was a Tax granted only upon Knights Fees, that those only who paid this Scutage, were then the Communis, or whole Body of the Kingdom, which is no Argument at all, since from this we may plainly collect the clear contrary. For if none had been to pay to this Tax, but those that held by Knights-Service in Capite, then the King would have had no need to have had it granted in Parliament; since by the 14th Article of King John's Charter, he might have Taxed his Tenants in Capite for the Knighting of his Elded Son, and the Marriage of his Elded Daughter, without the Assent of the Common Council of the Kingdom: And according to your Hypothecis, and the Authorities you have brought to prove it, these Tenants out of Capite might also, by the like Reason, have made their Tenants by Knight-Service have contri- buted to this Tax; which yet you see they could not do without the Consent of Parlia-
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Parliament: And therefore this Aid (or Subsidy) being granted in Parliament, must needs extend to all the Lands in the whole Kingdom, as well thosc that held by Knight's-Service, as well as those that did not; for it is not here said, as in the Writ to the Sheriff of Suflex, qui de nobis tenent in Capite; and then the Words pro se, & tota Communitate Regni, cannot mean (as you would have them) vie. That the Lords, and Tenants in Capite, had granted it for themselves, and the Community of their Tenants by Military Service only, who (by you) represented the whole Community of the Kingdom; for then (as I have already observed) this needed not to have been granted in Parliament at all. For at this rate, no Tenants of thothe Abbeys and Monasteries, (which were a great many) who did not hold in Capite, would have paid any thing to this Tax; nor yet the King's Tenants, who did not hold in Capite, but of some Castle, or Honour: Nor lastly, any Tenants in Soccage, who were very numerous in Kent, as well as in other Counties: (as Mr. Taylor proves in his History of Gavel-Kind.) So that if your Tenants in Capite, and other Under-Tenants by Military Service, had been then the Community of the whole Kingdom; this Community had not confided of above one Half, or at most a Third Part of the Kingdom.

But in my Sense of this Word Community, here will be no Difficulty at all, for these Magnates, mention'd in this Record, being taken (as I have proved, they often are) for Knights of Shires, then thef Words are thus to be under- stood; viz. That all the Parties mention'd in this Record, gave for themselves, and the whole Community of the Kingdom; confiding of all the Freeholders of England, who all contributed to the Marriage of the King's Daughter, according to their respective Eftates. And tho' the Senec of this Word had been otherwise in this place, yet it would not have contradicted my Sense of the Word Community, which I do not say always signifies the Commons, only when it comes immediately after the Words Comites & Barones; as it does not in this Record you have now cited.

M. But pray tell me how this could be; since the Record says expressly, that this Aid was to be Raisd by 40 s. upon every Knight's Fee; which could only extend to Tenants by Knights-Service: Nor could this Word Community here signify the Commons, as now understood, since the Citizens and Burghes are not at all mention'd, who (you know) do this at Day make up the greatest Part of the Representatives of the Commons of England.

F. This proceeds from your not knowing, or else not considering, the Ancient Manner of reckoning Eftates, (and consequently of Taxing by Knights Fees) not only Lands held by Military, but Soccage-Tenure also; as appears by thothe Writs of the 24th and 26th of Henry the Third, as they are fill up on the Clofe-Rolls, being both almost the same, word for word, for which I gave you at our last Meeting; yet since you may have forgot them, pray read them again. Rex Vicecomit. Northampton. Salutem: Praecipimus tibi, quod in per totam Ballatam tuam, in fugulis bonis Villis; & suminis in pleno Comitatu tuo, clamare facies. Quod omnes illi de Comitatu tuo, qui tenent Feodum Militis integrum, vel eum minus, quam Feodum integrum, dam tamen de Tenemento tuo, tam Militari quam de Soccage, possint jubentari; & Milites non sunt, fi tentementa tua diligunt circa Feodum omnium Sancorum, Anno Regni Nostr. XXV. Arma cipitant, & se Milites fieri faciant. Where you may note, that all Men, who held the Value of a Knight's Fee, either by Military, or Soccage-Tenure, were liable to be made Knights, provided they could maintain themselves of their Eftates; which could never have been, had not the Custom of Reckoning and Taxing Eftates of all sorts, as well by Knights Service, as otherwise, according to the Value of to many Knights Fees, (that is, at 20l. per Annum) been then commonly used. But as for your next Object, that the Citizens and Burghes are not mention'd in this Record, and fo could not be comprehended under the Words Communitatis Regni, this proves no more than that which will easily be granted you; that this Word Community, used in your Record, is there to be understood reflexively, and according to the Subject Matter, viz. the Community of Freeholders, or Land-Holders of the whole Kingdom only; since this Tax being wholly upon Lands, the Commons of Cities and Boroughs, then called Communitates Communitatis Sancorum, whose Eftates lay in Money or Goods, could not be Taxed by Knights Fees.
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Fees, not do I doubt but that if the Records of that Parliament of the 18th of Edward I. were now extant (which are lost) it would appear, that they also contributed to this Tax, according to their Estates, as they did in the 34th Year of this King, to make the King's Eldest Son a Knight. And as for your other Record of the 20th of Edward the Third, since it is but the same in Effect with this of the 30th of Edward the First, the same Answer will serve for both; only I cannot but observe, that whereas you have often affected that this Word Community, did only signify the Community of Tenants in Capite, now you fall a Peg lower, and it must at last take in the whole Community of Tenants by Knights Service, whether in Capite, or not, who must certainly grant this Tax, by their Representatives, the Knights of Shires, who were present at this Parliament, as appears by the Writs of Summons; now if you grant (as indeed you must) that the Word Community now signifies such inferior Military Tenants, as then served for Knights of Shires, why must not the same Word signify the like Persons before the 18th of Edward the First.

M. Well then, however, you grant that this Word Community does not always signify all the Commons of England, as you supposed, but give the Lords, so urge further, that it must mean the Community of the Tenants in Military Service only: Pray fee this very Record of the 34th of Edward I. which Mr. P. has given at large in his Appendix, which being long, I shall trouble you with no more than some Extracts to our present Purposes, viz., that the King intending to make his Son Prince Edward, a Knight, Summoned the Archbishops, Bishops, Abbots, Priores, Earls, Barons, and other great Men of the whole Kingdom, to appoint what Aid they would grant the King towards it: and then it follows thus, "That the Prelates, Earls, Barons, and others, as also the Kings of Shires, being met, treating together with Deliberation upon this Matter, considering that an Aid was due to make his Son a Knight, besides the Burthen that lay upon the King, by reason of the Scotch War, at length they unanimously Dominus Regni concassrent, pro se & toda Com- munitatis Regni trisefum omnium Bonorum suorum temporarium mobilium, for making his Son a Knight, and towards his Expenditures of his War in Scotland. And then the Gove & Burgenses Civitates, ac Buria, ac ceteri de Dominis Regni Congregati, treating about the Prentiles, and considering the Burthen lying upon the King (not mentioning any Aid for making his Son Knight, as not holding of the King by Knights-Fee, or Service, and therefore none of the Community of the Kingdom) Dominus Regni unanimitur ob causas supra ditas concass- rentur Vicesimum partem omnium Bonorum suorum mobilium. Here the Prelates, Earls, Barons, and great Men, with the Knights of Shires, conferred together and gave for themselves, and the Community of the Kingdom, a Thirtieth Part of their Goods, and the Citizens, Burgesses, and Tenants of the King's Demesnes (which were likewise none of the Community of the Kingdom) gave a Twentieth Part; for if they had been of the Community, they had paid a Thirtieth Part as well as the rest; and therefore 'tis most certain that even at this Time, viz., the 34th of Edward I. they were not taken to be part of the Community of the Kingdom, and that the Tenants in Capite, Serjeants, or at least the Military Men, and Tenants in Military Service were only such. This I have cited, to shew you that Anciety the Citizens and Burgesses were not then reckoned as Part of the Community of the Kingdom, and therefore the Words Community, and & Concerned, though put after, and distinct from Comites and Barones, did not then include all the Commons of England, as you have very confusedly affected.

F. As to this last Record you have cited, I need give you no other Answer to it, than a like Writ of the 35th of this King, which the Divor himseil had also given us in his History; which I shall here read you at Large, together with his Learned Comment upon it; it is for the Collecting of this Twentieth and Thirtieth Part granted in the Thirty Fourth you have now mentioned, the Writ runs thus, "Aliothae, libertas hominum, & sae universi Comitatu Interior, Middlesex, scint magna extra, ataliter; cun archipretices, Episcopi, Abbates, Priores, Comites, Barones, Aliothae, Liberti Hominum, ac Comunitatis Comitatu Regni Dextrj Trisefum omnium Bonorum suorum temporarium mobilium, Gove & Burgenses, ac Comunitatis omnium Cou- nitatu & Barones, & Ecclesiastici Regni, mun Tenementum et Vicesimum partem Omnium Bonorum suorum mobilium, caradar concassrent, et graviter, 

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And lest we should happen to mistake the Meaning of these Words, the Doctor himself hath furnished us with this Learned Comment upon them, as follows in the same Place. "It is said in this Record, that the Archbishops, Bishops, Earls, Barons, Abbes, Priors, Knights and Freemen, and Communities of Counties, gave a Thirtieth Part of their Goods, as if they had been all Members, and far in this Parliament. And so it is said of the Cities and Burghs, that the Citizens, Burgesses, and the Communities of the Cities and Burghs gave a Twentieth Part of their Moveables, as if they had been all there. But these Words signify no more than that the Knights and Freemen gave by their Representatives, and that the Communities of Counties, and the Citizens and Burgesses, and Communities of Cities and Burghs, gave by their Representatives, as is most clear from the Writ of Expenses for the Knights of Lincolnshire, and so consequently for the rest. Now I desire you would tell me, whether there can be a plainer Record against the Doctor's Opinion than this; for in the first place, who were these Knights, Freemen, and Commons, who granted this 26th and 30th Part of their Moveables in the 24th Year of this King; but the Knights, Citizens and Burgesses, the Lawful Representatives of the whole Kingdom in General, as well those who held in Capite, or else by inferior Military Service, as those that held by any other Tenure? Or who were these Representatives, but Men chosen out of all Sorts, as well those that held by Knights Service, as those that did not; unless you can prove (as you have not done hitherto) that all the Cities and Boroughs in England held of the King in Capite; and that none but Tenants in Capite, or Military Service at least, were chosen either for Counties or Cities: And though I find your Doctor has an utter Aversion to the Word Commons, and therefore will needs transliterate the Word Communitates, by Communities and not Commons, yet if you were to render these Words, the Commons of the Counties, Cities and Boroughs, into our Law-Latin, I desire to know what other Words you could make use of, but these in this Record, 'viz. Communitates Comitatuum, Civitatum & Burgorum'? So that to conclude, if in the 26th, 34th and 30th of Edward the First, all the Commons gave by the same Representatives as they do now, I can see no Reaon why they might not do so too, Thirty or Forty (nay Three-four) Years before that Time; and pray take Notice also, that here the Tenants in Ancient Demesne gave likewise by themselves, and could not be charged by the Knights of Shires. And therefore, as Mr. Lambard in his Archbeon very well observes, this Prescription of not being chargeable with the rest of the County, must be very Ancient, since there was no Land at that Time reckoned as Ancient Demesne, which had not belonged to the Crown before the making of Doom's Day-Book. And if granting an Aid to the King separately from the rest of the Kingdom, were sufficient to constitute the Grantors a distinctive Estate, then the Tenants in Ancient Demesne were no Part of the Commons of the Kingdom by the same Rule.

M. I must confess, what you have now said concerning the Conniant Use of the Words Communitas, and de Commune (coming after Comites et Barones) to express the Commons in Parliament in our Statutes and Records, would weigh much with me, had I not good Reaon to believe there were no such Thing as Commons in Parliament, in the Senfe now taken, before the 49th of Henry the Third; and from which Time I suppose it was discontinued till the 18th of Edward the First; for which I can give you very good Proofs: But in the mean time pray shew me by any Record, or Statute, that there were any Knights, Citizens and Burgesses Summoned to Parliament till the Times I allow. For in the first Place, you cannot shew me any Mention of Commons in the Plural Number, in any old Statute before Edward the First's Time; and as for the Words Communitas et de Commune, which I grant was often used to express the Commons after that Time, your self own they are equivocal; and therefore when put after the Earls and Barons in the Ineffances you have given, may signify the Community of the smaller Tenants in Capite, which were the only Representatives of the Commons that appeared in Parliament in those Days; and I am the more inclined to be of this Opinion, because I have searched the old Statutes very exactly, and cannot find any Mention of the Word Commons in the Plural, much less of Knights, Citizens, or Burgesses, till the Statute of the 34th of Edward the First, de Tellagio non conceden-
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do, (made in the 34th of Edward L) wherein I grant they are expressly mentioned: And as for Writs of Summons, you can produce none till the 23d of this King, to Summon them to Parliament: Though I shall shew by and by that the Doctor has found out one of the 18th of Edward the First, whereby he proves they were then Summoned, after about Twenty six Years Discontinuance: Therefore, pray shew me if you can by any sufficient Proof, that they were there in Henry the Third's Reign, or in Edward the First's, till the 18th.

F. I confess, your Doctor has not only exceeded all other Men, but himself too, in this rare Discovery: For whereas in his First Edition of his Answer to Mr. Pepys’s Book, he was content to follow Sir William Dugdale, and make the Commons to have been First Summoned to Parliament in the 49th of Henry the Third; and to have commenced with Montford's Rebellion, and so to have still continued on. Now the Doctor, upon Second Thoughts, in his Edition in Folio, will have them never to be Summoned any more than that once; because, forsooth, he cannot find them mentioned in such express Words, as that he cannot evade them, by saying the Senate is Equivoal. And if the Commons not being expressly mentioned in our Statutes, were a sufficient Reason to prove them not to have been there; were the Writs of Summons lost, as well as they are before the 23d of Edward the First, you might as well have faced us down, that there were none in all that Time, till the Statute de Taliojio non concedendo, you now mentioned. And for Proof of this, pray see the Statute called Articulus super Chartas, made in the 28th of this King; which is said to be made and granted by the King, at the Request of the Prelates, Earls, and Barons, who are only mentioned in this Statute; and yet certainly the Commons were then at this Parliament, as appears by the Writs of Summons and Expenses but now mentioned; and sure their Allents were given to it, as well as the Bishops, and Lords. I could shew you the like in many other Statutes of this King, nor are the Words Communicati, or Commonality ever mentioned above twice in all the Statutes of this King's Reign; viz. in that of Westminister the First, and that against bearing of Arms: neither is the Word Commons to be found above once or twice in all the Statutes of Edward the Second. For in the Statutes made at Lincoln, in the 9th of this King, 'tis said to be done by the King, the Counts, Barons, and other Grands of the Kingdom. Now if these general Words did comprehend the Commons in those Times, you grant they were constitutionally Summoned to Parliament: I desire you would give me any good Reason why the same general Words may not as well comprehend them long before? And if the bare Omission of the different Orders or States of Men that gave their Allents to the making of any Statute, and the different penning of Acts of Parliament, were a sufficient Reason to prove they had no Hand in it, I doubt two Parts in Three of the old Statutes of Henry the Third, and Edward the First, would have been made without the Conents, either of the Bishops or Lords; since in most of them there is no mention made of either: And that what I say is true, pray at your leisure peruse these Statutes following, viz. de Diffidione Securij of the 51st of Henry the Third, with other Statutes made in the latter End of that King's Reign, as also that of Edward the First, made in the 11th of Edward the First; that of Winchester made in the 13th of this King; that of Merchants in the same Year: As also those of Circumspelle agaris, and quo Warranto, and see if you can find any mention, either of the Lords or Commons in them.

But to come to direct Proofs: Tho' I grant the Words Knights, Citizens, and Burgesses were not expressly mentioned in our old Statutes; yet I shall prove to you by other Words of a much more Comprehensive Signification, that they appeared in Parliament, in the very Beginning of Henry the Third's Reign. For this we need go no farther than the Old Manuscripts, as well as Printed Copies of Magna Charta; which was first Granted in the Second Year, and again confirmed in the 9th of Henry the Third, both which conclude thus: Pro hac autem Donatione & Concessione, Archiepiscopi, Episcopi, Abbatis, Priorum, Comites, Baronum, Militium, libere Tenentium, & omnis de Regno nostro dedens quindicim decimum partem omnium mobilium suorum. Now can any thing be more express than this Clause, viz. That the Archbishops, Bishops, Abbots,
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Abbots, Priors, Earls, Barons, for themselves and the inferior Orders, viz. the Knights and Freemen, and all others of the Kingdom by their lawful Representatives, gave this 15th of their Moveables, at both those Parliaments, in which this Charter was first made, and afterwards confirmed.

M. I confess this Authority looks very plausible at first; but if it be strictly looked into, I believe it will prove nothing at all: for as to your Interpretation of these Words, I do not allow it, for Reasons I shall shew you by and by. But in the first place give me leave to dilate the Antiquity of this Charter, which I do not take to be so Ancient as you make it; for the grant there was a Charter made in the 2d, and again confirmed in the 9th of Henry the Third; yet you have already had my Thoughts of this Charter, which you suppose to be Henry the Third's, viz. that this which we now have is not properly his, but his Son Edward the First's; since it concludes thus: His et ibi fecit Boniface Cantuarentfs Archi[episco]po E. Landini[enfs Episcopo, &c. Anno Regni nofr[] (cells, Henrici 3. nono); whereas this Boniface here mentioned, was not Archbishop of Canterbury before the 27 Henry the Third, nor was there any one whole Name begin with E. Bishop of London, during the Time that Boniface held the See of Canterbury.

P. I am very glad you have made these Objections against the Validity of this Charter: For if I can prove to you, that what you have now urged from your Friend the Doctor, is a mere Cavil against the Charter it self, I think you have Reason to be my Convert. In the first place, I therefore freely grant that the Original of this Charter is not to be found among the Statute Rolls in the Tower, where there is nothing left of it on Record, except a Confirmation of it by a Charter of Infiduum of Edward the First, (the Conclusion of which is as you have now given) and I think there cannot be a greater Proof of the careles's keeping, or Embezzlement of the Ancient Statutes and Records of the Kingdom, than the Loss of this great Charter, which certainly must have been entailed at the Time when it was made; as well as every common Grant made by the King to ordinary Persons of Markets and Fairs; since we find Copies of it still Extant in the Ancient Annals of divers Monasteries, where the Originals of it were formerly kept; as in particular, in the Annals of the Abbey of Burton, published in the first Volume of Ancient English Writers, lately Printed at Oxford, which fully answers your Objection; for instead of Boniface, it is there Wittened by S. Archepis. Cant. I.e. Stephen Langton, who was then Archbishop of Canterbury near 20 Years before Boniface: there is also an, &c. after the Name of this Archbishop. And the same Charter is likewise recited Word for Word with the former; and hath the same Conclusion concerning the granting of this 15th, by all the Parties above-mentioned, in the Chronicle of Walter Hemingford, published by the Learned Dr. Gate, in his 2d Volume of English Historians, only it hath no Wittenes Names at the end, but the King himself, Tisfe nmpo. And farther, both agree in all Things material with four Ancient Manuscript Copies of this Charter, of the 2d of Henry the Third, when he was in Minority, one of which is in the Cottonian Library; a 2d was lately in Possession of Sam. Baldwin, Serjeant at Law; a Third is in the Hands of John Coke, Esq. Chief Protonomatus of the Court of Common Pleas, and a 4th is at this present with Mr. Prye of the Inner-Temple, which I my self have seen.

But to put this out of all doubt, there is still Extant a fair Original of this Charter of Confirmation of the 9th of Henry the Third, (when he was of full Age) under the Great Seal of this King (which is supposed to have belonged to Battle Abbey) and is now to be seen in the Hands of Sir Nathaniel Peel, Benchers of the Inner-Temple, who is so civil as to communicate it to all who have the Curiosity to see so great a Rarity; so that tho' it is not to be denied, but that the Charter published by Sir Edward Coke in his 2d Inflites, is properly the Charter of Confirmation of Edward the First; since Boniface was at that Time Archbishop of Canterbury, and Folk Bishop of London, (E. being by mistake put for F) yet I think no Man has any Cause to doubt whether that Clause we dispute about, be not in the Copies of this Charter, as well as in this of Edward the First.

M. Well,
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M. Well, admitting this Charter to be as ancient as you please, yet let me tell you, if your Sense be, that the Words at the End of this Charter, "omnes de Regno, those who gave or granted this Subsidy, were Members of that Parliament; if you will understand it so, and according to the literal Meaning of the Words, then omnes de Regno, as well those that had Estates in Land, as those that had not, all Copy-holders, all Tradesmen, all Bondmen and Villains (of which there were great Store in those Days) and all Servants were there present as Members of Parliament. And so then I would willingly understand where all these People should meet, how their Councils should be managed, and how it is possible in such Meetings (if any such there can be) to prevent the greatest Confusion imaginable. The Meaning then of the Words must be, that the Archbishops, Bishops, Abbeys, Eares, Barons, Knights, Free Tenants, and all of the Kingdom, or all the King's Subjects, Dedemunt, that is, paid a Fifteenth Part of their Moveables to the King, for his granting these Charters; not that they themselves gave or granted this Subsidy. And 'tis reasonable to conclude, that all the King's Subjects paid the Fifteenth Part, because one way or other, little or much, they enjoyed the Benefit of them. I take this to be the Genuine Sense of the Words, but Mat. Paris, whom you now quoted, makes it very apparent, who were the constituent Parts of this Parliament; for if you please to observe, the Men to whom the Chief Justices proposed this Fifteenth, and those who consulted about the King's Demands, and those that returned an Answer to them; and also granted the Fifteenth Part of the Moveables, as well of the Ecclesiastics, as Laicks of the whole Kingdom, were only the Archbishops, Bishops, Eares, Barons, Abbeys, Priors; and therefore they were the only constituent Parts of this Parliament, as they were also of the Parliament, or great Council held at Merton, in the Twentieth Year of this King's Reign; Whither says Mat. Paris, Confirmandum cum gaudio Nuptiis convivio Rex recedit a Londinium venit Meretoneum, ut ibi revocavit Magnates una cum Rige de Regni Negotiiis contrabullet.

F. I think I can as easily answer this small Objection against our meaning of these Words at the End of this Charter. Do I affirm that these Words are to be taken literally, or the contrary? Therefore you do ill to put a Sense upon me, which I do not allow of. But pray tell who ever was so mad as to believe that these Words are to be understood literally? Or that all those Persons who you here give us a Bed-Roll of, could all appear in Parliament in Person, or had all Votes at the Election of Parliament Men; and yet for all that, this Clause is true in a legal, tho' not in a literal Sense, that all the Freemen of the Kingdom granted this 15th, viz. That the Prelates and Temporal Lords in their proper Persons, and all the rest of the Kingdom by their respective Representatives, granted this Fifteenth. I hope it is a good Rule in your Civil, as well as our Common Law, that he who gives, or grants any Thing by his sufficient Proxy or Representative, is said to perform it by himself; and in this Sense, all the Men in the Kingdom gave, or granted a Fifteenth for the Confirmation of this Charter, and so at this Day, it may be said in a legal Sense, that all the Men of the Kingdom do join in granting the King a Tax by their Representatives in Parliament, tho' none but such as are Freeholders of 40 s. a Year, can have Votes at the Election of Knights of the Shire, nor any but the Aldermen of divers Cities and Towns, and the Freemen of Corporations, and the Scot and Lot Men of Boroughs, who have any Votes at the Election of Citizens or Burgeffes.

And that your Doctor himself, tho' he hath misled you in the Sense of this Word Dedemunt, yet can grant this to be a reasonable Interpretation of this Clause, when he is in a good Humour; pray remember his Comment upon the 20th of the 20th of the 4th of Edward the First, which I gave you but now, whereby, after the Barons it follows, that Militar Liberti Homines & Communitas Committatur dedemunt, granted a 30th Part of their Moveables, and the Community Civitates & Boroughs a 20th. Whereupon he tells you, these Words are so expressed as if they had been there all in Person; but these Words signify no more, than that the Knights and Freemen gave by their Representatives, and that the Communities of Counties, and these Citizens
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"tizens and Boroughs gave by their Representatives". And why these Meltes Libri Homines, & omnes de Regno, might not do it as well in the same Sense, in the beginning of the Reign of Henry the Third, when this Charter was granted and confirmed, I should be glad if you could give me a sufficient Reason. So that I shall refer it to your own Ingenuity, to consider, when the Charter says expressly, that all the Parliaments therein mentioned gave the Fifteenth, whether it be not a manifest writing of the Grammatical Signification of this Word Dedurunt, to render it they paid, for at this rate a Man may make Words signify just what he pleases. But out ancient English Historians are the best Judges in this Case. For the Annals of Waverly Abbey published in the fame Volume I last mentioned, under the Year 1225, having given us a short Account of the granting these Charters, 9th of Henry the Third, recite the Conclusion of the great Charter in the same Words as they are in the Charter it self only before Dedurunt there is also added the Word Concessurus, which shows that the Author of this Part of those Annals, who might very well write at the same Time, or prelately after the Charter was granted, by his Paraphrase of Concessurus, seemed to intend to prevent any such Mistake in the Signification of the Word Dedurunt. And that this was the constant Opinion of all Historians and Antiquaries to this Day, I will shew you from Henry de Kinghten, who lived within 100 Years after this Charter was granted, and in his History hath this Passidge in this Year, viz. 9th of Henry the Third ; Foil hac Rex Henricus concedit Magnatibus e convers duas chartas unam ad regnum, & aliam de libertatis in quam causam aut regius, aut comitatus, aut servitium 35 Partem mobilitum, & in mobilitum. From whence it appears plainly that at the Time when this Author writ, it was generally believed that the Commons (called Melites & Liberti Tenentes in this Charter) granted this 15th of all their Goods.

I shall conclude with a modern Authority of a Perfon, who you will own to be a Man of great Judgment and Learning, viz. Sir Henry Spelman, who in his Discourse of Magna Charta, inferred in his Glossary, that this remarkable Passidge, Demum Anna 9. Regis Henrici concedente Clero, & Populo cum Magnatibus Quintodecimum partem omnium rerum mobilitum totius Regni Angliae, renovaturs Charta Liberatibus, prout sub Rege Johanne prior erat condita, where it is plain, that by Populus he meant the Commons as distinct from the Lords and Clergy. As for what you say farther, whereby you would fer up the Authority of Mat. Paris against the expres Words of the Charter it self, I suppose you or the Doctor from whom you borrowed this Notion, are the first who interpret ancient Statutes and Records, according to the general Words of Historians: Whereas I always thought till now, that the Sense of the Historians ought to have been understood by Records, and not vice versa, since the former differ one from another in the Manner of Expreffion of the constituent Parts of our great Councils or Parliament, and for brevity sake, express themselves in as few Words as they can.

But notwithstanding the Concielces of these Expressions which we find in Mat. Paris, and other ancient Authors, yet I think even in this Place now cited, there are Words enough to prove there were other Lay-Perfons at this Council, besides Earls and Barons there mentioned; or else, what is the meaning of these Words alius Universi immediately after Barones, to whom Hubert de Burnh proposed the King's Demands, and who also gave their Answer to them? And if these Gentlemen were not Barons, as certainly they were not (or else to what Purpoze was this Diffinition made) then they were mere Commoners; and so we find there were Commons in Parliament, from the Authority of Mat. Paris, that before the 49th of Henry the Third, which is likewise proved by the Statute of Merton (which I have lately cited) in the Conclusion of its Preface, which runs thus, Its pro verum fact, & concessum tam à pre digiis Archipiscopw, Episcopis, Comitibus, Baronis, quam alius a Regis, & Alisi. Nor was it to the men of whom the Word & Alisi were, it and nor the Commons, for you did not answer this Question when I last mentioned this Statute.

M. I shall tell you my Thoughts of these Alisi by and by, when I come to these Words omnes de Regno; but in the mean Time, give me leave to give you the Doctor's Interpretation of this Word Melites put here after Barones,
Barones, which Milites were not Knights of Shires (as you suppose) but Tenants in Capite by Military Service; as appears by the Alizze or Statute of Richard the First, quoted by R. L'Hevendun in his History, which is said to have been made, per Allelujeum & Conisiun Archeipolorum & Regis & Regis, Abbatiam, Comitatum & Baronum, & Militum. Now these Milites were often Bari, and the Barons, Milites. Nam Miles (faith Sir Henry Spelman) quem Baronom vocabant non sunt Militari Cingulo (quo Equites cruccabant) fed a Militari Feodo, quo alias pollefer & liberæ Tenentes, nuncapatus ef, nomen famis, that is, such as had Lands given them for, or such as held Lands by Military Service, and did Homage and Pealty to those of whom they held their Lands; and in this Sense, Mat. Paris calls all the Temporal Nobility Milites, when in the Parliament of Henry the Third, he says, a Militibus Conceptum efl Scutagium, a Anno ad Scatum tres Marce.

F. I think your Interpretation of the Word Milites is forced, and quite contrary to the true meaning of this Charter: Now pray shew me the Consequence, that because the Barons were anciently filled Milites, that therefore your Tenants in Capite were then filled Barones too; which is not true, and quite contrary to this Charter it self, where these Milites (whoever they were) are put after the Barones, as a different Order of Men from them; whereas if the Terms had been then reciprocal, the Words Barones, or Milites (chose which you please) would have comprehended both; but indeed this Title of Miles was then of a much larger Signification, and took in all Knights of whatsoever Tenancy, whether by Military Service or Soceage; as appears by those Writs of the 25th and 26th of Henry the Third, which I have already cited; whereby those that held Ejacates sufficient to maintain themselves de Tenemento suo tam militarum quam Socei, were alike Summoned in to take the Order of Knighthood; and when Knighted, were certainly as good Milites as the Bells of your Tenants in Capite, and so might very well be reckoned amongst the Milites in this Charter. But pray tell me what sign they give you to these following Words, Liber Tenentes & ornmes de Regno?

M. These will likewise bear a like Interpretation, for these liberi Tenentes, that immediately follow in this Charter after Milites, I suppose were meant no other than the lesser Tenants in Capite, who having scanty Knights Fees, or part of Knight Fees, defined not Knighthood, or had compounded, or fined for it, that they might not be made Knights, and who not being actual Knights, are here called Free Tenants or Freeholders, as I have already told you at our last Meeting.

F. Pray give me leave to answer this Interpretation of the Word Liber Tenentes, before we proceed farther. You may remember that I have answered all your Authorities, whereby you would prove that the Tenants in Capite were at this Time the only proper Freeholders of the Kingdom; since I then proved to you from Sir Henry Spelman's Glossary, that any Freeman having an Estate of Inheritance, was as much the Liber Tenens, a Freeholder, as the belt Tenant in Capite in England. Indeed if the Words had been Milites & liberi Tenentes, qui de Regio tenuerunt in Capite, you had said somewhat, but otherwise it is all mere Supposition, without any Ground. But pray go on to the last Words in this Charter, & ornmes de Regno autem, what can they mean, but that all the Freeman of the Kingdom gave this Fifteenth by their Lawful Repreentatives?

M. If you do not like our Sense of these Words, Milites and Liber Tenentes, I cannot help it, nor shall I dispute them longer with you; but as for this last Clause in the Charter, & ornmes de Regno, it only means, all those who were Tenants in Capite in general in the same Sense; as when our Ancient Historians mention Regnum & Sacerdotium, by Regnum is to be understood both the Temporal and Spiritual Barons, great and small, the King's Judges, or any other that exercised any Share or Miniferial part of the Government; as perhaps all those did one way or other, by coming to our Great Councils or Parliaments, &c. all which is evident from the Words of the Quadri-partite History, concerning Thomas Becket, thus, Rex apud Clarendon, Regnum composit, univerfum. Lucum venient Prefides, & Procres, &c. i.e. the whole Baronage called together by the King's Writ, or a full Meeting of the Spiritual
ritual and Temporal Barons, both great and small. I pray also remember that Passage you your self made use of but now, out of Matt. Paris, whereby you would prove that the Common Council of the whole Kingdom was divided from that of the Tenants in Capite; because that after the Curia held at Christchurch, the King immediately issued out his Writs, commanding omnium ad Regnum spectantes, to appear at London; and yet you see there are no more mentioned to be Summoned than the Archbishops, Bishops, Abbots, Priors, Earls and Barons. So that we may hence learn the true Meaning of these Words, omnes de B. G. p. 63. Regno spectantes, in Matt. Parisia, the Regnum, or Government, the Communitas Regni, the totales Regni universitas, the infinita nobilium multitudine; and also gives us the Meaning of those Words, omnes alii de Regno, in the Close Roll of the 15th of Henry the Third, to the Sheriff of Somersetshire, Scias quod Comes et alii. & Barones, & omnes alii de tuo Regno nostro, &c. Concesserant, &c. Which are further explained by a Writ in the same Roll about the same Buindef, directed to the Sheriff of Suffolk (which you have likewise cited) beginning thus, Scias in ibid. M. 8. quod Archiepiscopo, Episcopo, Abbatis, Prioribus, Comitis, Barone, & omnes alii de Regno nostro Anglia, qui de nobis Tenent in Capite, de nobis concesserant, &c. Here the omnes alii de Regno, were the omnes qui de nobis Tenent in Capite, which were then all the Regnum, or Communitas Regni. So likewise it may be farther proved from a Record of the 48th of Henry the Third, Rex omnibus, &c. cum Reg. Pat. N. 4. venerandis Patres, G. E. Eborum Archiepiscopos, &c. & alii Praedati, Magnates, Militia, liberi Tenentes, & omnes alii de Regno nostro, utque in articulo necsstitatis servitium seecrant, &c. And I may also put you in mind of the Writ I cited but now, directed Archiepiscopo, Episcopo, &c. Comitis, Barones, Militia, & omnibus alii de Comitatu Kent, &c. for the Levyng of Forty Shillings upon every Knights Fee in that County. Now this Writ could not be directed to all the Men in Kent, but to all such as paid Scutage; for not a Forthieth Part of them were Tenants in Capite, or Military Service. So that these omnes alii de Regno, and omnes alii Comitiatus, were the same one with the other, and otherwise it could not be: For by omnes de Regno, or omnes alii de Regno, the Inhabitants in general could not be understood, for they never were Summoned, nor not the Hundredth Part of them, to meet in Great Councils; for 'twas impossible they should, and perhaps not above a Fourth Part of the Kingdom paid to this Fifteenth, if we consider how many Servants, Villains, Bondmen, and many such People there were then in the Nation that paid nothing.

F. You have taken a great deal of Pains to perplex and darken Words in themselves very clear and perspicuous; for methinks it is a strange piece of Confidence in your Doctor, when the Charter says expressly, That Omnes de Regno, all the Freemen of the Kingdom gave this 15th, to refrain this Act only to the Tenants in Capite, who were but a few in Comparison to the whole Kingdom; this is indeed to make Words signify any Thing he fancies.

But to answer your Authorities, which are founded all upon false Suppositions, without any Proof. As to your Authority from the Quadrilogia History of Thomas Becket; it is true, that the Presules and Proceres are there called Regnum, the Kingdom; but I have already proved at our last Meeting, that this Word Proceres was of fo comprehensive a Signification, that it took in all the Principal Men of the Kingdom, as well those that were Lords, as those that were not; so that the chief Citizens and Magistrates of our Cities and great Towns, are often called Proceres & Magnates Civitatum, in our Ancient Historians and Records; and certainly the great Freeholders, or Knights of Shires did much more justly deserve that Title.

As for the other Passage out of Mat. Paris, where the Bishops, Abbots, Earls and Barons, are called omnes ad Regnum spectantes; this is but a general way of Expression in this Author, and proves nothing: For either the Word Barones, takes in all the smaller Tenants in Capite, or it does not; if the latter, then this Author does not exactly recite all the Orders of Men, whom your self must have known; for, if it had appeared there, since all the Barons could never make this infinita Nobilium multitudine mentioned in this Author; if the former, then it is plain, that he thereby comprehended more than those who were really
really Barons. Since it is certain that the small tenantry in Capite were not really so, and consequently were mere Commoners, as I have told you more than once. And then make the profit of this Word, Barones, it may in a large and common Acception, take in all the chief Freeholders, or Lords of Mansions, which (as I have already proved) were often called Barons in our Ancient Histrians, and Laws of the first Norman Kings; and Mr. Camden tells us, that under the Word Baronagium, omnes Regni ordinis cominventur. This I say, supposing that by this infinita Nobilitum multitudi, is to be understood, all the chief Gentry, or Freeholders of England, called often Nobilitas Anglia, as I have already made out, and which may also take in the Representative of Cities and Towns, but if we should suppose, that by the Baron here mentioned, are to be understood only the tenantry in Capite; yet, since they, together with the great Lords, made the chiefst Figure in the Government, it was easy for this Author to overflip the particular Mention of others, it being enough to comprehend them with the Representative of the rest of the Kingdom, under the general Phrase of Infinita Nobilitum multitudi: As I have already said, the Concienfis of Histrians, was to be explained by our Statutes and Records, and not that their express Words should be interpreted by the obscure or general Phrases and Expressions of Histrians; and if by omnes de Regno, are to be understood all the tenantry in Capite in general, how could this be without a notorious Tautology? Since if it be as you say, that the Bishops, Abbots, Earls and Barons, comprehended all the greater Nobility, and the Milites & liberi Tenentes, all the lesser, or tenantry in Capite, (who made then the whole Kingdom) if so, what can these Words omnes de Regno here signify, but so many idle Words without any Sense or Meaning?

But it will be now more easy to answer your false Interpretation of these Words, omnes Alii de Regno, which you will needs have to signify only the tenantry in Capite; and it will be no hard Matter to shew you the Doctor's Prevarications on these Words; for as to the first Writ directed to the Sheriff of Somersetshire, though I confess the Words at the beginning of the Writ, are omnes Alii de toto Regno nostro; yet the Doctor has in his Glossary purposely concealed the Words that follow, which plainly restrain them to tenantry in Capite, and their Under-Tenants by Military Service. But if you please but to turn to the Writ which he has given us at large in his Appendix, Namh. 14, you will find, first, that this Writ recites, that the Earls, Barons, and omnes Alii de Regno, had granted the King an Aid of Two Marks on every Knights-Fee, qua de nobis Tenenti in Capite. Secondly, That at the Command of the Earls, Barons, and all others that held in Capite, the Sheriff should diftrain omnes militis & liberi tenentes qui de eis tenent per servitium militare, who were likewise to pay the King the like Sum of Two Marks for every Knights-Fee; so that you may here plainly see, that this could be no general Tax granted by the whole Kingdom, since none but Tenants in Capite, and their Under-Tenants by Knights Service, were chargeable with it, which, if given with their Consents, must have been done in full Parliament, and in which they had Representatives of their own chiefing; and if without their Consents, was directly contrary to Law.

But you need go no farther than this Writ you have now cited, to prove that the Militis & liberi tenentes, were not at this Time only Tenants in Capite, as you suppose, but their Feudatory Tenants also, as appears by the express Words of this Writ, which orders and directs the Sheriff to diftrain omnes Militis, & liberi Tenentes qui de eis tenent per servitium Militare. But as for the other Writ to the Sheriff of Suffolk, which (as you say truly) relates to the former, to the Sheriff of Somersetshire, it sufficiently interprets those general Words, omnes Alii de Regno, and expressly restrains them to omnes Alii qui de nobis tenent in Capite, who in a Council of themselves alone, granted this Tax for themselves only, as I have already proved; which, whether it was according to Law or not, we shall enquire by and by.

But in the mean Time, give me leave to answer your next Record, of the 48th of Henry III. which recites an extraordinary Service and Aid done by the Fratres, Magnusm, liberi Tenentes, & omnes Alii de Regno: Now that this was not a Service performed, or an Aid given by the Tenants in Capite only for the
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the whole Kingdom, the Word Subsidium in the Writ may teach you, which was never granted otherwise than by the whole Kingdom in Parliament. But let us first consider the Substance of this Record, which is indeed but the King's Declaration of a Right to all his Subjects in general, or the Freemen of the whole Kingdom, that what they had lately performed in Artikel neceffitatis predict, non fubi cedat in prejudicium, nec ad poferum trabatur in confuetudinem, vel consequentiam nec ad bujas modi jurisuum compellentur; which being the Effect of this Record, now see the Caufe why it was granted, which you may find in another Record of the same Year, and on the Roll, to which this Record you cited relates, which is a general Summons directed, Archiprefcopi, Epiftopii, Abbati- bus, Comitiis, Baroniis, Vice-comitiis, Militibus, ibero Hominiis, & universa Comunitati Comitatus Lincolnii; commanding them all, even the Citizens and Townsmen, immediately to appear with such Arms as are there expressed (and were proper for each Man's Estate and Condition) for the common Defence of the Kingdom, against Strangers then ready to invade it; and this Record also says, eodem modo scribitur ceteris Vice-comitiis Angliae. Now since it appears by this Writ of Summons, by which this Service and Aid was performed, that not only the Tenants in Capite, but all the Subjects of the whole Kingdom, were engaged in the Performance of it, can any body, but one who will take Things by halves, supposse that by these omnes ali de Regno there mentioned, (and who must certainly be the same Parties intended in the Doctor's own Record, viz. all the Freemen of the Kingdom) could be meant no more than the Letter Tenants in Capite, taken altogether, when they had been (according to our Sense) all particularly named before?

But that by these omnes de Regno, cannot be here meant only the Tenants in Capite, but all the Freemen of the whole Kingdom, I shall prove by another Record of the 16th of Henry III. and is the very Writ I gave you before, wherein it is recited, that the Villani, together with the rest of the Liber Homines, had given a Thirtieth Part of their Moveables; in Consideration of which, this Writ concludes thus, Conceflimus eitiam Archiprefcopi, Epiftopii, Abbatiis, Prioritiis, Comitiis, Baroniis, & vobis omnibus Aliis de Regno nostro, quod tam Charta nostra, de Foreffa, quam alia Charta nostra de Libertatibus, suas eis, & vobis fieri fecimus de eato in omnibus teneantur; so that it plainly appears, that by these Words in this Record, omnibus Aliis de Regno, must be understood all the Freemen of the Kingdom in general, unless you will allow none to have had any share in these Charters, or to have received any Benefit by them, but the Doctor's Tenants in Capite alone; which sure you will not affirm.

But let I tire you as well as myself, in dwelling so long upon Things so plain and obvious, were not they by too much Artifice rendered obscure. I come at last to the Conclusion of your Discourse, which is no more than a Repetition of what you had said at first; that because all the Kingdom could not be summoned to appear in Parliament, and that Villains and Servants, &c. never paid to this Tax; that therefore the Words omnes de Regno are not to be understood literally, (a dauntly Discovery) and therefore you have found an Expedition to help this Contradiction by your Tenants in Capite, and I by Knights, Citizens and Burgesses for the Lainy, and by the Procuratores Chri for the Inferior Clergy. Whole Interpretation is most agreeable to Truth, I durst leave to any indifferent Judge; for I must needs tell you once again, I cannot fee any manner of Reason, either from Authorities, or from the Nature of the Thing, that ever your Tenants in Capite could be the omnes de Regno in a legal Sense, and as such did represent all the Freemen of Estates in the whole Kingdom; therefore if you can prove this, it may go far to convince me, otherwise not.

Since you will not rest satisfied with those Authorities I have already pro-


Ibid. 124.

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both
both Scutage Tax, and Scutage Service, and other reasonable Aids, as often as
Necessity required.

F. I grant indeed the Matter of Fait to have been sometimes as you say,
since there is no averring against express Records; but I say likewise, that as
for those Writs the Dr. has given us, concerning the King's Ordering the Sher-
iffs to distrain the Melfe Tenants of the Tenants in Capite for Scutage-Ser-
vice, as to Marry their Daughters, or for the finding of Men in any War-
like Expedition; it was no more than what those Melfe Tenants were bound
to do by the Tenures of their Estates; if they had failed to serve their Lords
in Perfon, or by sufficient Deputies: And therefore the King might legally
grant them Scutage upon such Tenants; and perhaps might also change their
Service in Person into a pecuniary Aid, as appears by some of those Writs the Dr.
has given us; and this not by his extraordinary Prerogative, but by Law. So
likewise, tho' your Tenants in Capite could Tax themselves in their distinc
Council, or else in the Common Council of the whole Kingdom, at what rate
they pleased, for the Knights Fees they held of the King; and tho' the King
might sometimes undertake, by this Pretense, to Levy a Scutage of Two Marks
on their Under-Tenants also; yet does it not appear by either of those Rec-
cords you have now cited, that they gave for more than themselves alone; the
Words in the Writs being only, that they had given the King Efficient Authority
of Two Marks upon every Knight's Fee (as well Wards as others) who
held of him in Capite, without any mention of their Melfe Tenants. So that
if the Sheriff was afterwards ordered to distrain those Melfe Tenants also, for
Two Marks for each Knight's Fee they held of their Lords; this was training
a Point of Prerogative; for by the same Rule the King might (by the
like Prerogative) have taxed all the Bishops, Abbots, Great Lords, and all
other Tenants in Capite, without their Consent; as well as their Melfe Ten-
ants; tho' it was contrary to the express Words of the Charters of King
William I. and King John, which you yourself cited at our former Meet-
ing: So that granting the Matter of Fait to have been practifed sometimes,
as your Records make out; this is no Proof that this was a confiant Law,
or fextend Custom, much less that the King had a Right so to do.

H. I do not doubt but that I can prove to you, that what this King then
did in charging those Melfe Tenants, was according to his Ancient Preroga-
tive, and what himself and his Predecessors had frequently done, both be-
fore and after that Claude in King John's Charter of Nullum Scutagium, vel
Auxilium ponam in Regno meo, &c. was granted; nor may it be granted by
Henry III. and Edward I. that they taxed their Demefines thro' England, (tho'
not the whole Kingdom) by the Advice of their Privy-Council, until the Sta-
tute de Tallogio non concedendo was made, in the 24th of Edward I. And
both Richard I. and King John, had taxed the whole Kingdom, without com-
mon Allent, before the Grant of Magna Charta: As also in the Reign of Ri-
chard I. as you may find in Howden, who lived at that Time; (the Pallage
is long, and therefore I shall only give you the Beginning of it;) viz. that
this King, Anno 1198. (Regno 9.) accept de unauque Carusca Terra totius
Anglia, V. Solidos de Auxilio, &c. And then goes on to shew us the Manner
how it was raised and collected; and 'tis observable, that he uses these Words,
Auxilium and Tallogium, for the same Tax. So we find in Mat. Paris, That
King John took a Seventh Part of all Moveables, without common Allent, and
another time a Thirtieth, the Great Men and Clergy grumbling at it. King Henry III. also taxed all his Derfines, in the 33d Year of his Reign,
as appears by a Writ in the Clofe-Roll of this Year; whereby he also com-
mands the Sheriff of Bucks, that he make Philip Beffet a Rationalble Tallogi-
um, de boninissen fum de co tenentibus in Manerio de Wycumb, quod eligendo
fuit Dominium Præcedentorum Regis, &c.

I. In the 39th Year, this King (as the Doctor shews us at large) by a Re-
cord in the keeping of the Remembrancer of the Exchequer) taxed all his Derfines; and, among the rest, the City of London at 3000 Marks; which,
tho' with some Conneft, (mention'd in this Record) they were at last forced
to pay; because it was found upon Record, that this King, and his Father,
had several times Tallied (or Taxed) the said City in like manner, at the
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Sums therein mentioned; so that at last the Mayor and Citizens were fain to acknowledge them-selves thus talliable by the King.

So in the 52d Year of his Reign, he Taxed all his Demesne-Lands beyond Trent, by his Escheators: And this Right was acknowledged by all the Bishops, Earls and Barons, in the 33d Year of Edward I. as appears by their Petition to him in Parliament, in these Words: Ad Petitionem Archiprescopo. Etc., Episcoporum, Prelatorum, Comitum & Baronum, & aliorum provisorum hominum de Terra potentium quod Rex concedere velit quod ipsi posset tabulare antiqua dominica, unde sunt in Tenentia, ficta Rex Dominica sua tabulata, et eis responsum esse, fiat ut petitor.

From all, which you may plainly see, that the Kings of England had anciently a Prerogative of laying Taxes, not only upon their own Tenants and their Myne Tenants who held under them, but upon the whole Kingdom too; and if their Successors have acted otherwise, it has proceeded from their meer Grace and Favour, who have yed up their own Hands from exercising this Prerogative.

F. Pray, Sir, observe, that you have now quitted the main Question, Whether others besides the Tenants in Capite appeared in Parliament before the 49th of Henry the Third; and after that, till the 18th of Edward the First? And now start a new Point, Whether the King, with the Consent of his Tenants in Capite would not Tax the whole Kingdom? And to make out this, you have mustered up a great many Authorities; but for what End I know not, unless it be to prove that some former Kings stretch’d their Prerogative to act directly against Law, and their own Charters to the contrary; and to justify them in it when they have done, as if all Things were done according to their Lawful Prerogative, because they did it. If this be Law or Reason either, much good may you with it: For at this rate the King, notwithstanding all Laws made and sworn to by him to the contrary, may take what he pleases out of our Estates without our Consents, because his Predecessors broke the Laws, and their Coronation Oath into the Bargain. But you might have remembered, that et de jure ad jure, non datur conficienda; but I doubt the Precedents you have now brought, will not come up to the Proof of the Affirmation you have laid down: For it is plain, as well from King John’s Charter, as by that Paffage in Braden I but now cited, whereby it appears, that extraordinary Taxes, such as Hidage, Corage, and Caravage, & alia (under which if I suppose was included your Scuage Tax also) could not be imposed without the Consent of the Common Council of the whole Kingdom, when the King met his People in Parliament. If then this were Law, whatever King John or Henry the Third, or any other King acted contrary to this Rule, was illegal, and produced among other Mitchiefs the general Revolt of all the Baronage, &c. as well the Interior as Superior Nobility of the whole Kingdom; till such Time as our Kings finding they could do no good by Force, were fain, at last to content themselves with the Legal Prerogatives of the Crown, and by new Laws and fresh Declarations of the Ancient Law, to declare it unlawful for them to impose any Taxes upon their Subjects, without their Consents in Parliament.

But let me tell you, that by thus setting up the King’s Illegal Prerogative of taxing the Meine Tenants of their Tenants in Capite, you quit the Question; For I asked you by what Right the Tenants in Capite (whom you suppose) could grant by this Charter a Fifteenth of the Moveables of the whole Kingdom, as well of those who did not hold of them by Military Service, as of those that did; not of those who never held of them at all? And you then fly presently to I know not what unknown Royal Prerogative of Taxing the Meine Tenants of the Tenants in Capite at pleasure, which you must allow, either was according to Law, or it was not: If the former, I have already proved he could not do it by Law at all; but if against Law, there was the like Reason why he should have had that like Prerogative on his Tenants in Capite too; even over the very Bishops, Abbeys, and Temporal Lords: And then I desire to know whether the great Council of the Kingdom had not been long since destroyed and given up.
BIBLIOTHECA POLITICA

But to examine your Authorities. It is true, Hoveden says of Richard the First, that accept de uno quaue, Hida Terra V. solorae, yet does it not therefore follow, that he took this Tax without consent of his great Council. It was the ordinary Phase of Writers in those times, to say, Rex accepti, i.e. received such a Tax, when indeed he took nothing but what was given him by his Parliament. And therefore, we find this Tax not mentioned in any other Writer, but only Hoveden, and I cannot give you an express Proof that this Tax was granted in a Great Council; yet it is most likely (nay, certain it was) for the Word accepti does not in its own nature import any violent or illegal Exhibition: And therefore considering the nature of the Thing, it is greater Reason to suppose, that this Aid was granted by Consent; since this same Author tells us, in the Relation of this Affair, that this Money was received by the Hands of two lawful Knights of each Hundred, and that they did Answer this Money to the Exchequer, Coram Episcopis, Abbotibus, & Baronybus & hoc signiatus, who would never have undertaken it, had not this Tax been granted by the Common Council of the Kingdom; but that this King could not Tax the whole Kingdom at his pleasure, may appear by a Relation out of this very Author, in the very same Year, but a little before, viz. That when the King demanded by Hubert, Archbishops of Canterbury, that Honines Angliae, the Men of England should find him 300 Milites, i.e. Knights to stay one whole Year in his Service, or else would give him so much Money, as that he might therewith maintain those 300 Knights in constant Pay, viz. to every Knight Three Shillings of English Money, and that, to grant this, all the Rent was taken, as not da...ring to refund the King's Will, only Hugh, Bishop of Lincoln, as true Servant of God, abstaining from all evil, Answered, That he would by no means agree to the King's Desire, because it would redound to the detriment of his Church, etc. And so it seems the Bishops fell and came to nothing. Now it is plain, that this Request must have been made in the great Council of the Kingdom, or at least in that of the Tenants in Capite, and if he could not charge his Subjects with the keeping but of 300 Horsemen for one Year, without their Affents, can any Body believe that he should presently after exact a much greater Sum, viz. Five Shillings out of every Plowland in England? But as for all your Precedents for King John's Reign; he was such a Notorious Tyrant, and Breaker of his Coronation Oath, and common Faith both to God and Man, that I hoped that neither your self nor any good Englishman would have fetched Precedents for Prerogative, from so profligate a Reign as his; and in which I grant there were more than once Illegal Exhibitions of this Nature, which yet are branded by those very Historians that relate them, for great Oppressions and unjust Exhibitions; as particularly in this first Instance out of Met. Paris, of King John's taking away by Force the Seventh of the Moveable Goods of the whole Kingdom, which is by this Author called by no better than Rapinian, Rapine or Robbery.

The same I may say to the like Exhibitions of his Son Henry the Third, which are branded by all Writers, as horrible and illegal Oppressions; nay, are owned to be so by this King's frequent Confirmations of Magna Charta, and Acknowledgments of his Breach of them, and Promises to obviate them better for the future. But I am sorry to find your Doelor, whom you follow, both in his Answers to Mr. P. and Mr. A. as also in his compleat History, till to cite the most violent and illegal Actions, nay the very Perjuries, for Flowers of the Crown, and Royal Prerogatives.

But as for the Authorities you urge for this King's Talliating his Demesne without Consent of Parliament, you your self grant that this Talliage was not general upon the whole Kingdom; and if so, could only concern his own Tenants in Ancient Demesne, and none else; who were always exempted from being taxed with the rent of the Nation, because they were liable to yield the King a reasonable Talliage, ratione Tenure, whenever he needed it; yet this was counted rather a Privilege than otherwise; since they were not only free from all other Burthen and Parliamentary Attendance, but were also Taxed much less than the rent of the Nation, in regard of their Tilling the King's Lands for the Maintenance of his Hothoule: But when this reasonable Prerogative grew...
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 grew to be abused, and the Exactions levied upon them became intolerable, then they would no longer suffer it; but give it taken away by the Statute de Tallage non concedendo. After which we find the Tenants in Ancient Demesne frequently giving their Stares of Aids and Subsidies in Parliament by Delegates of their own, as in the Record of the 35th of Edward the First, which you have now cited; till at last they came to be relieved into the common Body of the Kingdom; but as for the City of London, it was never taken for part of the King’s Demesnes; and so is not to be found in Doomsday-Book, but as appears by Record, held of the King in Capite; and therefore could be no otherwise Taxed than as the rest of the Tenants in Capite, that is, by the Common Council of the Kingdom. And this made the Londoners deny to be otherwise Tallied, as appears by this Record of Henry the Third, which you have now cited. But the truth is, they had this Exaction first laid upon them in the exorbitant Reign of King John; and this was afterwards trumped again upon them in all the ill part of his Son’s Government, because his Father had done it before; and I doubt not but if Skip-Money had palled unquestioned, and been as often paid in the Reign of King Charles the First, but that it would have been urged as a Precedent in the Reign of Charles the Second.

But as for your left Authority of the 5th of Edward the First, pray take Notice, that it is before the Statute de Tallage non concedendo, and extends only to such Tenants in Ancient Demesne, as were held of the King by Nobility or Gentleman, either by Gift, or Purchase; and which, for all that, still kept the Ancient Custom of being Tallied by the King, as their Under-Tenants were by them, to enable the Lords to pay the King’s Tallage; and in this Sense I understand these Words in this Record, unde sunt in Tenacia, i.e. of which they are in Tenancy to the King. Nor does the Record call them Dominicae jura, as it does the King’s Demesnes that follow: So that this could not be a Tax upon all Under-Tenants by Knights Service, as you suppose; since their Estates were never called antiquae Dominicae, and therefore I think after all, you cannot shew me any legal Precedent that our Kings claimed a Right under Colour of their Prerogative, of Taxing the whole Nation de Alto & Basso, at their pleasure.

M. I shall not now dispute it longer with you, whether the Kings of England had not anciently a Power of Taxing the Lands held of them, without the Consent of their Great Council; but thus much I think I may safely aver, That when this Great Charter was made, the Tenants in Capite, as the Common Council of the Kingdom, gave Taxes and made Laws, not only for themselves but their Mefne Tenants, and the whole Nation also. Nor was this at all unreasonable, that those who thus held Estates by Mefne Tenure under the Tenants in Capite, should be bound by the Acts of those of whom they held them; since we see in Scotland, that at this Day none sit there, either as Commissioners of Shires, or Burgesses for the Royal Boroughs, but such as hold in Capite of the King; for anciently, before the Law for excusing the smaller Barons or Tenants in Capite from coming to Parliament, and sending Commissioners of Shires in their stead, was introduced by a Statute made in the Seventh Parliament of King James the First, Anno Dom. 1420, it confitted all of Tenants in Capite, viz. the Bishops, Abbeys, Priors, Earls, Barons, & Liberi Tenenti ban qui de Rege Tenent in Capite, as appears by the very Words in the Latin Titles to divers of those Statutes, as you may find them in Skene’s Collection of Scotch Laws. Now if this Law did anciently, and does still prevail in Scotland, that the Tenants in Capite should be the sole Representatives of that whole Kingdom, I cannot see any Reason why it might not have been so anciently in England also, especially since I can give you so good Reasons to back this Opinion.

F. I will Answer your Argument from Scotland by and by, but in the mean Time give me leave to tell you why I think it could never have been the Custom in England; and that for two Reasons, First, because it was against Reason, and 2dly, because it was against the known Law of the Kingdom. That it was against Reason, is apparent; since what Reason was there, that if a Man in those Times purchased an Estate for a valuable Consideration, of a Lord,
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Lord, or any other Tenant in Capite (as certainly Thouands did) to be held either by Knight's Service, or in Soccage, that such a Tenant should lye at the Mercy of his Lord, to dispose of his Estate in Taxes, and make Laws for him at his Pleasure; however exorbitant those Taxes were, or inconvenient those Laws might prove, the Lord being no Representative of his own Choice or Appointment.

In the next Place, that this was contrary to the received Law and Custom of the Kingdom in those Times, I can prove by Two very sufficient Authorities, the one of the Earl of Chester, the other of the Bishop of Durham. Now it is certain that both this Earl and Bishop held their County Patalines in Capite immediately of the King, nor had those Counties any Representatives in Parliament, till long after that they had Knights of Shires and Burgeses granted them by particular Statutes made for that Purpose; now according to your Hypotheces, all the Freeholders and Inhabitants of those County Patalines should have been bound by all As's of Parliament, and Taxed with the rest of the Kingdom as often as there were Laws made, and Taxes given when their Bishop or Earl was present, which was not so; for in the first Place as for the County of Chester, if the Earl had been the Representative in Parliament of his Tenants by Knight's Service or otherwise, as also of all the Abbeys, and the City of Chester it self, and all other great Towns in that County, his Vote in Parliament would have obliged all of them; and there would have been no need of a Common Council or Parliament of the States of the whole County, in which they then made Laws, and taxed themselves as a separate Body from the rest of the Kingdom; as may appear from the following Records which Mr. A. hath given us; the first of which is a Writ of King Edward the First, directed Archipiplogiscopis, Episcopis, Abbatisbus, Prioribus, Barontibus, Militibus, & omnibus alis Sedicibus Iuis in Comitatibus Ceftriae, reciting, That whereas the Prelates, Counts, Barons, & ali de Regno, had given them a 15th of their Moveables, he defers that they also would of their Benevolence and Courtezy (in Latin Curative) grant him the like Subsidy; which, Note, could not be done out of a Common Council.

So likewise in another Writ of the 20th of this King, reciting, That whereas the Probi Homines, & Communiter Ceftriae sicut eterni de Regno nostro 1550 per omnia omnium mobilium fuerum nobis concederent gratiolor. Now supposing (as the Doctor always does) that these Probi Homines were the Earls Tenants in Capite, what can this Word Communiter here signify, but another Sort of Men distinct from them, viz. the Commonalty or Commons of that County? And which is also remarkable, this County was now fallen to the Crown for want of Heirs Male of the last Earl; and so according to the Doctor's Notion, the King being their sole Representative needed not to have been beholden to them for those Subsidies; since they not as King, yet as Earl of Chester, he might have taxed them himself, which yet he thought not fit to do, because he knew it was contrary to the Rights and Privileges of that County, which had ever since the Grant of it to Hugh Lupus by William the First, always been taxed by themselves.

Which Privileges are also expressly set forth in a Supplication of all the Estates of this County Pataline to King Henry the Sixth, which Mr. P. has given us from an ancient Copy of it then in the Hands of Sir Thomas Mauny of that County, Baronet: Wherein the "Abbots, Priors, and Clergy, Barons, Knights, Esquires, and Commonalty, set forth, that they with the Consent of the Earl, did make and admit Laws within the same, &c. and that no Inheritors, or Poufflers within the said County were chargeable or liable, or were bounden, charged, or hurt of their Bodies, Liberties, Franchises, Lands, Goods, or Poufflers, unless the said County had agreed unto it. Now what can here be meant by County but the Common Council, or Parliament thereof, since otherwise they could make no Laws, nor do any other publick Acts? The like I may say for the County Pataline of Durham, which from the Grant thereof by William Rufus to the then Bishop, had always been taxed by themselves, and not by the Bishop in Parliament, and that as low as the Reign of Edward the Third; as appears by this Record of the 14th of that King, containing a Letter or Communion to R. Bishop of Durham, reciting, That whereas the Prelates, Earls, Barons and the Commons of Counties, had given him a 9th of their Goods there mentioned, that therefore the Bishops...
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"Bishops should convene the Magnates & Communicatio Libertatis vestre, (to wit, of his County Palatine) ad certum diem, & locum, with all convenient Speed; and that done, to persuade and excite the said Magnates & Community, to grant the King the like, or a larger Subsidy, towards the Maintenance of his Wars; which had been altogether in vain, if the Bishop, or the King could in those Days have Taxed this County at their Pleasure.

Now if these great Tenants in Capite could not Tax their Meane Tenants without their Consent, much les could the rest of the Tenants in Capite in England impose Taxes on their Tenants in Military Service, or in Sogage, without their Consent, which last had a much les Dependance upon them.

M. I must confess I never considered these Precedents of the County Palatine of Chester and Durham; and therefore can say nothing to them at present; since it is Matter of Fact; but as to Reason and Law, I think it is consonant to both, that not only Tenants in Military Service, but Sogage Tenure, should be bound by the Acts of their Superior Lords, of whom all the Lands of England were formerly held by Knights Service: And though in Process of Time many of these Estates and Lands became free Tenements, or were held in Sogage; that is, were a sort of Freeholders; yet the Lords retained Homage (which in the Times we now write of, was no idle insignificant Word) and by that a Dominion over the Estate; whereby upon Disobedience, Treachery, or Injury done to the Lords, the Lands were forfeited to them. And although the Lords, not the Tenants of them (which were termed Freeholders) were subject to any bale Services, or servile Works, yet the Lords had a great Power over these Tenants, by reason of their doing Homage to them (which though now antiquated) yet in nomine, their Lands were many ways liable to Forfeiture, and Taxes too.

So that upon all these Accounts, it was then as reasonable that the Tenants in Capite should in those Days make Laws, and grant Taxes for all the rest of the Kingdom; as the Tenants in Capite in Scotland should do so to this very Day, for all the Inhabitants of that Kingdom of never so great Estates; and to this Argument which is certain in Matter of Fact, you have yet answerewd nothing, nor do I believe can.

F. I cannot see, notwithstanding what you have now said, that the Superior Lords, by reason of Homage, should have an absolute Power over their Tenants Estates: For though in the Profession of Homage to the Lords, I grant the Tenant thereby promised to become the Lord's Man; yet he never thereby meant to become his Slave; and there were mutual Duties on both Sides; so that if the Lord failed to protect his Tenant in his Estate, or unjufully oppressed him, he might have refused (nay renounced) his Homage, till the Lord had done him right; nor can I see how a bare Right of having the Forfeiture of the Estate in the Caeles you have put, which yet let me tell you, were never so strik in respect of Sogage as Military Tenure, as I could shew you, were it worth while; for if this Right of Forfeiture alone, could give the Superior Lord a Power over his Tenant's Estate, to make Laws for him, and Tax him as he pleased, then by the same Rule, the King as Supreme Lord over all his Tenants in Capite, should have had the like Power over them, of making what Laws for them, and imposing what Taxes he pleased upon them, without their Consent; and so there would have been no need of Common Councils or Parliaments at all, since upon your Thebysip, the Tenants in Capite were the only Persons that had any Right to appear there. But if neither the Wardship, Marriage, nor Relief of the Heir, could give the King such a Power over his Tenants in Capite, much les could they attain the like Right over all their Meane Tenants by Knights Service; for that would have given them a greater Power over their Tenants than the King himself had over them; therefore if those great Tyes of Wardship, Marriage and Relief of the Heir, could neither give the King, nor yet any Tenant in Capite, Power over the Estate or Liberty of his Tenants by Knights Service, much les over their Tenants by Sogage Tenure, who were not under this Subjection. And farther, if a Right of Forfeiture alone,
in some Cales, could have given the Lords a Power of making Laws, and granting Taxes for his Tenants in Scoage, then they should have still kept that Right by this Rule, since all Lords had a Right of Fortitude even upon their Tenants in Scoage in some Cales, before the Statute of taking away Knights Service, and the Court of Wards, and Liversies, in the Second Year of King Charles the Second; as I could prove, were it worth while.

As to Scotland, I shall not deny the Matter of Fact to be as you say, that it hath at this Day no other Representatives in their Parliament, but the Tenants in Capite; yet whether it was so or not, and anciently, I very much doubt, since I find the very same Words and Phrases made use of in the Titles of their old Statutes, as also in their Records, to express the Confinment Parts of the great Council of that Kingdom, as were used in England, to express those of England at the same Time. For Proof of which, pray see the old Charters of King Malcolm III. and David I. as you may find them at the end of the Second Volume in Mr. Dugdale’s Monast. Anglic. and you will see the former to have been made by the Affent of the Comites & Barones Regni, Clericu dignissimique Regnis, &c. and as I shall also show you from Sir John Selden’s Collection of Scotch Laws, to begin with, and to prove there Extent, and the Name of a Scot of Second made in the Time of King William, Simmamed the Lion, who began his Reign Anno Dom. 1105. in the Faith of our Henry I. to the Obsequience whereof it is there expressed, that the Episcopi, Abbatis, Comites, Barones, Thanes, &c tota Communitas Regni teneret forum iuriscurrant. So likewise King Alexander II. who began to reign Anno 1214, which was the Sixteenth Year of our King John, and he made his Laws de confido & olimfus venerabilium Parrum Episcoporum, Abbatis, Barones, et proborum hominum suorum Scotia, and who therin were, may also farther appear by the beginning of certain Statutes made by the said King Alexander in the same Year, which begin thus, Statuit Rex per consilium & olimfus totum communis Scotiae, &c.

I shall next produce the Title of a Parliament holding the 15th of Robert I. who began his Reign Anno Dom. 1266, in the Third of our Edward I. In Deo nomine, Amen. Robertus Dei Gratia Rex Scotiorum Anno Regni sui Decimo tertio die Dominica proxima, &c. habito solenni trettato, cum Episcopi, Abbatis, Prioribus, Consiliis, Baronis, &c. qui Magnificus de Communitate totius Regni ibidem conventus, & which Title concludes thus, de Communi consilio & ex professo conveniens communi Preliminari, & liberty Tenementum predilorum ac totius Communis totius communi predicta ordinatis, candidis, &c. Statuta infra Scriptum, &c. So likewise in an ancient Manuscript, called, Scotia-Cronicon, formerly in the Possession of the Right Learned and Honourable Arthur Earl of Anglesey, and now in the Herald-Office, you will find the Entail of the Crown of Scotland to have been made by this King Robert, Anno Dom. 1315, in a general Council or Assembly of the whole Kingdom of Scotland, as well Clergy as Laymen, which as this Author tells us (who lived, within Sixty Years after) was held, Dominice proxima ante festum Apostolorum Congregati apud Are in Ecclesia Parochiali ejusdem Locis, Episcopi, Abbatis, Prioris, Archidiaconis, nec non Dignité & ceteri Ecclesiæ Paraliti, Comites, Barones, Milités, & ceteri de Communitate, Regni Scotiae, tam Clari quam Locis, &c. from which it is apparent, there was a great Council of the whole Kingdom (as in England) more comprehensive than that of Tenants in Capite alone.

And that our English Records also agree with these Scotch Statutes, you may see by Two Records which Mr. Prye has given us in his History of Popish Utopians, out of the Rolls of the 17th of Edward I. It is a Letter to Eric, King of Norway, concerning the Marriage of his Son Edward, with his Grand-daughter, then heiress of Scotland and Norway, reciting that the Cathedres (Scil. Regni Scotiae) Magnates, Prelati, et tota Communitas predilici Regni Scotiae unamini, & exprimere confenso, had agreed to the said Marriage. So likewise in another Letter of this King Edward’s about the same Marriage, he declares that he had by his Procurators therein named, treated and agreed with the Cathedres, Episcopi, Abbatibus, Comitiis, Baroniis, &c. tota Communitate ejusdem Regni, and it presently follows, ut pradicti nobiles & ceteri Communitates Regni Scotiae pradiditi, Now whom
whom can this Word Communitas signify, but here distinct from the Ealls, Barons, and Nobles, but the Commons of that Kingdom?

So likewise in the Fourteenth Year of King Robert the First, there was a Letter sent from the Parliament of Scotland to the Pope, complaining against the Violence of the King of England (which is to be seen in Manuscript, and is also printed by Dr. Burnet, in his History of the Reformation) and by which it plainly appears, that the Comites, Barones, Liberis Tenentes, & tota Communitas Scotiae, agreed to this Letter.

And that the Cities and Borough Towns were at that Time Part of this Communitas, appears by the League made between this King Robert and the King of France, in the 28th Year of our Edward the First, which is to be seen in a Roll of this Year, still Extant in the Tower; which League was ratified and confirmed in their Parliament, by King John de Baliol, ac Princeps, & nobilis Universitas, & Communitas scoto-britannica, & villarum praebiti Regni Scotiae; and I suppose you will not deny that in Scotland, the Cities and Boroughs from Times beyond all Memory, sent their Proxies and Representatives to the Parliament in Scotland, and that each Citizen and Burgess so sent, had as good a Vote in their Parliament, as the greatest Bishop or Earl of those.

M. I desire no better Proof than what your Self have now brought to make out, that the Tenants in Capite are not only at this Day, but have been from the very beginning of Parliaments in that Nation.

For I shall appeal to those very Statutes and Records you have now cited, which, compared with divers subsequent Statutes of that Kingdom, will make the Matter plain enough, that the Communitas, and these probi homines mentioned in these Laws you have cited, were the Community of the Tenants in Capite only.

In the First Place, therefore, let me observe from that very Law of King Alexander's, the Title of which you have but now quoted, that these Words per aliumnum Communitatis cannot here signify the Commons, since they alone could neither advise, nor give their Consent to make Laws, and therefore they must needs refer to the whole Community or Assembly of Ealls, conferring of Tenants in Capite only, as I shall prove by a Parliament of King Robert III. who began to reign Anno Dom. 1400, (in the 10th Year of our Richard II.) the Title is thus, Parliamentum Domini nostri Roberti III. Scotiæ Regis, &c. vocatis & summonitis more solito Episcopis, Prioribus, Ducibus, Comitiis, Baronibus, Libris Tenentibus & Burgenibus qui de Domino Regis tenentes in Capite; and this is also confirmed from the Title to a Parliament held at Perth, Anno Dom. 1427, being the 23d of King James I. Summonis & vocatis more solito Episcopis, Abbatis, Prioribus, Comitiis, Baronibus, & Libris Tenentibus, qui de nobis tenentes in Capite, & de quibus Burgis certis Burgenibus: So that I think nothing can be plainer from these Ancient Statutes, than that the Scotch Parliament held by the Commissary of no other Members than the Bishops, Abbes and Priors, Dukes and Ealls, Barons, Freetholders and Burghelss, which held of the King in Capite.

Having thus shown the Ancient Constitution of the Scotch Parliaments, for your Satisfaction, I shall farther shew when, and how it was altered.

In the Seventh Parliament of King James the First, held at Perth, Anno Dom. 1420, there was a Law made (which I shall contract) "That the small Barons Statut. Jacob. and Freetholders need not to come to Parliament, and that for the future out of 1 orb, each Sheriffdom there should be sent Two or more with Men after the Large neis of the Sheriffdom, the which shall be called Commissaries of the Shire; and that these should have full Power finally to hear and determine all Causes to be propounded in the Great Council or Parliament; and that the said Commissaries should have Collage of them of each Shire that ought to appear in Parliament or Council. I have only given you an Abstract of this Statute, because it is pretty long, and penned in old Scotch English, but you may consult it at your Leisure. And this is farther confirm'd by a subsequent Act of Parliament of King James B. A. P. the Sixth, holden at Edinburgh, July the 29th, 1557, wherein after a Repetition..."
of the former Act of King James the first, and a Confirmation of the same, it follows thus:

"And that all Freeholders of the King, under the Degree of Prelates and "Lords of Parliament, be warned by Proclamation to be present at the chun-
"king of the said Commissioners; and none to have voic in their Election
"but such as hes Fourtie Shillings Land in free tenantrie halden of the King;
"and hes their actual Dwelling and Residence within the fame Schire, Etc.

I need give you no more of this Act, but I think it is most clear from this as
well as the former Act of Parliament, that the Commons in Scotland were
only the King's Tenants in Capite, and are so at this Day; since none but
they can either chufe or be chosen Commissioners for the Shires. But as it
the Boroughs, who do each of them send but one Commissioner or Bur-
ges (except the City of Edinburgh, which sends two) all which are chosen
by the Common Councill of the Towns, now there are in Scotland three forks
of these Burghs, that is to say, Royal Burghs, Burgs of Regality, and Burghs
of Baronies; but only the Royal Boroughs, the Burgi Dominici Regis, or qui
de Rege Tenent in Capite, send Commissioners to Parliament, and are in
Number Sixty.

To conclude, That I may apply what hath been said concerning the Constitu-
tuent Parts of the Scottish Parliaments to ours Anciently, it seems to me, that
from the great Affinity there was between ours and theirs, 'tis certain, that
our and their Communitas Regni, was the same, that is, they were the small
Barons and Tenants in Capite.

F.I cannot deny but that the Parliament of Scotland hath, for above these
Two Hundred Years, confisted of the Bishops, Abbots, and Temporal Lords,

Vid. Prelent Stat. of Scott.

"land, p. 17.

Ibid. p. 100.

"together with the Leffer Tenants in Capite, or their Representatives the Com-

misions for Shires, and Burghes of Cities and Towns, till the Reformation,

that the Bishops and Abbots were quite taken away; tho' the former were re-

ferred to their Places in Parliament, by a Statute made in the latter end of

King James the First, yet I cannot allow, that from the beginning of that

Government, the Scottish Parliaments have confisted of no other Members

than those; since the Word Communitas coming, as it does in these old Sta-

tutes and Records (I have now cited) immediately after the Prelati, Comites,

Barones, & Militis, &c. must signify a distinct Order of Men from the

Tenants in Capite, called in the Statute of King James the First, the small

Barons, and since the Citizens and Burghes, though none of those Barons,

were also comprehended under this Communitas (and whom you grant to make

the Third Elate,) why this Word might not comprehend all the other great

Freeholders, I can see no Reason to the contrary.

And therefore I suppose, that in the Reign of King David the Second, or

Robert the Second, or else the beginning of Robert the Third, there was a

great Alteration in the constituent Parts or Members of the Scottish Parliament:
And about that Time, the Chief Freeholders, or Lords of Manors, who held
of Bishops, Abbots, and other Temporal Lords, as well as of the Tenants
in Capite, or else of the King, by petty Serjeanty, or Socage Tenure; as
also many of the small Towns, or Barones, might either forbear coming
at all, or else desire to be excused, because of the great Trouble and Charge
of Attendance, (as you see the smaller Tenants in Capite afterwards did,
when Commissioners for Shires were appointed as this Head.) and so
might by Degrees leave off coming, or be excluded by some Law not now
Extant. And thus the Tenants in Capite, might become the sole Represen-
tatives of the whole Nation in Parliament. And I am of this Opinion, be-
cause in many of the old Statutes before the Time of Robert the Second, we
find the Communitas totius Regni, coming immediately after the Earls and
Barons (as in our own Ancients Statutes and Records;) but after those Reigns,
we find no more mention of this Communitas, but only of the Dukes, Earls,
Barons, Liberi Dominibus, &c. and Burgenibus, qui de Rege Tenent in Capite, as in
the Titles to those Statutes of King Robert the Third, and James the Fifth, you
have now cited.

And yet that Liber Tenens was not anciently taken for a Tenant in Capite
only, pray see the 14th Chap. of the Laws of King Alexander the Second,
made Ann. Dom. 1214, with your Doctor's Comment upon them; Statutum eij
quod.
Dialogue the Seventh.

quod nec Episcopi, nec Abbates, nec Comites, nec aliqua liberi Tenentes, tenebant curiam suas nisi Vicemces Regis, vel servientes Vicemcomitiis ibidem fuerant. B. A P. p.98.

Upon which Words, the Doctor in his Answer to Mr. P. hath this Remark, viz. This again thews us, that the Freeholders were Lords of Manors at least. So that unless you will suppose that none but Tenants in Capite were Lords of Manors, or held Courts, (as certainly very many of the Meane Tenants did) this Word Liber Tenens must extend to any other great Freeholder or Lord of a Manor, of whatsoever Lord he held it; and as such might ancienly have had a Vote in that Parliament. So that if I have (as I think sufficiently) proved that the Word Communitias coming after the Earls and Barons, in our ancient Statutes and Records, did certainly signify another Order of Men different from the Tenants in Capite, I have the same Reason to believe it was so in Scotland too; not only because the general Words Communitias totius Regni, must needs be more comprehensive, than to express the Tenant in Capite only, (who could never Reprefent all the great Freeholders in Scotland any more than they did in England) but also because it is acknowledged by the Scotch Lawyers, that the Fundamental Laws and Constitutions are the same in both Kingdoms. For Sir John Sime in his Epistle to King James before his Scotch Laws, says thus, Intelligo suas suorumque Majorum leges, cum legibus Regni sui Anglia magna ex parte confortium; which is also acknowledged by the King himself in the Speech he made in Parliament concerning the Union of both Kingdoms.

To conclude, I cannot but admire your Doctor's strange Partiality, who does allow the Commons of Scotland to have even been a Third Estate, when he expressly grants that, "The Commons of Scotland were, and are at this Day, the King's Tenants in Capite; and that the King's Royal Boroughs were such as ever did, and do at this Day in Scotland, only send Burghes to Parliament; Now why the Cities and Boroughs in England should not always have had the like Privilege, as well as in Scotland, I wish you could give me any sufficient Reason.

M. Since you own that the Tenants in Capite, or else Commissioners in their stead, have been the sole Repræsentatives for the whole Kingdom of Scotland for above 100 Years, I doubt not but they were so, long before that Time; since you confess you cannot shew any Law by which this Ancient Custom came to be changed; though I grant, that the Statutes before King David and Robert the Second, are laid to be made by the Communitias totius Regni, yet you must not suppose that Constitution of the Kingdom altered, when the Clerks altered their Phrases in penning their Statutes and Records; so that this Communitias was the Community of the Tenants in Capite only, and not of the Freeholders, or of the Citizens and Burghes of the whole Kingdom; since as for the former, you cannot say, that all the People in Scotland had ever a Right to chuse the Commissioners for the Shires: For then 'tis most likely they would have kept it to this Day; whereas we see that none but Tenants in Capite have Votes at such Elections.

And as for Cities and Boroughs, I cannot find (nor do I believe you can shew me) any Instance of a City or Borough-Town in Scotland that ever sent Deputies to Parliament, but what held in Capite of the King. For though there are, as I said already, besides the Royal Burghs, two other forts, viz. Boroughs of Repality, and Boroughs of Barony, who hold of the King, but not in Capite, or else of some Bishop or Temporal Lord; and though divers of these are confidable for Trade and Riches; yet none of them send any Burghes to Parliament; So that though I confess there are Three Estates in the Scotch Parliament, called in the Statutes of King David and Robert the Second, the Tre Communitates Regni; yet did these always consist of the Tenants in Capite only, who therefore fit together and make but one Assembly.

Now that we may apply what hath been said to England, I desire you to take Notice, that the Doctor and we that are of his Opinion, do not positively affirm, that the Commons of England were not at all represented before 49 of Henry the Fourth, but that they were not represented in Parliament by Knights, Citizens, and Burghes of their own Choice, but by the greater and lefle Tenants in Capite, the greatest part of which I grant were not Lords. And admit that
that I should grant you that some Cities and Boroughs sent Members to Parliament, before the 49th of Henry the Third; yet were they only such as held in Capite, and no other, as the DeStor has very well obser'ved in his Answer to Mr. P's Argument from the Petition of the Town of St. Albans. So that upon the whole Matter, there will be no more gain'd by you in this Controversy, than that perhaps some Citizens and Burgesses appeared in Parliament, and constituted a Third sort of Men, which you may call the Commons, if you please, though I cannot find they were so called, till after the Time of Edward the First. But supposing this to be so; it is very far from your Republican, levelling Opinion, who do suppose, that all the Freeholders of England, had an ancient indefeasible Right of appearing in Parliament by Reason of their Propriety in Lands, or other Eftates. Whereas by our Hypo-
- theisis, we suppose the Great Council or Parliament to have anciently been the King's Court-Baron, confiding of his immediate Tenants, call'd thither by him their Supreme Lord, to-advertise him of the Government of his realations, and to propose what new Laws were necessary for the Publick Good of the Commonwealth; and together with him to raise such publick Taxes, both upon themselves and their Tenants, as the Necessities of the State required; yet notwithstanding, there is a vast difference between your Nation and mine, concern-ing the Rights which such Tenants in Capite might claim of coming to Parliament; since before King John's Charter, (wherely I grant all the Lesser Barons or Tenants in Capite were to be summon'd by the Sheriff to come to the Common Council of the Kingdom) the King might have only call'd some of the great and widoff of them, and such as he thought most fit to advise him in making Laws, and imposing Taxes upon the Nation. And the like Prerogative his Son Henry the Third resumed during the greater Part of his Reign, as I shall shew you from divers old Statutes by and by. And that our Kings did often take upon them to call whom they pleased, and omit whom they pleased of their Tenants in Capite, may appear by those who were called Socii Barum, or alas Magnates, who are put after the Barons; and of these there are many Influences of their being called to Parliament, and again omitted in several King's Reigns after the Commons were a Third Eftate, as represented as at this Day.

B. A. P.

F. I must beg you Pardon, if I cannot come over to your Opinion, notwithstanding what you now have said; since I do not find your Reason to come up to what you intend therein; for you only suppute, (but without any Proof) that the Words Populace and Comminitates must signify only Tenants in Capite, in the Ancient Scotch Charters and Statutes. All the Argument you bring is, the contrary is, that I cannot shew you any Law by which it was alter'd to what it is now; and therefore, that the Constitution has been always the same as at this Day. Now pray consider, whether this will not pres altogether as hard upon you in relation to England; for you cannot shew me any Law whereby the Tenants in Capite were excluded here, and Knights of Shires introduced in their steads; and therefore, by the same Rule, let the Scotch Parliaments have been of what they will, yet ours have been still the same they are now. But if you say, that this contrary Usage hath been introduced, either by the King's Prerogative, or by the licent Content of the People; or by some La

So that if those Arguments are of any weight, they will serve for England, as well as Scotland, but if they are not, it is vain to make use of them at all. The like I may say, as to Boroughs in Scotland; since it is as easy to suppute, that divers Boroughs in Scotland might voluntarily shew from sending their Deputies to Parliament, that did not hold of the King in Capite; as it is, that divers Boroughs in England did Petition to be exempted from sending Burgesses to Parliament, by reason of their Inability to pay the Expenses of their Burgesses; as I could shew you by divers Precedents, (some of which are in Print) had I now Time.
Dialogue the Seventh.

As for the rest of your Discourse, I cannot imagine to what it tends; for if the Tenants in Capite had any Place in, or Right to come to Parliament, how came they to have it, but by reason of the great Freehold Estates they held of the King? And if so, I can see no Reason why those that had as good or better Freehold Estates than they, should be all excluded: Or why a small Tenant in Capite of but one Knights Fee held of the King in Capite, should give him a Right to a Place in Parliament; and yet that a Meine Tenant, or Vavasour (as he was then called) who held Ten Knight's Fees of some Bishop or Abbot, who perhaps did not hold in Capite at all, should have no Right of appearing there, not of calling any Representative for him; since notwithstanding all you have now said, the Doctor either contradicts himself, or you, when he tells us, as expressly in his Answer to Mr. P. "That the Tenants in Capite were no Barons, represented only themselves, and not the Commons. But how will this agree with what he says in his Introduction, that the Body of the Commons had no place in making Laws, &c. before the 45th of Henry the Third, unless they were represented by the Tenants in Capite? And if so must there certainly represent those that he here calls the Body of the Commons of England collectively taken."

But as for your Notion of the Parliament's being the King's Court Baron, tho' you have borrowed it of a learned Scotch Lawyer, Sir George Mackenzie, yet let me tell you it was never true; for it is well known that the Great or Common Councils both in England and Scotland are much more ancient than the Tenures of Lands by Knights Service; or than the very Institution of Manors in this Kingdom, which the Doctor tells us are of no higher an Original than the Norman Conquest.

But admit I should allow your Notion of the Parliament's being, as you say, the King's Court Baron; then certainly all the Tenants in Capite had a Right to appear there, and to be not only Suitors, but Judges of all Differences arising among the Tenants in the Lord's Court, where neither the Lord himself nor his Steward were Judges; and that of Right and nor by Favor. Whereas you suppose such a Court-Baron as never was heard of; where the Lord could admit or exclude whom of his Tenants he pleased, to which if they had a Right ratione Tenures, certainly he could never do. So that instead of a Court-Baron and a Common Council according to King John's Charter, whereby all the Tenants in Capite were to be summoned to this Council, or pretended Court Baron; you suppose the King still retained a Prerogative of calling or omitting whom he pleased; which instead of confirming the Validity of the Charter, and that it was to be a Rule how such Councils should be called for the future; you make to signify just nothing, and that no Common Council was ever called according to that Model. But pray how me a Court-Baron, wherein the Tenants ever took upon themselves a Power of giving Taxes out of their Estates, that did not hold of the Manor, though they were resident within it. But indeed you are out in the whole Matter, for the Doctor himself grants in his Answer to Mr. P. when "he gives us "King John's Letters of Summons to a Council directed to the Barons and "Knights (and as he translates Fideles) Fundatories, or Vassals of all England, "wherein he lets them know, that he sent his Letters to every one of "them, if it might have been done". Now what Reason had he to write thus, if these Gentlemen had no Right to be consulted, or that the King might have called, or left out whom of them he pleased? But the Barons, or Tenants, in Capite were of another mind, when in the 37th of King Henry the Third, as Mr. Paris tells us, they refused to Act or Proceed upon any Thing, without all the rest of their Peers; divers of whom, it seems, the King had for some Reasons then omitted to summon.

But as for your Influx of the Barons, Peers, or allies Magnates, which were sometimes summoned, and sometimes omitted in the Reigns of our Three Edwards; you do well to put in, that it was after the Times that the Commons were of Third Estate; for indeed, it was only after that the Tenants in Capite had left off making a distinct Council by themselves; which I suppose was about the End of the Reign of Henry the Third; and then it is true, the King called several of these Tenants in Capite, (as also others that were
were not (so) by Writ, to the House of Lords, as Pars Barum, i. e. not as real Barons, but Baron-Peers, since a bare Summons by Writ did not as yet (nor long after) vest a Peereage in their Heirs. So that upon the whole Matter, I see no Reason from any Thing you have urged from the Example of Scotland, to make me change my Opinion, that the Tenants in Capite were anciently the sole Representatives, either of this or that whole Nation in Parliament. For pray take Notice that I do not find the Tenants in Capite so much as mentioned in the ancient Statutes of that Kingdom, or Charters of their Kings, as the Common Council or Parliament of Scotland, before the Reign of King Robert the Third, which was but late in Comparison of the Antiquity of those Councils in that Kingdom.

M. I could say more as to the Antiquity of the Tenants in Capite, their coming to Parliament as the sole Representatives of the Nation, before the Time you mention, but it grows late, and therefore I shall wave it at present, and so shall only proceed to remark that great Part of the Error of the Gentlemen of your Opinion, proceeds from this false Ground, that you suppose that the Parliaments both of England and Scotland were a perfect Representative Body of all the Freeholders and Freeman of those Kingdoms; which is a mere Chimera. For in the fist Place, if we will consider, it never was, nor indeed is so at this Day; since you your self must acknowledge, that all Copyholders and Leaseholders under Forty Shillings a Year, all Freemen in Towns Corporate, where the Election lies wholly in the Mayor and Aldermen or Common Council; and lastly, all that will not pay Scot and Lot in divers Borough Towns, are utterly excluded from giving their Votes in the Choice of Parliament Men; and consequent from having any Representatives in Parliament, though free as much Freemen as the rest of the Kingdom: And this either by general Statutes, or else by the particular Charters and Customs of those Cities, Towns and Boroughs; all which are looked upon as good and lawful Representatives of those Cities and Boroughs. So that I am clearly of the Doctor's Opinion, that the Tenants in Capite, as well those who were Barons as those that were not, only represented themselves, and not the Commons, as being (as you truly observe) never chosen by the People. And as no Man can believe that a great Lord or Bishopp could represent his Melfe Tenants, so neither could the smaller Tenants in Capite who were no Barons, be properly said to represent theirs; and yet, these might according to the Custom of Feudal Tenures, and the Power they then had over their Tenants Eftates, very well make Laws for them, and tax them at their Pleasures, because the main Interest and Strength of the Kingdom lay almost wholly in them; and these (as the Doctor very well observes) having the Power of this, or any other Nation de fide, always did make Laws for, and Tax the rest of the People.

But to say somewhat to the Authorities you have brought from the County Palatines of Chester and Durham; I know not what old Privileges they might pretend to, of not being forced to give voluntary Aids or Subsidies of their moveable Goods without their Contents; yet thus much I think may be made out, that as for all Land Taxes, and the general Laws and Statutes of the Kingdom, they were as much bound by the one, and as much liable to pay to the other, as the rest of the Subject of England; or else how came they afterwards to be bound by our general Statutes at all, as certainly they were from all Times since the Conquest, though Cheshire had no Representatives in Parliament, till the Reign of Henry the Eighth, and Durham had none till our Time.

F. You Gentlemen who hold this general Notion of Tenants in Capite, are so intoxicated with it, that you do not care what Ahburdities or Contra-
dictions you fall into, provided you may maintain your dear Opinion, as I shall shew you by and by: But first let me tell you, your Reply to what I have now said, is very fallacious, and in some Points misstaken as to the Matter of Fact: For in the first Place, I doubt not but our Common Councils or Parliaments were in the first Institution, the main Body or Representative of all the Freemen of the Nation; and though it came by long Continuance of Time to deviate from that Institution; yet, that is to be attributed either
to some prevailing Custom, or else positive Law to the contrary; for I think it evident, that in the Saxon Times, all the Freeholders of England had a Right of coming to Parliament in Perfon; and hence it is, that Liber Tenens, Liber Homo & Ingenius, were Synonymous, and of the same Signification, as I have proved from Sir Henry Spelman's Comment, in his Glossary upon those Words. And hence it is, that the Members of those Councils were so numerous as they were in those Times, and long after, till they became so vast and unmanageable, that they were fain by Degrees to pitch upon this Method of sending Knights of Shires to represent them; which is certainly a very ancient Institution, since the Tenants in Ancient Demesne, claimed to be exempted from the Expenditures of the Knights of the Shires by Prescription, as I shall shew you more particularly by and by; and likewise, since all Riches confided in those Days in Land, or else in Stock, or Trade; therefore the Cities and Boroughs, and Towns, by Reafon of their Riches, had always a Share in the Legislative Power, as well as in giving of Taxes. And since, all such Citizens and Burgeffes, not being able to come in Perfon, as the Freeholders could, were represented either by their chief Magistrates, called their Aldermen, or else by Burgeffes of their own chufing, as at this day; so that all Freedom, or Ingenuity being in this, as in all other Common-wealths, reckoned per centum, by the Electors of the Owners; our Common Councils were, and are truly, the Representative, not only of the Electors, but Perfons of all the Freeemen of the Nation. For I am far from the Doctor's Opinion, that the Cheers, or Bever, or Scotch Vaffals, or French Peasants at this Day, and so were not reckoned among the Freeemen; all Freedom confifting then in so much Freehold Lands, held in a Man's own Right, or being Freeemen of some City or Borough Town. And this gives us a Reason, why Copyholders and Tenants for Years, have no Vote in Parliament at this Day; since it is certain, (and all our Law-Books allow it) that at the first all Copyhold Eleffates were held by Villeneuge, and the Owners of them at first the Vileus, or Tillers of the Demesnes of the Lord of that Town; there being at first no Freehold less than that of a whole Township, since a Manor, and therefore all Copy-holders and Tenants for Years, or at Will, though Freeemen, are not admitted to have Votes at this Day, because (as I said before) Freedom ancienly confisted in the Inheritance or Freehold Elefate of Land, or in Riches in Trade or Traffick, Leaves for Life and Years, being not commonly in Ule in those Days. And hence it is, that when Elefates of Freehold came to be divided into small Parcels, all Freeholders till the Statutes of Henry IV. and V. (which we have before cited) were as much capable of giving their Votes at the Election of Knights of Shires, as the belft and greatest Tenents in Capite in England, till it was reduced by those Statutes to 40 s. Freehold per Annum; these Freeholders and Burgeffes of Towns being ancienly looked upon in the Eye of the Law, as the only Freeemen; and it was thefe Freeemen alone who owed Suit and Service to the County Court, and were amerced if they did not appear.

This being premised, and sufficiently underftood, will give us a very good Account, why Copy-holders and Leafe-holders for Years do not give any Votes at Elections of Knights of Shires; and yet the Parliament may still continue the Representative of all the Freeemen of the Nation; as the People of Rome, and the Territories about it were of all the Romans, though there were a great many Liberis, and in Inuqulim, who were free, and not Slaves, and yet had no Votes in their Comitia Centuriatia, or general Assemblies of all the Roman Citizens.

But that the Liberis homines, & Liberis Tenentes de Regno, must take in more than your Tenants in Capite, the Doctor himself is at last forced to confess in his Glossary (notwithstanding his maintaining the contrary in the Body of his Book) viz. that the Liberis homines, & Liberis Tenentes, mentioned in K. John's Magna Carta, were not only the Tenants in Capite, but their Reinos, and Tenants in Military Service also, and whom he there supposes to have been the only Men of Honour, Faith and Reputation, in the Kingdom; and if so,
might certainly have been chosen Knights of Shires, as well as any of the Tenants in Capite; though this is but Argumentum ad Hicnimem; for the Truth is, that the Mefine Tenants by Military Service, were not the only Men of Faith and Honour in those Times, since it is certain the King's Tenants in Perpetu Serenity, and of some Honour or Calile, or else his Tenants in Soccage, besides those who held of other Mefine Lords, and the Tenants of those Abbot and Priors who did not hold in Capite, and yet were very numerous, were Men of as much Faith and Honour as those that did; since many of them, poffef'd as good, if not better Estates than the Tenants in Capite themselves. So that you are certainly miftaken in Matter of Fact, when you lay the whole Force and Strength of the Nation lay in their Hands; for if you mean Legal Force, I have already proved, that the Tenants in Capite had no Legal Right to give away the Estates of their Mefine Tenants, or to make Laws for them without their Consent, who were altogether as free as themselves, Serviitio suis debitia; solummodo exceptis, as Bracton tells us, much less for to great a Body of Men as I now mentioned, who never held of them at all, and consequently could not upon your own Hypothecis, be ever reprefented by them. But if you mean a Phyfical Strength or Force; though this can give no Natural, much lefs Legal Right for one Man to Lord it over another; yet even this was much farther from Truth, since the Mefine Tenants of all Sorts, as well by Military Service as in Soccage, together with those above-mentioned, who never held of the Tenants in Capite at all, made Six Times a greater Body of Men, both for Numbers as well as Estates, than all the Tenants in Capite taken together.

But to conclude, neither is your Remark upon my Authorities from Chester and Durham at all to the Purpofe; for I have sufficiently proved, that those County Palatines, were not at first concluded within the general Laws and Taxes of the Kingdom; since they had their particular Councils for both within themselves, as the Supplication of the Estates of the County Palatine of Chester, sufficiently declares; and certainly Durham had the like Privileges, since I never heard that the Men in that County were more Slaves to their Bifhop, than the Clethore Men to their Earl. And though I grant that about the confueld Times of King Henry VI. there was a great Breach made on the Ancient Liberties of these Two Counties Palatines; and if the King and Parliament made Laws for, and Levied Taxes upon them, though they had no Repreffeatives therein, this proceeded partly from their being over-pow- ered by the reft of the Nation, and partly by the Eafe they found in being excufed from the Expences of Knights of Shires, and Burgeffes, which all the reft of the Kingdom was at that time liable to, and which came to a great deal of Money (Four Shillings per diem, being in thofe Days, more than Forty Shillings now.) And yet you fee at laft they were aware of their Error, and at their Requett, got the Privilege of having Repreffeatives in Parliament of their own chufing, as well as the reft of the Kingdom. And if this had not been a Right claim'd by English Subjects, how came the Welsh Counties, which were anciently no part of the Kingdom of England, to have been admitted to chufe one Knight for each County, and Burgeffes for each Borough Town, as well in North-Wales, as South-Wales, though both there were Conquered Countries at the first, and incorporated to England by particular Statutes? And therefore we have no Reafon to deny the Truth of Bracton's and Fortescue's Affertion, that no Laws are made, nor Taxes imposed in England, sine confenfj communis totius Regni; or as the latter truly adds, in Parlamento; and certainly this Word common Affent must take in all their Affents, who had Estates either in Land, or other Riches, at that Time when this Law was Eftablfh'd.

But leaving this Dispute about Scotland, and the County Palatines, pray make an end (for it grows late) and give me the reft of your Reafons, why the Commons could not be reprefented in Parliament before the 49th of Henry III. and 15th of Edward I.
Dialogue the Seventh.

M. I will proceed to do it, and for this End shall reduce my Arguments to the Five Heads. The First is, some Writs found out and produced by the Doctor, whereby he proves that the Commons were not summoned during the Reign of Henry the Third, till the 49th. Secondly, The general Silence of all Statutes in Henry the Third's Reign; wherein is not one Word mentioned of the Commons, but rather to the contrary. Thirdly, The critical Time (viz. in the 49th of Henry the Third,) when the Commons were first called, during Montford's Rebellion. Fourthly, Their Discontinuance from that Time, till the 18th of Edward the First, there being no Mention made of them in all the rest of the Reign of Henry the Third, nor yet of Edward the First, till the 18th; in which the Doctor shews you a Writ (not taken notice of before) by which the Commons were Summoned anew to Parliament: Lastly, From the uncertainty of the manner of the Writs of Commons, whether for one Knight or Two Knights, and sometimes no Citizens: and Burgesses at all, which sufficiently prove the Novelty of the Institution, as also of some Parliamentary Forms relating to the Commons, which shew that neither their Number, nor Manner of Election, was settled long after the Reign of Edward the First.

To begin therefore with the first Head. I know the Gentlemen of your Opinion make a great Noise about the 10th, or rather defect of the Writs of Commons, and Parliament Rolls of all the Kings, from the 23rd or 25th of Edward the First. So that we cannot be so well affur'd what was done in Parliaments of those Times, as we may be afterwards. Yet there are still some Writs of Commons extant upon the Close Rolls before, and in those Times, by which the Bishops, Earls, and Barons, were Summoned to Parliament, or Great Councils. And we have all the Close Rolls of King John and Henry the Third; on the Dorset of which, anciently, most of the Writs of Commons to the other Kings Reigned, are entred (few on the Patent Rolls, which we have likewise.) "It's therefore very strange, if the Commons were then represented by Knights, Citizens, and Burgesses, and Summoned to Parliament as at this Day, that there cannot be found any Commons to them upon those Rolls, as well as to the Lords.

But the Learned Doctor hath, for our Satisfaction, found out Three Writs of Commons to the Lords, one in King John's Reign, and two other of Henry the Third. The first is in the Close Roll, 6th of King John, directed to the Bishop of Salisbury, which is needless here to be repeated Verbatim; M. s. d. r., only pray Notice of the material Words of this Writ, where after the Caufe of the Commons particularly exprest, it concludes thus, expediat hanc venire consilium & aliquam Magnatum Terre nostra quos ad diem illum & incum fecimus convocari. The Second is in the Close Roll of the 26th of Henry the Third, directed to W. Archibishop of York, wherein he is likewise Summoned ad tridentandum, Nobis ac una cum ceteris Magnatibus nostris quos similiter fecimus convocari de arduis Negotis nostris flatum nostrum & toto Regni nostro spectantibus tagnetibus, with this Note underneath, codem modo Scriptum omnibus Episcopis, Abbatis, Comitis, & Baroniis.

The Third is of the 28th of the same King, directed to Boniface, Archibishop of Canterbury, whereby he is Summoned to be at Westminster within Fifteen Days, M. xiv. day., after Hilary; next coming, before the Queen, and Richard Earl of Cornwall, de Magnatibus about the Affairs of Gascony: And this very Council Mat. Paris, Auno Dom. 1254; calls a Parliament, to which all the Magnates, or Great Men of England came together, the Day of which Meeting he makes to have been the 6th of the Calendars of December, being St. John's Day, and which fell out within Fifteen Days after St. Hilary's Day, which was that appointed for the Meeting of this Parliament by the aforesaid Writ of Commons, And who were the Constituent Parts of this Parliament, may be farther made out by a Letter of the Queen, and Earl Richard to the King, then in Gascony, which is recited by Mat. Paris, in his Additions in the Words; Domini Regis Angliae, Additament &c. Regina & Richardus Comes Cornubie Salutem, Recipimus litteras Veneris ad V. 189. N. 50. Natale Domini proxime prateritum quod in Gaffino Sancti Hilariji Consociarum Archipresbyteros, Episcopos, Abbates, Priorum, Comites, & Regni Angliae ad offendum, &c. Whereby it appears who were then the Constituent Parts of Members.
Members of our English Parliaments, viz. the Archbishops, Bishops, Earls, and Barons of the Kingdom. So that there is no such Universal Silence concerning the Con延uent Parts of our Parliaments, as you and those of your Party suppose, from the Loss of the Parliament Rolls of those Times; most of which, though I confess are lost; yet there are enough left to satisfy any reasonable Person, that there were then no Commons in Parliament in the Sense they are now taken.

F. You cannot give me a better Demonstration of the Loss of the Parliament Rolls and Writs of Summons, than what you now offer; for if we have all the Close Rolls of King John and Henry the Third, on the Dorset of which you tell me the Writs of Summons used to be entered; then certainly those to the Lords were there enter'd also; and if so, how comes it to pass, that in above Eighty Years Time, in which there must be above Eighty Parliaments, you can show me but Three Writs of Summons, and those only to as many Bishops, and to no Temporal Lords at all? If so be these were Parliaments and not great Councils of the Bishops, Lords, and Tenants in Capite, only, as I rather believe they were. For you rely too much upon your Doctor's Credit, when you allege, that we have all the Close Rolls of King John and Henry the Third, which is a great Mistake; for I have had a Friend who has given me a Note of what Close Rolls are still Extant in those Reigns, and what are lost, which you may here see.

To begin with King John; pray observe, That all the Close Rolls of the first Five Years of his Reign are gone; and so they are in the 9th, 10th, 11th, 12th, and 13th; for certainly, there were some in those, as well as in the succeeding Years. In the next place, till the 18th, there is but one Roll left of each Year; but then there are Three; and after that, but one or two in a Year to the very end. Now pray tell me, how we can be assured, that there was not more then one Roll in every precedent Year, as well as in the 18th. The like I may say for the Reign of Henry the Third, which though I grant are more entire than those of King John, there being some left us of every Year, but the 23d; yet they are but few; and for the greatest part but one in each Year; never but two in any Year in all this long Reign, unless it be the 39th, in which there are Four, which is very strange, that in so busy a Time, as most of this King's Reign was, there should be no more Rolls left: And therefore it seems very probable, that at least half are lost, and in which might be many Summons, as well to the Commons, as to the Lords. And if they are not lost, pray tell me what is become of all the Writs of Summons to your letter Tenants in Capite, who certainly often met in this long Reign according to King John's Charter. But if you will tell me they are lost, or omitted to be entered upon the Close Rolls, I may with like Reafon and Certainty affirm the same of the Writs of Summons to the Knights, Citizens, and Burgesses; for if the one may be lost, sure the other may be so too.

But what if after all, these Writs you have produced were not any Summons to a Common Council, or Parliament at all; but only to a Great Council of the Tenants in Capite? Which I have great Reafon to believe, not only because the Title to the last Writ is only Summonus ad Concilium, and not Commune Concilium Regni; but also because Mr. Selden and Mr. Prym, who certainly must have seen all these Writs, as well as the Doctor, and were as able to judge of them, never cite them for Summons to Parliament; And Mr. Prym observes of several Writs, in which the like Words of Summoning the Lords to give their Advice, are likewise found, that they were only to such Councils, or Colloqui, or Treaties, which were frequently used as low as the Reign of Richard the Second. But if these Writs had been Summons to Parliament, sure Mr. Selden and Mr. Prym had no Reafon to believe (as they often do) the Loss of not only Parliament Rolls, but all Writs of Summons, both of Lords and Commons, (except those of 49th Henry the Third,) till the 23d of Edward the First. But pray go on, if you please, to make good the rest of the Positions you have now laid down.

M. I doubt not but in the next place to shew (though 'tis true most of our Parliament Rolls are lost) both from our Ancient Historians and Statutes, that
there were no Commons in any Parliament, during all the long Reign of King Henry the Third, except on the 49th of that King.

I shall be in the first Act of Parliament we have of the Time of Henry the Third, which was made in the 20th of this King, at Merton, where though it is said, To be provided and granted, as well by the Archbishops, Bishops, Earls, Barons, as others; yet the Words & Alis, and others, are to be understood of the Tenants in Capite, distinct from the Earls, and Barons, as I have already proved.

F. I shall Answer your Authorities as you go. You may say you have proved it, but I know not when. And why may not I with as good a Face maintain, that these Words & Alis do here signify the Commons; if the Word Barons must take in all the Great Lords and Leffer Tenants in Capite, as sometimes you suppose it doth, when no other Lay-Members are mentioned? But I have already observed, that this Barones is a Cheveral Word, and to be freight'd, or contracted, as befit suits with your Hypothexis. So I think I may with greater Reason suppose the Earls and Barons, to be all comprehended under the Word Barones, and the Commons under Alis, as I have already proved; and which is also most fit on the last Clause of Magna Charta of King Henry the Third. But you forget that I have, I think, sufficiently made out, that the Commons had their Representatives, both at the making and confirming of Magna Charta in the 2d and 9th of Henry the Third; and therefore whatever Proofs you bring to the contrary, will come too late; though I shall patiently hear what you have to say. But if you have no more Authorities to produce from Statutes and Records, which have not been already considered, pray proceed to the 49th of this King's Reign, and give me some Reasons why the Commons were called in that Year, and never before nor after, till the 18th of Edward the First; for they both seem to be very improbable Suppositions.

M. I shall oblige your Commands, and shall give you as short an Account as I can of this Transaction. First therefore, I desire you to take Notice, that after Simon Montfort, and the rest of the Barons of his Faction had taken King Henry the Third, and Richard Earl of Cornwall, the King's Brother, with many other of the Nobility, Prisoners at the Battle of Lewes; he carried them about with Him, till they had taken in all the strong Forts and Castles of the Land; and when this was done, Nat. Paris tells us, that calling together at London, the Bishops, Earls, and Barons of that Faction, which is evidently held by their King Prisoner; they began to set up a Committee for the Government of the Kingdom, consisting of Twelve Lords, who were chosen out of the whole Community or Body of the Barons, without whose Advice and Consent or at least of Three of them, no Affairs in the King's Household, or in the Kingdom, should be transferred; and to these Ordinances, the King and his Son were forced to agree. And though the Record of this Agreement recites, that this Ordinance was made at London, by the Convent, Good-liking, and Command of the King; and also of the Prelates, Barons, and of the Community of the whole Kingdom; since this Agreement is Signed only by some Great Earls, and Barons, and no Commoner Witness to it, but the Mayor of London, whom your self will grant was no Parliament Man.

After which, Simon Montfort, the better to settle himself in his Ufur'd Power; and in those Lands and Castles which himself and those of his Faction had unjustly wrested from Prince Edward; who was now also a Prince, having delivered himself as a Hostage for the Performance of this for'd Peace; they in the first place sent out Writs in the King's Name, unto divers Bishops, Abbots, and Priors, and to such of the Noblemen as were of their own Party, to appear at Westminster, on the Oalves of St. Hillary next ensuing; and the Dotor hath given us a Copy of the Writ of Summons to the Bishop of Durham; as it is found in the Close-Rolls of the 49th of this King; and at the end of it, it is thus recited,odem modo Mandatum eff Epis- copo Carlolt. As also to divers Bishops, and Abbots, all of their own Party and Faction; there being above an Hundred Abbots and Priors then Summoned (more than were ever I believe, before or since); and then follows a short Writ to the Sheriffs.
Sheriffs of Counties, to Summon two Knights de Legesforibus & Dificitoribus singularum Comitatuum; though it doth not appear by the Writ, whether the Sheriffs of the Counties were to Elect, and send these Knights, the Sheriffs being then of the Faution, and made by them; for ‘tis there said, only good venire faciant. There are also other Writs recited to have been directed to all the great Cities and Towns of England, as also to the Cinque-Ports, to send two of the most Legal and Discreet of each of the said Cities, Boroughs, Towns, and Cinque-Ports, to the said Parliament at Westminster, at the Time aforesaid. So that without the History of this Nick of Time, these Writs (which are said to be for the Delivery of the Prince out of Prison, and for the settling of Tranquility and Peace in the Nation,) cannot be underflood.

But Prince Edward’s Release could not be agreed upon in this Parliament, whatever other Business might be dispatched: So that Things still remained in this uncertain Condition (the King being all this Time a mere Shadow) until such Time as Simon Montfort, and Gilbert de Clare, Earl of Gloucester, falling out, the latter at last took up Arms, and joining with the Earls of Surrey and Pembroke, to whom also came Prince Edward, after he had made his Escape from Hereford; they all together raised considerable Forces against Montfort, who meeting them, and joining Battel near Evesham, Montfort with one of his Sons, and many other Lords and Knights were Slain, and all his Party routed.

Now pray tell me, if this is not a very clear Account from the History of the matter of Fact, why the Commons were first called to Parliament by Montfort during his Rebellion. And I think I can also give you very good Reasons (and Authorities to back them) why they were again discontinued all the rest of this King’s Reigne, until the 18th of Edward the First.

F. I shall tell you my Opinion of your Narrative by and by; but in the mean Time, pray satisfy me in one or two Quetions: Pray Sir, what may be the Reason, that we can find but Twenty Three Earls and Barons Summoned, of that great Number there was then, and only Thirteen Bishops in this Parliament; and yet the fame Time there should be Summoned above an Hundred Abbots and Priors, and but Five Deans of Cathedral Churches; pray why might not these numerous Barons be trusted, as well as all the Abbots and Priors?

M. As for his not Summoning all the Earls, Barons, and Tenants in Capite, but putting Knights of Shires and Burghesses in their Rooms; there may be a very good Reason given for it, viz. the Danger that Simon Montfort and his Privado’s apprehended from the too great Concentre of the Nobility, and their great Retinues; and the Example of his own and the Barons Practises at Oxford, in the Parliament of the 42d of Henry the Third, might be the Cause why they altered the Ancient Usage; and of their sending Writs out, commanding the Sheriffs of each County, as also the Cities and Burghs to send two Knights, Citizens, and Burghesses respectively. But the Reason why there was so many Abbots and Priors Summoned, was, because Simon Montfort thought himself sure of them: He was a great Zealot, and a Godly Man in those Times, and a great Minion of these Religious Men (as then called) as also of the Bishops and Clergy; and they were at least seemingly Great Favourites of his.

F. I must confess there is some colour of Reason, why Simon Montfort should Summon so many Abbots and Priors to this Parliament, if he were sure of all their Votces before-hand; but there is no Certainty of this; for if he had been so sure of them, there was as much Reason why he should have called them all likewise to the Parliament at London, which you say he Summoned the Year before, when with the Contents of the Bishops, Barons, and others, he made the new Ordinances you mention: But you cannot find in any Historian or Record, that he then Summoned so many of them; and it seems pretty strange, that all these Abbots and Priors, and Deans, nor a fourth Part of which were Tenants in Capite, should all take the Trouble to come to this Parliament without any Scruple; if neither they nor their Predecessors had ever been Summoned before.

But
Dialogue the Seventh.

But the other Reason you give why so many Earls and Barons should be omitted, is much more unlikely; for if the numerous Barons faithful Prætices at Oxford had before frustrated Montfort's Design, there had been indeed some Reason why he should have done all he could to have hindered their coming again; whereas on the contrary, the Earls and Barons at the Parliament at Oxford, though they came thither with Arms and great Retti- mes, yet it was only to join him, and to force the King to agree to the Oxford Provisions. But if the Commons were now summòned (as you suppose) to curb the extravagant Power of the Lords, yet it could not be his Interest, or indeed in his Power to do; nor the latter, because the Earls, Barons and Tenants in Capite, were too powerful and numerous a Body to have suffered such an Affront and Breach on their Ancient Right, as this would have been. Nor could he and his Two and Twenty Companions, have ever dared to have displeased so great and powerful a Body of Men, as you must allow your great Barons, and Tenants in Capite both great and small then were, and who made such a powerful Opposition for their Liberties in King John's Time; or that they would have thus tamely permitted Men wholly of the Sheriff's Choice, to have thus taken away their Places in Parliament, and made Laws for them, much less the Citizens and Burgeffes, most of whom were certainly not Noble by Birth, nor yet held Lands in Capite. Nor could it be for Montfort's Interest so to do: For the greatest Part of the Earls and Barons were of his Side already, and thus to exclude them, had been the only way to disoblige them, and make them leave him, and go over to the King's Side. So that I must needs tell you upon the whole Matter, granting Montfort to have been such a Knave and Hypocrite as you make him, you certainly he was no Fool, but a cunning Politician; and I leave it to your self, or any indifferent Person, to judge whether it was possible for him to do so silly and un-politick a Thing as this. For granting all the Abbots and Priors to have been of his Side, (as you suppose) they could no way counterbalance the great Power of those Earls and Barons, and numerous Tenants in Capite, that were all hereby excluded. So that let the Commons have been Summoned when you will, it was certainly before this 49th of Henry the Third, or not at all.

But to give you my Opinion why so few Earls and Barons are mentioned in this Record of the 49th of Henry the Third, to have been Summon'd to this Parliament: I conceive it was not out of any Jealousy or Sufpicion in Simon Montfort of thole who were then his fast Friends, but out of pate Careleffes, or Omifion of the Clerks; who I suppose through Hatfe, Inadvertency, or Multi- plicity of Bufinesse omitted to enter the Names of all the rest of the Earls, Bishop, and Barons, to whom Writs of Summons were likewifef sent. And that I do not speak without Book, I appeal to the Record it self, where there is a blank Space left untill of about Four Inches Breadth, which could be left for no other End, than to add the Names of all the rest of the Earls and Barons who were certainly Summoned to that Parliament, as well as those whose Names are there express'd.

M. I shall not longer dispute this Point, but I think you must grant that the Commons are never mentioned in any Record or Statute of this King; for after his Victory at Ewpham, he called a Parliament at Winchefler, whereunto we do not find any Commons Summoned, as before; but the King, by the Advice of his Magna alone, Seized the Liberties of the City of London, and also they gave him all the Lands of the late Rebels.

And then there was after this a Parliament Summoned at Kenelworth, in the 50th of this King, where it was agreed by the common Affent of the Bishops, Abbots, Priors, Earls, Barons, and all others, that Six Perfonos, who were all (except one) either Bishops or Barons, should chufe Six others, and the whole Twelve were to judge concerning thole who were disinherit'd for their late Rebellion, and their Determination or Award, is call'd, Dictum de Kenelworth, and was made to better the Condition of the disinherit'd, and to take their Forturities and Loffs of their Effairs into a Composition for them after the value of five years Purchafe, to be paid at two or three Shillins Payments: Yet we do not find that to this Parliament the Commons were at all

summoned,
Summoned, but the contrary:, for though it is true that the Statute gives us all their Names who had a Hand in drawing up this Decree, yet the Doctor further proves to you from Sir William Dugdale's Baronage, that there was not one of them, but what was either a Bishop, or a great Baron of the Kingdom. Whereas had there been any Commons in this Parliament, they would certainly have had Commissioners of their own Order, as well as the Bishops and Lords.

I shall give you a short Answer to your Authorities from the Parliaments of Winchester and Kenelworth. As for the former, you must own that all the Rolls of it are lost; and that there is no more left of it on Record than that Writ or Commission which the Doctor has given us: which recites, That by the unanimous Consent of all the Magnates, or great Men (as the Doctor renders it,) the King had the Selfin and Possession of all the Rebels Estates given to him. Which is no Argument to prove that no Commons were there; since I have so often made out, that under this Word Magnates, not only the Knights of Shires, but Citizens and Burgesses were often comprehended. 'Tis true, there are no Writs extant, to prove the Commons were now Summoned; neither is there any Reason to believe the contrary; since if it were a cunning Invention of Montfort to Summon the Knights, Citizens and Burgesses, to abate the Power of the Tenants in Capite, it was sure as good Policy for this King to continue to Politick an Injunction, which would for the future serve for a good Balance, not only against his Tenants in Capite, but his great Lords too. For the Parliament at Kenelworth, I shall admit all the Matter of Fact to be true as you have related it from Mist. Weilminfinghe, who says, that the Twelve Commissioners appointed to draw up the Statute of Kenelworth, were chosen de Potentioribus Procerum, & Prudentioribus Preatorum; and also that the French Record (cited by the Doctor,) together with Sir William Dugdale's Comment upon it, make it out plain enough, that the Lay Commissioners who were chosen by all the Parties there named, to make this Statute, were all great Earls and Barons, though in the Record it self only stild Knights.

Well, what follows from all this? That the Commons could have no hand in this Choice, because the tous Autres, or omnes Alii, mentioned in this, and other Records, must needs always signify the smaller Sort of Tenants in Capite; and I say it signifies the Commons as now taken. Whether you have made good your Interpretation by any cogent Proofs, I must leave to your own Inguinity; for to tell you the Truth, I think your Doctor has led you astray in this Point; and till you can make it out better than you have done, I must beg your Pardon if I keep my old Opinion. And if your Argument be good, that no Commons were there, because none of them were chosen Commissioners, then by the same Argument none of the small Tenants in Capite were there neither; because none under the Degree of an Earl or Baron were Elected. As for the want of Writs of Summons to these Parliaments, if that were to be the Rule, that makes as much against the rest of the Tenants in Capite, who were no Barons; nay, the very Bishops, Abbots, and Lords; since there is no Writs of Summons found for their Appearance at either of these Parliaments; and so the King might call whom he pleased.

M. In the First Place, It does not follow that because Montfort had Summoned some of the Tenants in Capite to appear for all the rest, and that he also called some Citizens and Burgesses to this Parliament of the 49th, yet the King might have very good Reasons (though we cannot now positively tell what they were,) not to follow this new Invention of Montfort's, however it might then serve the Turn; for perhaps the King did not like it, because introduced by a Rebel. And he had also by his Victory at Bosworth, to quelled the Power of the great Lords, and Tenants in Capite, that I believe he was afterwards able to call or omit whom of them he pleased, according to the Testimony of Mr. Cambden's Nameless Manuscript Author, cited in his Britannia; that after the horrid Troubles and Confusions of the Barons Wars, only those Earls and Barons, Regio

Rex dignatus est breva Summonitius dirigere veniret ad Parliamentum suum, & non Alii. And
Dialogue the Seventh:

And that this was true in Matter of Fact, I shall prove from the next Statute of Henry the Third, which is extant, viz. that of Marlbridge, made in the 52d Year of this King, to which there were no more Summoned than some of the more Difcreet of the Greater and Lesser Baroets, as appears by these Words in the Preface to that Statute: Convocatis Dificeritibus ejusdem Regni tam Majoribus quam Minoribus, Provisum est, & Statuum ac concordatum, etc. which seems to have been done by the King's particular Direction, since by the general Writ of Summons provided by King John's Charter, the Sheriff of each County was to Summon all the Minor Barons, and Tenants in Capite, which could not be, if only the more Difcreet were then Summoned, as not is there in this Preamble, the least Hint or Intimation of any Writ directed to Counties, Cities or Burghs, for the Choice of Members.

I defere you in the next: Place to take Notice, that Briot (who lived about that Time) supposes this Statute to have been made, Per la Parovance de Robert Walrand & per Commune affent des Gravez Seigneurs du Reaume, by the Procurement or Forecast of Robert Walrand, and by common Affent of the Great Lords of the Realm, without any Mention of the Commons. I have a great many more such Statutes to Influence in, which are said by M. Paris to have been made in several Parliaments of this King, by the Community, or Commons University or Baromage of the whole Kingdom, but I pass them by, because we have sufficiently debated most of them already.

If only fome of your Great Lords, and Tenants in Capite, could thus meet, and make Laws to bind all the rest, and they fo tamely put up this strange Infringement of their Privileges, as you supple, it feems their Power was much abated since the 37th Year of this King, when (as I said) M. Paris tells us, that the Barons would do nothing without the rest of their Peers, whom it feems the King had then omitted to Summon; and therefore I must needs tell you, that I am not of your Doctor's Opinion, nor yet of Cambden's Nameless Author, that this King, after his Victory over Montford and his Adherents, could by his Prerogative call, or omit what Peers he pleased; since it is contrary to the Declaration of all the Bishops, Abbots, and Prioris in full Parliament, in the 'Second of Richard II. wherein they claimed, "That holding per Baronium, it did belong to them, de jure & consuetudine Regni Anglie (that is, by Rights of Prescription) to be present in all Parliaments as Peers of the Realm, and to treat, consult and ordain concerning the Affairs of the Kingdom. And if the Spiritual Lords claimed this Privilege, the Temporal Barons might with the like Right have made the like Claim.

And I am sure it is highly derogatory to the Rights of the Peage of England to maintain that the King either hath, or ever had the Power of calling and leaving out what Lords he pleased, and so to make pack'd Parliaments to serve a Turn whenever he pleases.

But to come to the main Strength of your Argument, that because the more Difcreet Men of the Kingdom of the Greater as well of the Lesser, are only mentioned in this Statute, that therefore there were only called to it fch Lords, and Tenants in Capite, as the King pleased to Summon, and that all the rest were left out, which is a very idle Supposition, for at this rate, I may as well say, that there were no Temporal Barons there at all, and that by the Greater Difcreet Men are to be understood some of the Bishops and Judges; who, though no Peers, yet were then the most learned in the Laws and Customs of the Kingdom, of any Persons at that Time, and consequently the moft Wife and Difcreet to draw up Laws, and by the leflet Sort of Difcreet Men, shall be understood fch Great Clerks and Lawyers, though not Tenants in Capite, as the King pleased to chuse, as being likewise most able to advise him. But if you tell me that this Interpretation is forced, I may as well say the same of yours, and that with greater Reason. Yet I shall prove that this Parliament was Summoned in no other Manner, and confist of no other Person than tho'fe that used to appear in all other preceding Great Councils or Parliaments.

In the First Place, therefore, I must put you in Mind of what I have already said, that there is no Conclusion to be drawn from the bare penning of the different Forms of ancient Statutes, who were Summoned to the making
of them, not by what Power they were Enacted, some of them, it is true, being drawn in the Form of the King's Charters, or Writs; without any Mention of the Affent either of the Lords or Commons; and others are said to be Enacted by the whole Realm, without any Mention of the King at all; and I have given you a Lift of divers old Statutes from the Reign of King Henry the Third, to the Time of King Edward the Third, in which there is no Mention at all made, either of the King, or any other of the Three Estates, and yet no Man, I think, but will grant that these Statutes were all made, and agreed to by them, according to the usual Forms, though it be not particularly expressed. And therefore to give a better Account of this Law, it is fit we consider, that these Words convocatis Differentiis Regni, are no more restrictive to some particular Persons, than if it had been in the Superlatibe Degree, instead of Differentiis, it had been Differentialis, or Sapientissimus Regni, which no Man would interpret to mean only a few of those whom the King should judge the wiselest and moat discreet Men of the whole Kingdom; and therefore we must not mind the Grammatical, but Legal Sense of these Words; and then it amounts to more than this, that by the Greater Differes Men, were meant the Lords Spiritual and Temporal, as under the Lesser Differes Men were included the Commons.

But that these Minores Differer, cannot be underdstood of the Tenants in Capite only, appears by the Conclusion of the Preface to this Statute of Marbridge, in these Words: Provisiiones, Ordinationes, & Statuta subVerso ab omnibus Regni insigni Incultis, tam Magnisibus, quam Minoribus, firmer & insubditanter tempore perpetuo Statuaris observar; so that if by the Majores Incula, who were to observethefe Statutes, the Lords Spiritual and Temporal are meant, then by the Minores Incola Regni, must be understood for the fame Reason, the whole Commons of England; and so likewise by Parity of Reafon, by the Minores Differer, mentioned before in the Preface, must be also meant the Representatives of the Commons in Parliament.

And that this alone can be the genuine Sense of these Words, may appear, by comparing this Statute with another made at Gloucester, the 6th of Edward the Fifth, where in the Preface it is recited in these Words, purussemm le Roy, pur Amendement de son Royaume, & pur plus plenier exhibition de droits fcombe le profit d'office demande, appelles les plus Differes de son Royaume auxibien des Greindres, come des meindres, estable eft, & acordamment ordine. So that if the Commons were there called to this Parliament, and if by the Greindres Differes, were understood the Lords, then by the like Reason under Meindres Differes must be meant the Commons, as at this Day.

But that this Statute was made by the Common-Council of the Kingdom, and not by a Conventicle of a few of the Lords and Tenants in Capite,Sumonned ad Libitum Regis, appears by all the Original Writs, founded upon several Branches of this Statute, which are to be seen in the Register, reciting that this Statute was made de Communi Concilio Regni. Now the Word Commune signifies no more than General; and how could this be called a General Council, which only consisted of a few of the wider Sort of Bishops, Lords, and Tenants in Capite.

As for what you and the Doctèr cite out of Cambden's Nameles Author, of King Henry's sending Writs of Summons, and calling out a few of the Earls and Barons out of a great Multitude that were Seditious, after the War with the Barons was ended, if you will have it extend to those who never forfeited by reason of Monfort's Rebellion, I need not say much to it, since Mr. Selden, in his Titles of Honour, hath sufficiently baffled that Author's Authority, for if it was never true as to Earls, it was not like to be true in respect of the greater Barons. But as for your latter Barons, or Tenants in Capite, I know not but he might be more much in the right, in respect of them.

What you say as to Robert Walrand, is not much material, for though he was never so great a Baron or Lawyer, yet he could draw up this Law but as being one of the King's Council, who in those Days drew up, and prepared all Bills that were offered in Parliament. And thus Briton might well say, that
that this was made by the Common Affair of the Great Lords, (this Act being so highly for their Advantage) and yet the Commons might be also there as well as they; for otherwise, if Briton must be literally understood, what becomes of your Minores Diferent mention in this Statute to have given their Consent, as well as the Majores? whereas this Author mentions none, at whose Request it was made, but the Great Lords only. But that by these Minores, Incola Regni, mentioned at the end of this Statute, were meant the Knights, Citizens, and Burgesse, may see a Writ of Summons the 24th of Edward the First, with the Doctor's Note upon it, in his Answer to Mr. P. The Writ is directed to the Archbishop of Canterbury, and concludes thus, that he should warn the Preva-
ratoris Cleri there mentioned, to appear with him, ad trahendum, ordinandum & faciendum nobissecum, & cum eteris Prelatis, & Procubibus, & Alis, Incola Regni nostris; in the Margin over-against these last Words, the Doctor gives us this Note, the Incola Regni were the Knights, Citizens and Burgesse mentioned in the former Writ, but not here particularly enumerated. Now, though it is true, that this Writ is after the Time that the Doctor will acknowledge the Commons to have been constantly Summoned, to Parliament; yet if these Words could mean the Commons in this Writ, why they should not signify the same in this Statute, I can see no Reason, but the Doctor's Prejudices to the contrary. But if you have no more Authority to allege from the Reign of Henry the Third, pray, go on, and shew me the rest of your Arguments, why you suppose the Commons were never called in above half the Reign of Edward the First, till the 18th. And I desire this the more, because I have already proved from the Statute of Welf. 2d of Edward the First, the Words, & tout le Community de la Terre, coming immediately after the Counts, Barons, and those other Words foregoing, must needs signify the whole Commonality or Commons of the Land; and so the Doctor himself has rendered it in his An-
swer to Mr. P.

M. But first, pray observe what the Doctor there tells you, that by the Word Commonality, he means not the Commons in the Sense they are now taken, but the Community of the Tenants in Capite only: And for this, pray confute the Writ of Summons to the Archibishop of Canterbury to come to this Parliament, (which I confess is the only Writ of this kind that is left upon the Rolls from the 49th of Henry the Third, to the 23d of this King) in which you will find the Archibishop Summoned ad trahendum, ordinandum &c. cum Prelatis, &c. and that, as the Doctor explains it, with the Prelates and Great Men of the Kingdom; which Great Men very frequently comprehended, as well the Barons Majores or Minores, the Earls, Barons, and greater Tenants in Capite, and the less, which then were the Community of the Kingdom; to look into your Interpretation of the Words des Grandes, et des Membres in the Statute of Marlbrige (by which you would interpret the like Words in the Statute of Marbridge) for the Commons, as now understood, will signify nothing, as being before the Time we allow the Commons to have been Sum-
mmoned to Parliament in this King's Reign.

F. It were a very easy thing for any Man of a confident undertaking Tem-
per, to frame a wrong Interpretation in pleases, from the general or equivocal Words of Histories or Records, if he could as easily find Authorities to sup-
port it; but I see nothing like a Proof for it, but the Doctor's bare Affirmations. Since I have already sufficiently proved, that the Words Commonality and Commu-
nities coming in our Statutes and Records immediately after the Counts and Barons, do always signify the Commons, as now understood; and why they should not signify so here, I can see no Reason. For as to the Words in the Writ to the Archibishop of Canterbury, they prove nothing at all, who were the Con-
stituent Parts of that Parliament; for if the Word Magnates must signify the greater and better Tenants in Capite only, pray why do they not signify so in the Writ of Summons to Parliament, of the 49th of Henry the Third, to the Bishop of Durham (which the Doctor has Printed) where there is no mention made of his Treating or Advising with any other Persons, than the other Prelates, & Magnates nostris? Yet the Doctor, within two Leaves after, gives us the Writs of Summons for the Knights, Citizens, and Burgesse to this Parliament. But it feems in his first Edition of his Book against Mr. P. Ccc 2
he had not made those rare Discoveries he did afterwards, where he pretends not to carry this Opinion beyond the 45th of Henry the Third. Therefore pray go on to shew this new Light, by which the Doctor discovered that the Commons were never Summoned to Parliament all the Reign of Edward the First, till the 18th.

M. In the first place, you cannot shew us any mention of the Words Communion, or Community, in any of the Parliaments of this King's Reign; nor in the Statute de Bigamia made in the 4th of this King; the Preamble thereof runs to this effect; that these Underwritten Constitutions were recited before some of the Bishops and others of the King's Council, and afterwards heard and published before the King and his Council, here is no express mention, who were the Constituent Members of Parliament at this Time, or of this Parliament in particular, more than that it is said, in the Close of this Statute, that the aforesaid Constitutions were Published at Weyminster, in the Parliament after the Feast of St. Michael.

So likewise by the Statute of Weyminster the 2d, made in the 13th of Edward the First, it appears, that the Prelates, Earls, Barons, and the King's Council, were the Constituent Parts of the Parliament at Gloucester you but now mentioned; for it recites, that the King, in the 6th Year of his Reign, Comitatus Prelatii, Comitibus, Baronibus, & Concilio suo apud Gloucetere, &c. And thus the Statute of Mortmain made by this King in the 7th of his Reign, is declared to have been made de Concilio Prelatiorum, Comitum, Baronum, & seorum fideliun Regni nostri de Concilio nostro existentium, &c. The Statute of Alton Burnel, was made in the 11th of this King, by himself and his whole Council, Le Roy per Lex, & per tout son Council ad ordon & efajble; though this was done in Parliament, as appears by the Statute of Merchants of the 13th of the same King, which recites, that the King had made by himself and his Council at his Parliament at Alton Burnel these Etablishments. I have been the more particular in the recital of these Statutes, not only because here is no mention made of any Commons in these Parliaments, but also because it farther confuses your Position in your 9th Dialogue, that the King had not then the sole Legislative Power.

F. You have said almost nothing now (I except that of the King's being the sole Legislative Power,) which I have not already freely acknowledged, viz. that the Words Community, and Communality, are not above twice mentioned in the enacting part of any Statute in this King's Reign; and the Knights, Citizens, and Burgesses not once mentioned, till the 34th of this King; nor any mention again of the Communality, till the Statute of Lincoln, made in the 12th of Edward the Second; and yet it appears by the Writs of Commons and Expenses, beginning at the 28th of Edward the First, that the Commons had been Summoned to Parliaments ever since that Time; and that they were so also before that Time, I have already proved both by Acts of Parliament and Records; and it would be a very uncertain Constitution, if we should suppos[e] the Representatives of the Nation, in the Great Council or Parliament, to alter as often as the Words or Parables whereby they are expressed. But by yours, and your Doctor's Method of Arguing, if the Writs of Summons to the Commons of the 49th of Henry the Third, had happened to have been torn off, and lost, as they easily might have been; since it is only affix'd to the Roll by a loose Schedule; and also, that all the Writs of Summons to the Commons had been lost, from the 23d of Edward the First, to the 34th, when there is no denying the Commons to have been there, because particularly named; and if the Writs had also happened afterwards to have been lost, till the 12th of Edward the Second, when they are expressly named in the Statute of Lincoln, which I now mentioned: Then the Commons should have been as well excluded by the same Argument, as they are after the 49th of Henry the Third, by the Doctor and those of his Opinion, because no Writs of Summons are found for them, nor any mention made of them in any Statute, first for above Thirty Years, and after that for above Thirteen Years together; since you will not allow the Words Community and Communality to signify the Commons, till you please to take them in that Sense.

This
Dialogue the Seventh.

This may serve as a general Answer to all you have said concerning the Omis- sion of the Commons in all Statutes, till the 18th of this King, and may serve not only for them, but against the Bishops and Tenants in Capite; being all present at divers Parliaments, where the Acts are recited to have been made by the common Affirm or Accord, without at all specifying whose Affirm, and sometimes without naming the King at all.

This being premised, it will be easy to return you a short and particular An- swer to the Statutes you have cited. As for that de Bígamos, you confess that the Statute only mentions its being recited before the King's Council, and publi'd in Parliament, without relating what were the contingent Parts of it; Ergo, no Commons were there; and I may, with as good a Face say, no Bishops, Ab- bots, nor your smaller Tenants in Capite were there, because not particularly named. As for the rest of the Statutes you have cited, of Gloucester, Mortmain, and Alton Burnel's, 'tis true, the Prelates, Earls, and Barons are there only particularly mentioned, because they then bore the greatest Figure in the Government, your lesser Tenants in Capite being quite left out; for that they could not not then be comprehended under Barons, I have sufficiently made out. But to conclude, give me any sufficient Reason, why the Commons might not be at these Parlia- ments, as well as they were in the 18th of this King; the most commonly no otherwise mentioned than they were before that Time. If you say the Writs of Summons make it out, they were there, you confess your Prejudice, since the two Writs of Summons before that Time would, if they had not been lost, have made out the same Thing.

As for what you say for the King's being the sole Legislative Power in those Times, I have long since proved, that no King could ever legally make Laws, without the Consent of the Common Council, or Parliament; and after that, all that you can say for the King's making Laws alone, with the Advice of his Council, signifies nothing: For if the Words are literally to be under- stood, then this Council of the King, whether you will have it to consist of the whole Parliament, as the Statute of Mortmain seems to intimate, or else of his particular Council in Parliament, as in the Statute of Alton Burnel, where those Constitutions are said to be ordained by the King and his Council; if by ordinance, you mean only drawn up, and prepared for the Parliaments Affrerr, it is no more than what I shall easily grant to have been the usage in those Times: But if you will have ordained to signify enabled, then pray tell me how you will avoid the King's Council having a joint Hand with the King in his Le- gislative Power; for the Words are, the King by himself and his Council had Ordered and Enforced. But you have carried both your self as well as me, too far from the main Question; therefore, pray give me some better Reasons why you are of this Opinion, that the Commons were not Summoned again to Parliament, till the 18th of Edward the First.

M. I am now coming to it: But first remember, that about an Hour or two ago, I cited a Record of the 30th of Edward the First, which related to an Act of the 18th of this King: By which Record it appears, that the Prelates, Earls, Barons, and other great Men of the Kingdom, had then in full Parliament on the first of Janus, granted him 40 s. on every Knights Fee, to marry his Daughter: And it thence also appears, that tho' this Tax is said to be given for themselves and the whole Community of the Kingdom; yet it was by the Community of Tenants in Capite alone, because it was to be raised wholly upon Knights Fees, so that it was levied in this King's Reign, there appears noth- ing that can plainly evince, either the Summoning, or being of any Com- mons in Parliament, as now understood; however, we are at least left at great uncertainties; nay, in my Opinion, the Proof is more strong on the Negative, that there were none.

F. I wonder you should mention this Writ any more; since I have already confuted the Doctor's Notion about it; and proved, that it was a general Tax granted by the Parliament upon the whole Kingdom, and not laid, either by or upon the Community of the Tenants in Capite alone; nor does the way of Taxing by 40 s. upon every Knights Fee at all prove it. For if it is to be under- stood, not only by a grant by Knights Service, then it is not a Tax laid have ex- tended to any other Estates, as certainly it did; since the King could, by King
John's Charter have made his Tenants in Capite to grant him an Aid towards this Marriage of his Daughter, and (if what you say be true) could also have made all the Mefne Tenants of the Tenants in Capite, to have contributed to it according to the Knights Fees they held; and this without calling a Parliament at all, therefore pray give some better Authority than this, for I'll assure you, I am not at all satisfied with it.

M. I will now give you the Writ the Doctor has discovered, and by which it will plainly appear, that this Tax granted in the 18th of this King's Reign was given before ever the Commons were Summoned to it; and for this, the Learned Doctor has found out, (among a loose Bundle of Writs of this Year,) a Writ of Summons, directed to the Sheriffs of most Counties of England, and they are the ancientext extant, or perhaps that ever were, (for in probability, the calling of Knights, Citizens, and Burgesses, according to that Example, was discontinued from the 49th of Henry the Third, unto this Time) by which two or three Knights were directed to be chosen for each County: Pray read the Writ it self, since I look upon it as the first Pattern of this kind; that of the 49th of Henry the Third, seeming to have been written in Hafie, without those Forms that were afterwards required in Writs of this kind, and particularly in this: Edwardus Dei Gratia Rex Anglie, Dominus Hiberniae, &c. Agoniam Vice-comitit Westminsteriae Salutem. Cum per Comites, Baronites, & quosdam alios de Proceribus Regni Nofiri, super factum super quibusdam specialiis regia, super quiusdam, quam cum alias, de Comitatibus Regni sibi Colloqueium habere columnae & Trojabarium, iibi praebessum quod daret, vel tres de Discordioribus, & ad laborandum potentiariis et Militibus de Comitatu pridie sine delatione Eligi, & eos ad nos utique Westminsterium venire facias ita quod sint ibidem à die Sancti Johannis Bapt. prox. futur. in tres Septimanas ad ultimum cum plena potestate pro se & Communis atque his que Comites, Baronites, & Proceres pridilii, tum dixerint concordando, & habebat ibi hoc Breve. Telle meipso apud Westminster. 14. Die Jun. anno Regni Nofiri 18.

Whereby you may see in the first place, that there was yet no certain Number of Knights of Shires settled, who were to be Summoned to appear at this Parliament. And you may, in the next place remember from a before-mentioned Record of the 30th of Edward the First. That on the first of this Month, the King had Scourte then given him in full Parliament: And now Fourteen Days after, at the Incolour of the Earls, Barons, and other Great Men of the Kingdom, upon certain matters by them moved and propounded to him, he issued His Writs of Summons to the Sheriffs of the several Counties, to cause to be chosen two or three Knights of each County, to come to him at Westminster, three Weeks after St. John Baptist at farthest. We may also further observe from this Writ, that it is most probable (though it is not here absolutely said so) that the King was moved by the Earls, Barons, and great Men of the Kingdom, to call these Knights to this Parliament; and that as this Writ is the first to be found after that of the 49th of Henry the Third; so I take it to be the first Writ of Summons after that Time, for the Election of Knights to represent the several Counties.

In the next place, that there could be no Citizens nor Burgesses chosen, or sent to this Parliament by virtue of this Writ, in the same manner as they were afterwards by Directions contained in the Writs sent to the Sheriffs, for Electing Knights of the Shires.

Lastly, That by this Writ, the Knights were to come to the King at Westminster, three Weeks after St. John Baptist at farthest, which was the 15th of July; also, that in the same Year, between the Time of the date of the Writ, and the Time appointed for Meeting of the Knights, the Statute of Westminster the Third was made, as may appear by this Clause at the beginning: Dominus Rex in Parlamento suo apud Westminsterum post Pascha, Anna Regni sui Decimo octavo, videulet in Quinto Saneti Johanni Baptist. (that is, the 8th of July) ad Institutionem Magnatum Regni sui Concilii, Proclami, & Statuti, Quod de cetero locat unicunque libero bonum, &c. So that this was the same full Parliament, which gave the King Scourte on the first of June, and
Dialogue the Seventh.

and then the King and Barons, without the Commons, made this Statue, of the Knights had another Summons after the Date of this Writ (for before that they were not in Parliament) or the Knights came a Week before they had need to have done; but neither of the latter are probable, seeing the Knights then were great Husband of their Time and Expenses; and were not very forward to undertake this Service, as being constantly bound with, or engaged by Sureties, or Manuators for the Performance of it, and their Appearance in Parliament: And therefore it seems reasonable to conclude, that this Law was made without them, and before their coming to Parliament.

So much of this Writ, from which, as well as divers following Writs and other Records, it is evident, that it was from this King's Authority, and at this very Time, that the House of Commons came to be fixed and establish'd in the present confiant Form it is now, and hath been in for many Kings Reigns; and then the King in this Age was not altogether confin'd to any Number of Knights, Citizens, or Burgesses; nor were several Brief Forms and Usages now practis'd, ever then thought of, nor some Legal Niceties and Puntilio's now in use, then judged absolutely necessary.

F. Pray give me leave to answer what you have now said from this Writ, before you proceed to any other Record. First, as to your Argument from the Variety or Uncertainty of the Number of Knights of Shires, which you at first suppos'd to have been summons to Parliament, that I doubt will prove a gross Mistake; for if we closely consider the Writ it self, it will prove no more than a Summons to these Knights to a great Council, Colloquy or Treaty (as the Writ here calls it) and not to a Parliament, the Words Colloquium & Traiectum mentioned in the Writ, not then signifying a Parliament, but such a Colloquy, Treaty or Council, as is mentioned in the Statute of the Seventh of this King, forbidding all Men coming with Arms to such Assemblies; wherein there is also a plain Difference made between Parliaments and such Treaties, as I have already proved from the Statute of the 21st of Edward the Third, which was first made in such a Treaty or Council, as appears by the Title to the said Statutes, and was afterwards confirmed by the next Parliament, in the 28th Year of the same King, Chap. 1, whereby Magna Charta, and all other Statutes before made, are all confirmed. For had this Summons (you mention) been to a Parliament, sure there would have been also Writs of Summons found for the electing and returning of Citizens and Burgesses, as well as Knights of Shires to this Assembly, and these Writs of Summons would have been ented on the Horde of the Cofe Rolls, according to the Rules your selfe have laid down; whereas this Writ is only found in a loose Bundle of Writs of Summons; neither is there any Title in the Margin of the Record (as is usual in Writs of Summons to Parliament,) whereby it may appear what kind of Assembly this was to which these Knights were summoned. Nor is your Argument from the Date of the Writs of Summons any convincing Proof that the Commons were not already in this Parliament at the Time of the Writ illus'd, since during the Session of it, the Earls and Barons might make this Request, for calling of some other Knights out of the Counties, to give their Opinions and Advice in the Matters to be propos'd to them by the King; and that thereupon the King at their Request, thought fit to summon Two or Three more of the Knights to have their Advice also.

And as for your last Argument, that the same Parliament which gave the Tax above-mentioned on the first of June, must be, fitting even to the very Time of the Return of the Writ, because the Statute of Wellsminster the Third was made on the Quindecime of St. John Baptist, (viz. the 6th of July) so that the King and the Barons, without the Commons, made this Statute, and that these Knights were summoned after the Act was pulled; there is no Necessity of making these Consequences; for this Parliament might very well have dissolved that very Day this Act pulled, and this Council or Colloquy might be summoned to meet within Three Weeks after Midsummer (i.e. about the 16th of July) according to the Writ you have cited. And so I believe it would appear, were the Rolls of that Parliament, and the Writs for the
the Expenses of the Knights now extant, as they are left, as well as those of divers preceding Parliaments.

W. Well then, you are forced to confess, that this Writ was issued whilst the Parliament was still sitting; and if so, I cannot see any need there was of another left Council or Colloquy to meet after the Parliament was ended, since as long as it was sitting, that could have much better disjirched all such Business as the King had to do; and how the King could foresee that he should have need of another Council before he had any Business for it, seems very improbable; and therefore I think I may very well suppose with the Doctor, that this Writ was a Summons to Parliament, though it does not (I grant) expressly call it so. But your Argument is of no weight, that because this Writ was not entred upon the Close Roll, that therefore it is not to be look’d upon as a Summons to Parliament, as also because the Title to it is only Summantio ad Confulium; since the Doctor in his Answer to Mr. P. gives us several Parliament Writs upon the Close Rolls with this Title ad Confulium, which proves, that the King had in those Days a larger Power of calling what number of Knights of Shires he pleased to Parliament, as appears by Two other Writs he then gave to Edward the First, which are entred in the Close Rolls to the Sheriff of Northumberland, to cause Two Knights to be elected for that County, bearing Date the 8th of October, and the next Day after, the King, as appears by another Writ to the same Sheriff, ordered him to cause to be chosen two other Knights besides the former, and to cause them also to appear at Westminister the Morrow after St. Martin’s Day, to hear and do such things as the King should more fully enjoy; the like Writs (with both the former) were sent to all the Sheriffs in England. Now though it is true, that the Title to the first of these Writs, is only de Munitio Elegentis & Munitenda ad Confulium; yet these Words well consider’d must certainly here mean a Parliament, both these Writs being entred upon the Close Rolls, where all Writs of this kind are wont to be found, as I have already observed; and besides, the Words in the first Writ are the same with those which are found in several other Writs of Summons to Parliament, viz. ad Confulendum, & Confenienti, pro se & Communiate idd bis qua Comites, Baronet & Proceres pruditi concorditer ordinarentur in præmissis.

F. I confess we are at a lost in this Affair, for want of the Records of this Parliament, which if we had, I doubt not but there would appear very good Reasons why the Lords did then deprive the King should consult more of the Knights of the Shires than what had appeared at this Parliament, as that Lords might refuse to give their Advice in the Matters proposed by the King, without he would also consult more of the best and ablest Knights of Counties, who were to come up with fresh Power, and further Instructions, what Answer to give the King in the Matters he should propose, which, that it was neither to give Money, not make Laws, is plain; since (you say) the Tax of 40 s. on every Knight’s Fee was given, and the Justice of Westminister ad made before they came up to Parliament, but indeed the Words in the Writ plainly prove that this was no Parliamentary Meeting, since they are here only Summoned ad Confulendum, & Confenienti; whereas in all Writs of Summons to future Parliaments, the Words are ad faciendum quod tune de Communi Consilio ordinabantur, or the like, as appears by the Writ of Summons of the 23d of this King, which the Doctor has printed, whereas the Words in this Writ are only ad confectioniendum, &c. bis qua Comites, Baronet & Proceres pruditi tune duxerint concordanda, &c. And if this had been done at the Request of all the Tenants in Capite (as you suppose), how in the Bishops, Abbeys and Priors, who held also in Capite, to be omitted, and not mentioned in this Writ to have joyned in this Request, as well as the Earls, Barons and great Men?

But as for the Doctor’s next Precedent, viz. a Writ to the Sheriff of Northumberland, to return Two Knights of the Shire, and then the next Day after, other Two for the same County, I am not at all satisfied, that those Writs were a Summons to a Parliament, and not to a great Council; for besides the Title of the Writ is de Militibus Elegentis & Munitenda ad Confulium, the
Words in the Writ are not the same with those which were commonly used in Writs of Summons to Parliament, as I have already shown you in this Writ of Summons we are now upon: Whereas in the Summons to Parliament of the 23rd of this King, the ordaining Part doth as much refer to the Commons, as to the Lords, the Comune Consilium confining of both; whereas in these Writs you have cied, they were to conten to such Things which the Earls, Barons, and great Men should think fit to agree to. But that I may shew you a little more plainly, the Absurdity of this Fancy of your Doctor's, that these Knights of Shires were now summoned, the Parliament sitting; Pray let me ask you one or two Questions concerning this Business, pray who were these Gentlemen that the King you say thus summoned to Parliament?

M. According to the Doctor's Account, they must have been all Tenants in Capite, since he often tells us, that out of these alone, the Knights of Shires were chosen at the first.

F. Well, but then who were these Magnates and Ali Proceres, mentioned in the Statute of Westminster, and in this Writ of the 18th of Edward the First?

M. I must own myself at a loss, certainly to define who they were; for if I say they were the smaller Tenants in Capite, who are here put as a distinct Order from the Comites et Barones immediately foregoing, I foretell you will ask me how these Gentlemen could be Summoned; since all the Tenants in Capite were at this Parliament already? Therefore, I must tell you, I think there were only some of the greatest and wisest of the Tenants in Capite, who were no Barons, now Summoned; and whom the Doctor tells us, were often called to great Councils, as Barons, Peers, and who, though sometimes called to sit among the Lords, were often again omitted in several Kings' Reigns; so that this Parliament was composed (as theof of Malbridge and Gloucester) not of all, but only of the more different of the lefier Barons or Tenants in Capite.

F. If this be all you have to say to extricate your self out of this Difficulty, I think it will not amount to much; for in the first place, all you have here said is meer Conjecture without any Proof; since this Statute of Westminster 3d, says only in general, that it was made at the Instance of the Magnates, under which Title your Doctor, when he explains the Writ of Summons to the Archbishops of Canterbury tells us, were frequently comprehended the Barones Maiores, the Earls and Barons; as under Minor Res, the lesser Tenants in Capite, which when the Statute of Westminster the first was made, he will have to be the whole Commonalty of the Land therein mentioned; and why this Parliament of Westminster the 3d, should not confit of the same Members now, needs some better Reasons than your bare Affirmation to the contrary. Besides this, that the Prerogative of calling these Barons Peers to Parliament, did not only extend to Tenants in Capite, but to other Mefe Tenants also; if the King thought them considerable enough for Eluates, or Wieldom, to do them that Honour; and so was not confined to Summon none but Tenants in Capite, who according to your Interpretation of King John's Charter had all a Right to appear by General Writs, at the Common Council of the Kingdom. But you may answer, what Senes you please on this Words Magnates et Proceres, yet I am sure your Doctor can take them in no other Sense than for the Community of all the Tenants in Capite, both great and small, and so he tells us in his Glossary, when he Comments upon the Writ of the 30th of Edward the First, which you mentioned, and which refers to this very Parliament of the 18th, when forty Shillings was granted on every Knight's Fee to marry the King's Daughter; and there the Doctor immediately tells us, "That such as paid that Scutage were Tota Communitas Regni, and no others; and that the Tenants in Capite were granted and paid it itself for themselves and Tenants, &c., and which must certainly relate to this very Parliament of the 18th of Edward the First, or none at all.

M. I confess I do not see how the Doctor can solve this Difficulty, but by denying what he has already said, and affirming, as I do now, that all the lefier Tenants in Capite were not Summoned to this Parliament, but only...
some of them at last ordered by this Writ to be chosen and returned by the Counties.

F. Yes, he might do it, if bare affirming were to pass for Proof, but I shall not give up my Reason upon no better Grounds, either to him or you; nor to mention the Improbability of the Thing, that the King should be now over-ruled by the Earls, Barons, and other Great Men, to call these Knights of Shires, which had been omitted ever since the 45th of Henry the Third, for above Twenty Years, when he had no need at all of them, but rather the Advantage of governing without them; since it is the Policy of Princes rather to diminish than increase the number of the Members of their great as well as private Councils, who certainly are more easILy managed when they are a few than a great many.

M. But what if we should go from the Doctour's Position, and say, that perhaps these Knights were chosen out of the Meine Tenants of the Tenants in Capite; many of whom I grant might be considerable for Interest as well as Prudence; and with whom the King at their Request might desire to treat of certain Matters which had been before moved and propounded by him.

F. This is all that can be said, and yet is much more unlikely than the other; since to believe that the Earls, Barons, and Tenants in Capite should be now grown so weary of their Power of imposing Taxes, and making Laws for the whole Nation, as to intreat the King to admit their Under-Tenants to partake of so large a share in both, is so extravagant a Fancy, that if it had not suited with the Doctour's present Hypothesis, he would never have affurred it in cold Blood; since himself affirms, that upon the making of King John's Charter, the Earls, Barons, and Tenants in Capite, were the only Parties to it; and that all the rest of their Tenants who were there present, were only their Retinue and Tenants in Military Service, which were with them at Runnymede, and more

B. G. L. p. 151. hardly to be reckoned among the Freemen of the Kingdom; all the rest being only Followers who helped to augment the Noije, and were not Law-makers: For it is not probable (says the Doctor very well) that those Men that had the Force of the Nation would permit Men of Small Reputation to share with them in Law-making. Those that had the Power of this or any other Nation de facto, always did give Laws, and Take the People. But it seems these Great Lords and Tenants in Capite, are either very stiff to maintain; or else easy to give up their Privileges, just as it belt suits with the Doctor's present Occasion; but the Doctor may contradict himself as much as he pleases, since it is not his Fault, but his Hypothesis that hath led him into it.

M. I confess it seems somewhat hard at present to conceive it; but we know not what Reason the Lords and Tenants in Capite might have had to define the Circumstance of these Knights of Shires at this Juncture of Time. But that their coming to Parliament looks like a new Thing, may farther appear from hence, that the King for a good while after the introducing Knights of Shires to serve in Parliament, was wont to use the Liberty of Nominating the same Members of Parliament who were formerly chosen; as appears by a very remarkable Writ the Doctor there likewise gives us, of the 28th of the same

B. A. P. p. 152. King, directed to the Sheriff of Cumberland; whereby he is commanded to cause to appear at the Parliament of Lincoln, on the 1st of St. Hilary, the very same Knights, Citizens and Burgesses, who had before appeared at the last Parliament, unless any of them were Sick or Dead. From which we may collect, that our Kings in those Days often made use of their Prerogative of Summoning such Members to Parliament, as were not then actually chosen by the Counties to serve in that Parliament: And for a farther Confirmation of this, there is still extant upon Record in the same Roll the Returns of several of the Sheriffs upon the same Writs: Whereby it appears, that the same Members were returned to appear in this Parliament, without any new Elections, who had before served at the precedent, unless in the Case of some that were Sick or Dead.

And that our Kings had not yet a long Time after lost their Prerogative of Nominating how many Knights, Citizens and Burgesses, they would have chosen and returned to appear in Parliament, may appear by a Writ of the 45th of Edward the Third, whereby one Knight for a County, and one Citizen and Burgess, and
Dialogue the Seventh.

and those too named by the King to the Sheriff, were to be Summoned to appear in Parliament at Winchester, to do those Things that are appointed in the same Writ, which were likewise directed to all the Sheriffs in England; and that this was a Parliament, appears from hence, that the Knights, Citizens and Burgesses had Writs for their Expenses at this Meeting at Winchester. And though in these Writs it is only expressed by these Words, Magnum Consilium Nofstrum; yet from this Writ of Summons it is evident, it did the Bunifex of a Parliament, and so no great Matter for the Name.

If those be all the Arguments you have to produce against the Ancient Right of the Commons being part of the Parliament before the 18th of Edward the First, I doubt they will not be sufficient to do the Bunifex. For as to this Record of the 28th of Edward the Fifth, whereby the King is supposed to have had a Power to call those Knights of Shires to be returned who were Elected to serve in the Parliament before going, without any new Election, this is altogether prevaricacious; for if you will but read the Writ itself, and the Reason of the King's thus acting, it will plainly prove the contrary. For the King recites in that Writ, "That having resolved that the Charter of Forrefts should be observed, and that his Subjects made a Perambulation thereupon; yet that he would conclude nothing in that Matter, without the Counsel of the Prelates, Earls, Barons, and other Great Men, and therefore defining to haften that Bunifex, as far as he could without any Delay, he thereby orders him to come to court before him to the Parliament and Procures, and the fame Knights, Citizens, and Burgesses, as were before Elected. Now the King might have very good Reason for it, why he would rather treat with them than with any other, because they had been privy to all the precedent Transactions concerning this Bunifex of Forrefts, and therefore were most likely to come to the speediest Conclusion with the King in that Affair, as being better instructed in it, than it was possible for any new Members to be, who had not before been privy to the whole Affair.

Yet that the King never intended hereby to impose Representatives upon his People without their own Consent, appears by this Clause at the end of the said Writ, Ina qualitate, Graces & Burgenfes prælibād die & loco modo omnium interim cum plena potestate audienæ, & faciendo ea quæ ibidem in praeminis ordinarii contingens pro communi commodo dixit Regni. Now tho' these Knights, Citizens and Burgesses could appear in Parliament with full Power of acting therein, without the new Election or Confirmation at least of those whom they represented, I should be very glad if the Doctor or your self could inform me. But to come to your next Record of the 45th of Edward the Third, whereby you would prove that the King in those Days had a Power of appointing, not only how many Citizens and Burgesses should appear in Parliament for each County, but also could name the Persons that should appear therein: I wonder how the Doctor could fo impose upon your, or his own Understanding; since nothing is more apparent than that this Council at Winchester, to which they were Summoned, was no Parliament at all but a Great Council, as appears by the very Words of the Writ it self, which recites, "That whereas a Parliament lately at Welfmyngetter, had given the King a Subsidy of Twenty Four Shillings and Three Pence upon every Parish in England, that the King being willing to be better informed after what manner the levy of this Tax might be more justly performed; and because it would be burdensome for all the Great Men, Knights, Citizens and Burgesses, who came to the said Parliament to meet together again for this Matter, therefore he ordained for sparing their Pains and Expenses, to have a Colloquy and Treaty with some of the same Members, and therefore names the very Persons whom he commands should appear before him at Wincheffer, to inform him and his Council of the best Manner and Form whereby the said Tax might be more justly and most conveniently levied, according to the Intent of the said Grant. So that nothing is more plain from the Writ it self, than that this Assembly was no Parliament; the proper Bunifex of which is always to make Laws, give Money, or redress Grievances; none of which, it is apparent, were the Cause of this Meeting. So that those who were thus Summoned, did not appear as Knights of the Shires (their Power being expired at the Dissolution of the Parliament) but only as so many particular private Men, who by reason of their Interest in the Country, the King supposed could best inform him.
in the Buisness above-mentioned, the like I may say for the Citizens and Burgesses then summoned. But that in the Reign of this King there were several Councils of this kind, which tho' no Parliaments, as having but one Knight, one Citizen, and one Burgess, and only making Temporary Ordinances concerning Trade, and other Things of less moment, which were to be put in Practice for a Time, till they could be confirmed by the next Parliament, appears by the Ordinance or Statute of the Staple above mentioned. And of these Mr. Pryor in the first Part of his Parliamentary Register of Writs gives us divers Precedents, which he rightly judges, were only Writs of Summons to such Councils, and not to Parliaments; because there is no Summons in them ad Parliamentum (which was the constant Word then in use for the great Council of the Kingdom) but only Colloquium & Traianiun or Concilium, which was the Title then given to such Colloquies, Treaties, or Councils; as also because there are often but one Knight for each Shire; and no Citizens, or else but one for each City and Borough; as also from the Writs to those Bishopps, which are summoned to such Councils, in which is no Clause for the summoning of the Deans, Arch-Deacons, and Prebendaries of the Clergy of the Dioceses; as was then usual in all Parliaments. But, for safety, because the Titles of the Writs for these Assemblies, are only Summonitio ad Concilium; all which your Doctor passes by very slily without taking any Notice. And this may serve for a sufficient Answer, not only to this, but all those other Precedents which the Doctor hath there heaped together of the like nature.

M. But what say you to the last Record the Doctor has given us, whereby he farther proves that the King did likewise often use his Prerogative of discharging such Knights of Shires as he judged not fit to be chosen, or returned? As may appear by another Writ which he likewise gives us of the 7th of Richard the Second, directed to the Sheriff of Surrey, reciting, "That whereas Sir Thomas Camoe being a Banneret, was chosen one of the Knights of the Shire for the fame County, yet because such kind of Bannerets were not wont before-Times to be chosen Knights of the Shire, therefore he commands them to caue another Knight to be chosen to come to Parliament in his stead. So that upon the whole Matter nothing seems plainer to me than that the chusing and returning of Knights, Citizens and Burgesses, being then but a Modern Institution, and proceeding wholly from the King's Favour, it was no wonder if they used a greater Liberty, and a larger Prerogative of nominating and discharging such Members of Parliament as they thought fit, than they have of late Agess taken upon them to do, when the Custom concerning the same Matters became better settled by Proceedings of Time. I have omitted several other Instances, which the Doctor there gives us of the King's Adjourning or Dismissing of Parliaments, to appear again upon his Summons without any Day appointed, which is contrary to the present Custom of Parliaments; as also of divers Records in the Reign of Edward the Second; the first a Precept to the Sheriffs to send up again such Members as had left the Parliament, or else to chuse others in their stead; as also another Record of the same King, whereby it appears, that he not only by his sole Authority (and as far as it appears) without their Consent, not only Prorogued, or Adjourned the House of Commons, but also punished the Members for Absence. All which do farther prove that several of those Rights and Privileges which the House of Commons do now assume as their ancient and undoubted Birthrights, have been only granted from the Crown by the Indulgence or Connivance of some of our Kings, who were afraid to displease them and which his Majesty has Majestically re-affirmed and exercised whenever he shall think it convenient so to do.

F. As for this last Record, whereby you would prove from the King's discharging Sir Thomas Chamoe from serving as a Knight of the Shire for Surrey, that therefore he had a Power at that Time of discharging whom he pleased from serving in Parliament, the Writ it itself shews the contrary, for it there recites, that the said Sir Thomas and his Ancestors had been Bannerets, which could not be meant of such Bannerets, as were Knighted in the Field, and therefore Mr. Selden in his Titles of Honour truly supposes, that this
Dialogue the Seventh.

Word cannot be understood of any other Banne"ret than a Parliamentary-Ba"ron, or Banne"ret of that Time: The Expression of Holy/med Banne"retti shewing that it is not meant of all Banne"retts, but such only as have that Title, either by Inheritance, or in such a kind as an Inheritance might be made of it, is apparent, by the precedent Words, Banne"retti eos sicat comple\lres Antec\lrorum suorum existentur. And the said Sir Thomas, and his Anc"elors, having been often called to Parliament among the Barons, therefore this Writ was illi"ed to dis"lige him; for it appears by the first Vo"lume of Sir William Dugdale's Baronage of Eng"land, that this Nobleman's Anc"elors had been frequently summoned to Parliament, from the Reign of Henry the Third, as this Gentleman himself was likewise summoned to all Parliaments from this 7th Year of Richard the Second, to the 8th of Henry the Sixth inclusively, when he is sup"posed to have died. And if he him"self were not summoned to Parliament as a Lord, before the 7th of Richard the Second, Mr. Selden in the same Place, gives us a sufficient Rea"'on how this might be, viz. "That his Name, by reason of Non-age, or some other Cause, was omitted till the 7th of Richard the Second, for want of an Heir by Lineal Defec"nt, Entail, or Honour by Tenure, not being then frequent. And as it hath sometimes happened (in like Case) the Dignity being obscured by his ab"taining from the Name of Lord, or Baron, the Freeholders of Surrey chose him Knight of their Shire; after which, he being according to his Anc"elor's Rights, summoned to Parliament as a Baron, there was a Neces"sity to dis"lige him, which was done under the Name of Banne"ret, and not Baron, it seems according to the use of that Time, because he then held not a whole Barony, or did not hold per Baronium. So that whoever will but consider this Account Mr. Selden gives us of this Busine"s, need not run to the King's Prerogative, for a Rea"on how this Peer came to be dis"liged from serving as a Member in the Hou" of Commons.

But that Banne"ret then signified the lowest Degree of the higher Nob"lity, appears by the Statute of the 15th of Richard the Second, in the Se"ond Parliament, in which, after the Archbishop, Bishops, Ab"bott, Priores, Dukes, Earls, Barons, immediately follow Banne"retts, Knights of Shires, Cit"zens and Burgesses; all which are specified to have a Right of coming to Parliament of old Times; so that this Title of Banne"ret could not then signifi" what it hath ordinarily done since that Age: But a Baron's Peer, at least such a one, had been him"self, or his Anc"elors, frequently called to sit among the Lords, but not holding by Barony, was not called a Baron, but Banne"ret only.

So that I hope I have now fairly run through, and examined all the Pre"cedents which you or your Do"ctor have been able to urge in this great Ques"tion; and I think, if you are as candid and ingemous as I take you to be, you will not affect, that any of them do amount to a Proof; either that the Commons were never summoned from the 45th of Henry the Third to the 18th of Edward the First, or that the Writ of Summons for there pro"vided him in Parliament and not to a great Council, or that the King ever took upon him to appoint what number of Knights, Citizens and Burgesses, should come to Parliament, or could nominate who they should be, or could dis"lige whom he pleased from serving as Members therein. All which your Do"ctor, I think, with greater Confidence, than right under"standing of the true meaning of the ancient Writs and Records of Parliament, hath undertaken to affect. I beg your pardon for troubling you so long on these Heads, since the Length as well as Div"lity of Records you have now cited, could not be answered by the said comp"s.

At I must confess, you have given pretty plausible An"wers to most of the Authori"ties and Records I have now cited; yet I cannot affect so far as to come over to your Opinion, without a longer Consideration of the Strength of the An"wers you have now given me to the Do"ctor's Authoritys. But in the mean Time you would oblige me, if you could give me the le"t of your Arguments, whereby you would undertake to prove that the Commons have been always an essencial Part of the Parliament ever since the Conquef. For it seems to me, by what I have read out of our ancient Historians, that there is no express mention made of them by
by Name, in any Historian or Record, till the Reign of Edward I. and as for
those Arguments Mr. P. hath given us to the contrary, methinks the Doctor hath
given satisfactory Answers to them.

F. I think I have made it clear enough, that the Commons of England were a
conspicuous Part of the Witanage General, or Common Council of the Nation, before
your pretended Conquest; and if it doth not appear that they were deprived of
that Right by the Normans Entrance (which you have not yet proved) I think
we may very well conclude, that Things continued in the same State as to the
Fundamental Constitution of the Government, as well after your Conquest as they
did before. Nor have you, as I see, proved any Thing to the contrary; since
you confess, that as much a Conqueror as King William was, yet he altered no-
thing in those Fundamental Constitutions, the most that you pretend he did, be-
ing only in an Alteration of the Persons who were the Legislators, from English
to Frenchmen, or Normans. So that upon the whole Matter, I think there is no need
of any new Arguments to confirm this Truth; since the Commons of England
claiming a Right by Presumption, of having their Representatives in Parliament;
if you, or your Doctor, nor none of those whom he follows, can prove by suf-
cient Authorities when this began, then I am sure you ought, if you were of
the Jury in this Matter, to find for the Tenant in Possession; since that, together
with a constant Usage Time out of Mind, is as well by your Civil as our Com-
mon Law, a sufficient Title to any Estate: Yet I doubt not but to shew you the
next Time we meet, that the Doctor has not given such satisfactory Answers as
you imagine, to most of Mr. P's best Arguments, proving this Right of Prescrip-
tion to have been the constant Opinion of all succeeding Ages; to which I shall
also add divers new Authorities, as well from Ancient Historians, as Parliamentary
Records and Statutes. But since it is grown now very late, I beg your Pardon
till another Opportunity.

M. I thank you, Sir, for the Pains you have taken to satisfy me in this great
Question; but pray come again within a Night or Two, that we may make an
End of this weighty Controversy, and then we may proceed to what we at first
intended, viz. Whether the King can ever lawfully be refered; or whether by any
Act he may commit, he can ever cease to be King.

F. I accept of your Proposal, and shall wait of you again as you appoint, but in
the mean Time pray consider well of the Authorities I have now urged, and the
Answers I have given to your Arguments, and then I hope there will be the less
need of new ones.

M. I shall not fail to do it; but in the mean time am your humble Servant.

F. And I am yours.

Bibliotheca
Bibliotheca Politica.

D I A L O G U E  VIII.

Being a Continuation of the former Discourse concerning the Antiquity of the Commons in Parliament; wherein the best Authorities for it are proposed and examined. With an Entrance upon the Question of Non-Resistance, &c.

P A R T  III.

M. Am glad to see you again so soon; for indeed I am very impatient to make an end of this great Question concerning the Antiquity of the Commons appearing in Parliament; and therefore pray go on where you left off; and give me those plain Proofs you promised me, whereby you would make out that both the Knights of Shires, as well as the Citizens and Burgesses, had a Right to be there ever since the Conquest; for I defer to go no higher.

F. I thought I had said enough on that Subject at our last Meeting to satisfy any reasonable Person: I am sure more than you were able fairly to answer, especially as to my Replies to the best Authorities you brought from the Doctor; and therefore pray before we proceed farther, tell me your Opinion upon Second Thoughts, of those Authorities and Arguments I then gave you.

M. I must confess they do somewhat shock me; but I hope you will pardon me, if I cannot come over to you, without first hearing what may be laid by the other Side; and to this End I have wrote to the Learned Doctor for his Solution to several Difficulties, that I confess upon his Hypothesis I know not how to solve; but doubt not but to receive farther Satisfaction from him as to those Points in a short Time; but in the mean while, let us proceed in our intended Design, and examine the rest of the Arguments you have to produce on your Side.

F. I shall obey your Commands; and therefore in the First Place you cannot expect more than is in our Power to give you. For since all the Parliament Rolls and Writs of Summons, (except those of the 49th of Henry the Third) are lost, till after the Times in Question between us, you must be contented with what other Proofs we can produce, provided they are sufficient to satisfy any unbiased, indifferent Person. And to this End I shall fort the Authorities I intend to make use of.
use of into these Three Heads. First, I shall give you divers Quotations out of the most Ancient Writers, who lived in, or nearly the Time you prefix; viz., the coming in of the Norman William; and shall defend down in order of Time, as low as your Doctor’s 18th of Edward I.

Secondly, I shall shew you from the Authorities and Testimonies of the Judges of almost all our Courts; of the Houfe of Commons; nay, of several whole Parliaments, and the King himself, That the Commons had an undoubted Right of Sitting there by Precepture.

Thirdly, From the Content of all our Neighbouring Kingdoms, who being governed by a King, and a great Council or Assembly of the Estates according to the Gutbick Model, the Commons had always from the Institution of the Government their Representatives in those Assemblies.

M. I much doubt this; but pray begin with your Ancient Historians; for as for my own Part, I must freely tell you, though I have looked them over very wary, yet I can find nothing in them concerning the particular constituent Parts or Members of our great or Common Councils, but the Magnates, Optimats, or Principes, Comites and Barones, all which, though you have at our last Meeting shewed me from some Authorities, that they may take in others, though not Noble by Birth; yet since these Words have been most commonly taken in another Sense, it needs some better Proof than to say in general, that meer Commoners were there, because those general Words may sometimes be taken in that Sense. And as for the Words Clerus and Populus, which I confes are often mentioned to be present at those Assemblies; the learned Doctor, in several Places of his Answer to Mr. P. as also in his Glossary, hath plainly proved, that as the Word Clerus sometimes signifies the Bishops, and sometimes the Interior Clergy; so Populus does also neither great nor little People, but only the Lity; and therefore as it is used and restrained, signifies the Lay Plebs, or the Lay Magnates. What I mean by Plebs, I shall tell you by and by; but that the Word Populus does not signify the Inferior Sort of People, or such as were inferior to Barons, Tenants in Capite, or Noblemen, the Doctor has very well proved from that Paffage made use of by Mr. P. to prove the Commons to have been in that great Council which made Henry the Fifth King, because it is said by Mat. Paris, that Congregatio Clero, & Populo unito se, &c. by which Word Populus he would understand the Commons alone distinct from the great Lords. But the Doctor very plainly shews him the Falseness of this Interpretation from the same Author, within Three Lines of the Place himself had cited, where the same Body of Men, which is but just before called Populus, is presently after called Magnates, ad hoc Clero respondente & Magnatibus contemptis; not one Word in this Place of any Populus, but the Great, or Noblemen, (that is, the Tenants in Capite) must be the People or Laymen here mentioned; and this same Clerus and Populus is by Eddinson, speaking of a great Council held at Westminster in the Second Year of this King, called Primates Regni versusque Ordinis, or a Florence of Worcester words all the Orders of Men assembled in this very Council, Omnes Principes Regni &i Sectariorum Ordinis, in which the Doctor also proves from several like Passages in Eddinson; in all which, as also in all other Authors the Doctor hath there cited, this Populus is explained to be the Earls, Barons, and great Men of the Kingdom only; that is, all the greater, as well as smaller Tenants in Capite. And though I confes at our last Meeting you brought very good Proof, that the Word Populus was more comprehensive among the Romans, yet though the Roman Populus comprehended all the People, as well Nobility as Plebeians; and that in Scotland it took in the Burgesses of the Royal Boroughs, which hold immediately of the King; yet does it not follow that this Word must needs signify fo in this Kingdom too, since in all Countries, not all the People, but only the Governing Part of it is used for the Populus in all Histories, Publick Acts, and Laws of those Kingdoms; thus in Poland, the Populus consists solely of great Councils of the Nobility and Senate, in which there are no Plebeians at all.

F. I hoped we had done wrangling about this Word Populus, but since I see you are not yet satisfied, I shall shew you more plainly, that by this Word used in our Ancient English Historians, is not only meant the great Lords, and Tenants in Capite, but another larger, and more comprehensive Body. And whereas you say that the Word Populus is still restrained by our Ancient Historians to the Magnates,
Dialogue the Eighth.

nates, Primates, &c. Principes Regni; all which Words do in their genuine Signification signify Great or Noble men; and that tho' they are sometimes taken in a different Acceptation, yet that it lies upon me to prove that they are to be taken in my Sense. To this I must tell you, that the proving Part ought to lie wholly of your side; for since the Commons of England have been for above these Four Hundred Years constituent Members of our Parliament, (as is agreed on all hands) and that they also claim to be so by Right of Precedence, it still lies at your Door to prove the contrary, and to shew at what Time, and upon what Occasion they were first introduced: Which if you have not been able hitherto to perform, so as to give me any tolerable Satisfaction, you cannot blame me if I still keep my own Opinion, and believe them as Ancient as Kingly Government it self in this our Island.

But since I grant these Words Clerus and Populus are of a general, and equivocal Signification, their true Sense and Meaning is left to be understood from the Subject Matter that is treated of; as I shall shew you first from the Nature and Signification of the Words Clerus and Populus, according to the ancient Constitution of our Government, that they must signify many more than your Tenants in Capite alone, and then I shall confirm my Interpretation by the Authority of such ancient Historians as lived either in, or very near the Times I mention; and therefore I shall first prove from the great Analogy there was between the Clerus and the Populus, so that if the Clerus took in more than your Tenants in Capite in our Common Councils, by the same Reason the Populus must do so too.

Now that this word Clerus, when used by it self, does not originally signify either the Bishops and Abbots alone, or the inferior Clergy alone, (as your Dr. Afters) is evident, because Clerus is a general Word, and comprehends all the Clergy of whatsoever Sort or Degree. Now that all the Clergy, as well the Superior as Inferior, had either themselves in Person, or else by their Representatives, a Place in the Saxon Witten Germon, or Mycel Synods, and made together with the Laymen one entire Council, or general Assembly, without the joint Consent of both which no Laws or Constitutions, whether Ecclesiastical or Civil, could be enacted: For Proof of this, we need go no farther than Sir Henry Spelman's first Volume of Saxon Councils, and particularly in the Councils or Synods of Clovesho first and second, of that of Kinglon, Anno Dom. 838. that held under King Egbert, and Witheofe King of the Mercians, and that of Winchester under the same King Egbert, in which Tithes were first granted: In which all you will find that both the Clergy, as well the inferior, below the Degree of Bishops and Abbots, as also the Laymen below your Earls, and great Aldermen and Wives, had a Share.

And that this continued so, both in, and after the Norman Times, appears by the first great Councils we have left us, that were held under the first Kings of the Norman Race.

M. I should be very glad to see that proved; for I always hitherto believed that none of the Clergy had then any Votes in the Great, or Common Council of the Kingdom, but those Bishops, Abbots and Priors, who all held in Capite of the King alone. And tho' it is true, there was also a Synod, or Convocation of the Clergy often held at the same Time when the Common Council of the Kingdom was assembled, yet was it no Part of that Council; and as the Clergy had nothing to do in the making of Temporal Laws, so had the Laymen no hand in the making of Ecclesiastical Canons, or Constitutions; for the Pope's Legate or Archbishop of Canterbury often held these Synods at other Times when the Common Council of the Kingdom was not assembled at all; and thus it continued till the 25th and 26th of Henry the Eighth, when the King was first by the Clergy in Convocation, and afterwards by the whole Parliament, recognized and declared Supreme Head of the Church of England under Christ; and from that Time the King re-asserted the Power which the Pope had before usurped; and his Consent alone under the Great Seal is the only Ratification of all Canons or Ecclesiastical Constitutions passed in either of the Convocations of Canterbury, or York, at this Day.

F. I grant that for between Three Hundred and Four Hundred Years, the Matter of Fact hath been as you say; but that it was not so from the beginning, is also as certain. For first, in the Saxon Times, before the Pope's Uproarion came
in, it is evident from the Councils, or Synods, I have now cited, that the King had no more Power to make or confirm any general Ecclesiastical Laws or Constitutions without the Consent of the Wittens Gener or Hycel Synod, constituting of the Clergy, as well as Laity, than he had to make Temporal Laws without it. So far were they in those Times from having any Notion of any Personal Supremacy in the King in Spiritual, more than in Temporal Matters; and that this continued so till the Pope did not only usurp upon the King's Right, but that of the whole Kingdom in general, may appear by those Memorials we have left us, of such Common Councils or Synods, in the Reigns of our first Norman Kings.

For the Proof of which, I shall begin with the Reign of William the First, in whose 14th Year the Privileges of the Abbey of Westminster were confirmed by that King in a Common Council, as well of all the Clergy, as Laity of the whole Kingdom; as may be proved by a Charter Bill to be found at large in the old Chartyry of the Abbey of Westminster, now in the Cottonian Library, collected by Salcardus an ancient Monk of that Abbey, the Condudion of which Charter of Privileges makes it very plain, of what Members this Council then consisted, and who gave their Consent to the Acts of it, which pray read, In solemnium Pentecostes habere Confesso in celebrando loco preceptibus Westmonast. & a nostra regia Majestate consentiunt in annum, candidi Regni nostri Principibus, ad audirent, & confirmandos, quoddam Synodali decreto consensum necessarii consensu communis consensu maximi Regius Concilorum, Abbatis, & alienarum insignium Procerum, &c. Scripta eft illa Charta, & sibi tradita & ab ipso Rege, & subpatis personis testificata confirmat, & autorizata in Dei nomine, &c.

This being one of the first and most remarkable Councils of this King's Reign, I cannot let it pass without observing, First, that all the chief Men of the Kingdom were there, as well of the Clergy as of the Laity, and that the Words Primates and Proceres here mentioned, are very comprehensive, and may take in many others besides your great Lords and Tenants in Capite, I have already prov'd at our last Meeting but one. Secondly, Pray observe that this Charter of Privileges, tho' all of them concern mere Temporal Things, is authorized, confirmed by the common Consent and Subscriptions of all the chief Men, as well of the Clergy as Laity. From all which nothing can appear more plain to me, than that in the Reign of this King, the Clergy and Laity made one Common Council, without whose joint Consents nothing could be transacted in the Legislative, whether of Ecclesiastical or Civil Concernment.

I could give you more instances of this kind in this King's Reign, but I make haste to that of his Son William the Second, in whose Seventh Year Eadmer tells us, there was a Common Council held at Rockingham, about the Difference between Archbishop Anselm and the King; at which were present, Episcopi, Abbatis, Principes, as Clerorum, as Laicorum numerosa multitudine; now that by Principes or Chief Men, may be here meant many more than your Tenants in Capite, I have already sufficiently prov'd; and that this numerosa multitudine must mean somewhat more than thole, I shall prove farther by and by.

In the long Reign of Henry the First, I could give you many Instances of this kind, but let these suffice. In the 7th Year of this King, Ewton tells us in his History (speaking of the Council in which this King gave up his Right of Investitures) Clero & Populo ad Concilium Londinensis congregato; and who this Clerus and Populus then were, he immediately explains himself thus, Aelfredus, Archip, episcopi, episcopos, easteris, multisinde maxima Procerum, & Magnatum; under which Words I have already prov'd, that divers others besides your Tenants in Capite might be comprehended, and their great Number shews them to have been more than thole.

But the this Author does not here expressly say it, yet that the inferior Clergy were likewise at these Councils, appears from Sim. of Durham, and the Contiuentor of Florence of Worcester, Anna Dom. 1126. being the 25th of this King, where they both make mention of a Synod or Council held at London, at which were assembled the Archbishopps, Bishopps, Abbotps, &c. (the Pope's Legate prefiging over the Clergy,) and besides these, cum innumeris Cleri, & Populi Multitudine. And the Contiuentor of Florence shews us the Manner of their giving their Consent to those Constitutions, as well Civil as Ecclesiastical, there made and published; they being proposed, with a placite eovs; and the Answer to them is,
Dialogue the Eighth

Placet, Placet, Placet, thrice repeated; which is very like the Form still observed in the Bishops and Lords giving their Consent to all Matters proposed in their Houle by saying Consent.

So likewise the Continuance of Florence, in Anno Dom. 1137, being the 27th of this King, mentions such another General Council, or great Synod, wherein William Archbishop of Canterbury presided over the Clergy, and after the Recital of all the Superior Clergy as before, he thus proceeds, Confessisse quosque illuc (1, 2 Vol. E 35.)

to Welfininer magna multitudine Clericorum et Laicorum, tam Divinum, quam Mediocrium, & talibus est Convensus insinuatis sedit etiam tribus diebus, absumus ibi de negotiis secularibus nonnulla, quaedam quidam determinata, quaedam dilata, quaedam vero propter nimium eflumia turbis tumultu ab Audience judicantium profugata. And tho' the Author gives us the Ecclesiastical Constitutions, yet it is plain from him, that Civil Matters were also transacted in this very Council, which confirmed as well of the Superior as Inferior Clergy, as also of the Nobility, and Commons; which are all expressed under the general Words of Divinum & Mediocrium, and reembody the Phrases of the Majores & Minores; and the des Greinders & des Meindres, mentioned in the Statutes of Marlbridge and Gloucester; which Words were debated at our last Meeting.

In the Reign of King Stephen, there were also several Councils held of the same Sort; and particularly that of his Third Year, in which was granted a Charter of Confirmation of this King's, of the Privileges of the Abbey of Welfininer, which is also to be found in Sedulherd's Chancery above-mentioned, wherein after the general Words of habito universalis tonus Angliae coelitio, and a mention of the Pope's Legate (who presided over the Clergy) it follows thus, afferunt etiam Comites, Regni mei & Barones quam plurimi, & innumeris Cleri & Populi multitudine qui his omnibus interfectum, & Religiose favere voluntatem & Aientium, Authoritati insigne pagitis, & Privilegio praebuerunt, &c.

So likewise in an ancient Manuscript Chronicle of the Abbey of Ely, under Anno Dom. 1139, being the Fourth Year of King Stephen, there is a remarkable Passage, when speaking of a great Council then held at London, he expresses it in these Terms, Concilium adunato Cleri & Populi, (and then explains of what Members these did consist, viz. Episcoporum, atq. Abbatarum, Monachorum, & Clericorum) Pluribus infinite multitudinis. Now pray give me leave to make some Observations from these Passages in all these ancient Charters and Historians; that besides these Bishops, Abbots, Earls and Barons of the Kingdom, there were also an innumerable Multitude of Clergy and People; or (as the Ely Chronicle words it) an infinite Number of Clerks and Commons. Now, pray tell me, what can be meant here by all these put distinxt from the rest of the higher Orders, but the Inferior Clergy, as the Deans, Archdeacons, who were then the only Proxies or Deputies of the Secular Clergy of the whole Diocese? And who can be meant by this infinite Multitude of People, or Plebas, (which naturally signifies the common People distinctly from the higher Nobility) but the most considerable Freeholders, or Lords of Mannors, whether Tenants in Capite, or not, under the Degree of the higher Nobility, together with the Citizens and Burgesses of Cities and Towns; and who came not only as Idle Spectators, since the Charter I last cited expressly mentions that they were not only present, but also gave their Affents to this Charter of King Stephen's?

At And may I not with as good Reason ask you why these Words Populus and Plebas may not in the historical barbarous Latin of that Age serve only to express (not the Multitude, or Rabble, or mere common People, but) the whole Body of lefser Tenants in Capite, beneath the Dignity of the greater Barons?

F. I will give you two very good Reasons for that; First, from the great Analogy there was then between the Members of the Inferior Clergy, and those of the Laiety or Commons; the former of which, even all the Abbots and Priors, Deans and Archdeacons, (except those few that held in Capite) with all the rest of the inferior Clergy almost mentioned, holding only in Frank Alむnung, and not by any Military Tenure at all. Now pray give me any sufficient Reason why the Laiety should not also consist of all other Orders of Men who did not hold in Capite, neither, and by whom I do not mean the mean Vulgar, or Rabble, tho' Freemen or Freeholders of small Estates, but the most considerable Freeholders or Lords of Mannors in England; or else the Knights of Shires, who, I suppose, reprented not only themselves, but their Inferior Tenants whether Copyholders, or for Term of Years; as also the Re-
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preserver of all the Cities and Borough Towns in England: Now these might together with your Tenants in 

rep, make to great an Assembly, as might very well deserve the Title (with an easy Hyperbole of infinitis or innnumera multitude) as our ancient Historians express it.

Wethers your Doctor's Tenants in 

rep, could never in these first Times after this Conquest, amount to so great a Multitude; not being, by his own Confession, above 700 Persons, besides the Bishops, Abbots, and Prioris, who did not make above 100 more, which could never deserve the Title of an infinites and innumerable Multitude.


t, your Notions nor your Authorities to prove it, do any way satisfy me; for in the first Place your Argument from the Analogy between the Clergy and Laity, who, you say, made up this Assembly, does not hold; for, tho' I grant there might be in that part of it which we call the Convocation, and was then called the Synod, all the Bishops, Abbots, and great dignified Clergymen; yet were not these considered as Ecclesiasticks, Members of the great Council of the Kingdom; but a distinct Assembly from it, which treated only of Spiritual Matters, and together with the Bishops and Abbots made Ecclesiastical Canons, as the Two Houses of Convocation do at this Day; yet meddled not at all in Matters of a meer Civil or Temporal Concern; any more than the Lay Council could meddle with Spirituals. And to let you see that this was true, it is evident beyond dispute, that this Ecclesiastical Synod was often amended by the Authority of the Pope, or Archbishops of Canterbury or York, when the Common Council of all the Laity were not summoned at all; and fo once verfa the Common Council of the Kingdom often met, when the Synod of the Clergy was not convened; as appears by the most ancient Writs of Summons to the Bishops we have left us; as particularly, the first Writ of this kind that is upon the Rolls, viz. That for the Bishops (which Mr. Pryn has printed in the First Part of his Parliamen
ty Regifter) in the 6th of King John, and which I have cited from the Doctor's Answer against Mr. Pryn at our last Meeting, in which Writ, tho' I grant there is a Clauze for summong the Abbots and Conventual Priors, yet there is none for the inferior Clergy. But in the next Writ, which the same Author has likewise Published, viz.

That to the Archbishops of York, there is no Clauze at all for summong any of the Clergy as such, tho' 'tis true, there is underneath an Edict made 
fisciuior omnibus Episcopis, Abbatisuis, Etc. Commitisus & Baronibus, which thows that this Writ was not to summong them in their Spiritual but Temporal Capacities. So likewise in the next Writ of Summons to Parliament, we have left us, on the Roll, which is cited in Mr. Selden's Titles of Honour, as also in the same Parliamentary Regifter, and in Dr. B. against Mr. P. viz. That of the 49th of Henry the Third, to the Bishop of Durefer, without any Clauze of Summons to the Clergy, whether Abbots or others. So likewise in the next Writ of Summons that is left us, viz. That of the 23d of Edward the First, (published also by Mr. Pryn) to the Arch Bishop of Canterbury, in which there is no Clauze of summong, any of the Clergy; and tho' there immediately follows another Writ of the 23d of this King, in which I grant there is this Clauze of Premu

nientes Priorum, Etc. viz. The Prior, Chapter, and other of the Clergy of his Diocese, to appear in Parliament; yet that they were no necessarity part of it, but only of the Convocation, appears by the rest of the Writs of the Summons to Bishops, which Mr. Pryn has also given us in that Chapter; all which if you please to peruse, you will find, that in near 200 Writs to Parliament, or great Councils, the Clauze of Premunientes Clerum, is to be found in scarce half of them, which thows that the summong or omitting them depended wholly upon the King's Pleasure, and so were no constituent part of the great Council or Parliament, as you supposse they were under the first Norman Kings; for then sure they would have not been omitted to have been contantly summoned in all Parliament, as well as the Bishops and Abbots.

But to come to your next Argument from the Numerousness of these Assem

blyes, which you say could not be properly called Numerosis, or Infinita Multitudina, whereas all the Tenants in rep as well Ecclesiasticks as Lay-men, did not amount in all to 800, there may be an Allowance made for this to the Month's way of writing of these Times, which might call such a great, or more than ordinary Assembly of the Clergy and Tenants in rep, an innumerable and infinit
Dialogue the Eighth.

Infinite Multitude, when indeed they were but few more than our Lords and Commons are at this Day.

I pray, Sir, give me leave to answer what you have already said, before you proceed any farther, because what I have to reply to it will be pretty long. In the first Place, you cannot with any reason (if you better consider of it) deny, that the Clergy, as well the Superior as Inferior, did, before your Conquest as well as long after, make but one Alterable or Body of a General Council, the sometimes sitting in several Places (as the Lords and Commons do at this Day) for the Words in the Old Book of Ely, see Adames Concilio Cleri & Populi, which is to be rended, the Council of the Clergy and Laity, being united and joined together, and which already shown Jude 16, A.D. 1660, was confirmed by the Council of King William’s to the Abbey of Westminster, and to which (so a Matter of great Temporal Concernment) all the Clergy, as well as Laity, gave their Joint Consents, as appears by the Conclusion of that Council, which the late King Stephen was here, but now King James, who should never have done, had they not then made a Part of the same General Council, or Assembly.

Having proved to you that the inferior Clergy did anciently make a Part of the General Council of the whole Nation, I shall now answer your Objections. 'Tis true, that for a great Part of some Kings Reign, for want of the Writs of Summons to the Superior as well as to the Inferior Clergy, we cannot certainly tell, tho’ we may presume it from the general Words of the Sibyllians, whether the Inferior Clergy were summoned or not; yet this, I think, I may boldly aver, that wherever any ancient Author makes mention of the Clerici et Populus in general, being presint at any such Common Council, it must necessarily mean, not the Bishops, and Abbots, or the Superior Clergy alone, but the great Lords and Tenants in Capite only, but those and the Representative of the whole Nation, both Clergy and Laity taken together, as I think I have sufficiently made out.

Nor is your Objection considerable, from that Writ of the 6th of King John, that no Inferior Clergy were summoned, because only the Abbots and Priests are mentioned at the End of it. To this I answer, that being it to be a Writ of Summons to a Common Council of the Kingdom, which is not yet proved the Omission of the Inferior Clergy being summoned, is no cognizant Argument to prove they were not there; since for ought as you and I know, there might be as little Writs issued to the Inferior Clergy, distant from this to the Bishops and Abbots, which left used to have distinct Writs to each by themselves, and I may as well suppose these Writs to be lost, as you do that all the general Writs to the smaller Tenants in Capite, who were no Bishops, and yet were to be all summoned, according to King John’s Charter, are all lost. And as the Abbots and Priests mentioned at the End of this Writ of King John’s, they were such as held only in Capite, or else such as did not; if the former, this might be only a Council of Tenants in Capite, and none other, of which I grant there were many held in those Times, upon Occasion of Wars, Surveys, and other Matters; but if by these Conventual Abbots and Priests summoned by this Writ, you will mean all Abbots and Priests of whatever Tenure, then it appears plainly that this great Council consisted of many other Ecclesiastics, than what held in Capite, and if so, why might not the Inferior Clergy as well make a Part of it?

But as for your next Authority, the Writ of the 49th of Henry the Third, which is certainly a Summons to Parliament, in which is no Clause of summoning the Inferior Clergy; this is no more an Argument than the former, since it might not then be the Custom to inform them in the same Writ with the Bishop, to be summoned by him, but they might have general Writs of their own directed to the Clergy of each Diocese. But that all the Inferior Clergy as well as the Superior appeared at divers Common Councils or Parliaments during this King’s Reign, (which they could never have done without the King’s Summons, tho’ the Writs are lost) may appear from that great Council or Parliament of the 5th of Henry the Third: Whereas as Mat. Fortes tells us (in the Place, I have to often mentioned) were summoned Clerici et Populi, came Mortuos Reginas, or Regens, as Mat. Weissenflusius words it, and in this Council was given by annales de Regno, the 15th of all the Movements of all the whole Kingdom. So that these...
omnes de Regno must take in all Degrees of Men, and consequently the Inferior Clergy too; for it is certain the Bishops and Abbots did never represent them in the House of Peers, or in Convocation, so as to lay any Taxes upon the Inferior Clergy without their express Consent. And this is the more evident, because this Tax was a 15th upon Moveables; and not a Tax upon Land, and consequently could never be imposed upon those of the Clergy, (who held in Frank Almough, as all the Inferior Clergy then did, and do at this Day) by the Bishops and Abbots that held in Capite. And that these Charters were made by the Common Consent of the whole Kingdom, &c. (and then certainly by the Inferior, as well as Superior Clergy,) may appear by the Confirmation of the great Charters, as also in the Preamble to the Statute of Articuli super Chartas (made, the one in the 25th, the other in the 28th of Edward I.) in both which it is expressly recited, that the great Charters of Liberties, and the Charters of Foret, were made per Common Affent de tout le Royaume, en Temps nostre Pere; and if by the Common Affent of the Realm, then sure by that of the Inferior as well as Superior Clergy, since the Bishops and Abbots, who fate there only by their Barones could never represent them.

That the Inferior Clergy were also summoned to Parliament, in the 39th of Henry III., appears from the Annales of barkton, in Annno Dom. 1253. Where that Author, (who lived at that Time) relates, that the Inferior Clergy then appearing in Parliament, sent Melfingers to the Pope concerning the intolerable Grievances they then lay under; among which, the first Grievance set forth by the Procuring of the Clergy for the Diocese of Lincoln is this, Quoniam beneficiarum suorum Dominus Regi suis concessit sibi non vocavit, maxime cum agitur de aliquo obigando necessario et ejus expressus confenetus: By which it appears, that the Inferior Clergy then claimed it as their undoubted Right by the Law of the Land, not to be Taxed either by the King, or the Pope, without their express Consent; and they contended so hard for it, that they have preserved this Right even to this Day, when they now give their Votes to the Choice of Knights of the Shires, tho' till the late King Charles's Reign, they were never Taxed without the Consent of their own Procurers in Convocation. And this may serve to enlarge your Understanding, and to shew you in what Sense the whole Clergy, as well the Inferior as Superior, did anciently make the Third Elate in Parliament, which was more Comprehensive than the Bishops and Mitted Abbots alone, who fere in the Upper Houfe only per Baronom, by Reston of their Barones, tho' in the Synod or Convocation of the Clergy, they acted only as Ecclesiastical Persons; where they also joined in the making of Ecclesiastical Laws, and giving Taxes; which left you cannot deny, but to be a mereTemporal Thing.

M. You may be so far in the right, yet tho' the Inferior Clergy often joined with the Common Council of the Kingdom, in giving the same Taxes, yet this was by, and upon themselves alone, and they had no hand in making of Temporal Laws, and giving Taxes for all the rest of the Kingdom; and I challenge you to shew me any Precedent within these Five Hundred Years, that the Inferior Clergy ever made the Third Elate in Parliament, or that their Consent was ever asked to the making of Temporal Laws; since the Bishops have been always look'd upon till of late, as the only Representatives of the Inferior Clergy, in Parliament. How else could they be obliged by general Statutes or Acts of Parliament? Since according to your own Confession, they gave no Votes at the Election of Knights of Shires, but since the Return of King Charles II. So that if they had ever joined in this Legislative Power (as you suppose they anciently did) I cannot fee why they should not have kept it to this Day.

F. I grant indeed, it has been otherwise between 300 and 400 Years, but that it was not so from the Original Institution of the Government, is also as certain; for that the English Common Councils confited of all Sorts and Degrees of Ecclesiasticks you must allow; since before the coming in of the Norment, the Bishops and Abbots did not sit in the Mynel Synods, as Temporal Lords, is generally acknowledged; and yet even after they came to sit among the Lay Peers in the great Council of the Nation by virtue of their Barones, the Inferior Clergy also gave their Affents to the making of Temporal Laws, and giving Taxes; I have proved by such Authorities, as I do not fee you are able to Anwser; and for further Proof of this, to shew you their coming was continued down to the Reign of Henry III. see Sir H. Spelmans's Councils, Second Volume, where you will find that they were
in that great Council at Clarendon, when those famous Constitutions were made, as appears by these Words in Mat. Paris at the end of those Constitutions. Hinc Recognitionum, sine Recordationem de confuetudinis & libertatibus in quin Architecti, Episcopi, Abbates, Prioribus, Clerus, cum Omnitibus & Baronibus, & Præcessibus cunctis juraverunt. So likewise at the Council of Gunnington in the 34th of this King: Roger Hoveden has in his History these Words, Dominus vero Rex statim postquam in Anglia applicavit magnam congregavit Concilium, Episcoporum, Abbaticum, Comitum & Baronum, & abhorre multorum Clericorum, quum Leicestrum, apud Gunnington. And Mat. Paris in the Year 1185, (being the 31st of this King's Reign) mentions a Common Council of the Kingdom then called at Clerkenwell, where Convocatis est Clerus & Populus, cum tota Nobilitate, which Dr. Heylin in his Stumbling-Block of Difobedience thus translates; the Clergy & Commons, together with the Nobility being summoned. And in the R. of Richard I. R. Hoveden also tells us of a great Council held at Pipewell Abbey in Northamptonshire, where the Archibishop of Canterbury produced a Charter of King William I. Reges, & Universis Episcopis, Clero, & Populo. And an Ancient Charter of prime of King John, (now in the Archibishop of Canterbury's Library) Enrulled, &c. Moderationem frond., magis fidelis, rectius the fald King to have been Crowned. Medium tam Cleri quam Populi unaniem consentia, & favorem. And that the rest of his Reign was turbulent, yet the Author of the Manuscript Eusebius, quoted by Mr. Selden, in his Titles of Honour, mentions a great Council at London, in the 16th Year of King John, where the Archibishop of Canterbury was present, Humiliatur Clero, & tota sestus Laicis, i.e. (says Dr. Heylin in the same Place) "The Clergy of both Ranks and Orders, with all the Laity (called here Sedes Laicis) and the Lords and Commons had then their Places in Parliament. And the Doctor proceeds thus, "And in Pleffion of this Right the Clergy Good " when Magna Charta was fet forth by King Henry III. Wherein the Freedom, "Rights, and Privileges of the Church of England (of which this evidently was "one) was confirmed to them; (i.e. the whole Clergy in general.) I have here shewed you, what Dr. Heylin's Sense was; to let you see that a Person of great Learning, and a high Churchman, thought it no Heresy to be of our Opinion, and to maintain as he does all along in that Chapter, that the Inferior Clergy and the Commons were a Consequent Part of the Common Council or Parliament long before the 49th of Henry III. and that the Inferior Clergy continued to be so, till the Reign of Henry IV. at least.

But that their Contents was also anciently asked in the making of Laws, we need go no farther than the Authority I have now given you from the Continuation of Florence of Worcester. And farther, that they were once a Part of this great Council or Parliament, besides the Testimony of the Modus tenendi Parliamentum, (who tho' he be exploded, as an ancient Author, yet certainly is a good Witness for his own Time, viz. That of Edward III.) where the Procureors Cleri are reckoned among the Consequent Members of States of Parliament; which is also confirmed by the Two first Writs of Summons we have left on the Rolls, viz. the 23d of Edward I. wherein this Clause of Praemunientes Clerum is particularly expressed; which I pray read from your Doctor's Answ'er to Mr. P. Praemunientes Priorum & Capitolium Ecclesiae vetere, Archidiascos & Regem usque diem sitis. & diem Capitolium & de quibus Procuratores idoneos plenum & sufficientem potestatem ab ipsis Capitolis, & A. F. P. C. Gero babentes, & velobitum, inter fud, modo omnibus tune ibidem, ad triduum, ordinandum, & faciendum nobilium, & cun catoris Prætatis, & Procurae & alia Incolis Regni vel quilibet sui habeatur &c. This, The Dangers in the Writ mentioned to be threatened from France.) And that this was not the first Time this Clause of Praemunientes was inferred in the Writs of Summons to Bishops, might be easily proved, had we all the Writs of Summons before the 23d of Edward I. as well as since. But we may hence observe, that the Inferior Clergy are not only summoned to treat with the Prelates, but are as well as they, here authorized to treat, ordain and act with them, and the Lords and Knights, Citizens and Burgesses (for so your Doctor himself here in the Margin translates, his Incolae Regni) and how they could thus confute and act with them, they had not been then, as well as the Prelates, a Part of the same Body of the great Council or Parliament of the Kingdom, I confess surpasses my Capacity to understand. Nor is this Clause found in this Writ alone, but also in the Writs of the Bishops Summons to.
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to Parliament as low as our own Times. And that these Writs were not a Convocation, but Parliament, appears in Prym's Parliament Regifter plainly, by the Letters of Procuration made by the Prior and Chapter of Bath to William Smytham and John de Merston, appointing them to appear and act for them as their lawful Procurators in the Parliament summoned Anno Dom. 1399. being the 27th of Edward I. which is of a different Form from another Letter of Procuration of the same Prior and Chapter, Anno Dom. 1395. (31 Edward I.) to their Procurators therein named to act for them in the Convocation then summoned at Westminster; the same Difference is also observed in all the Writs of Summons to Convocation, different from those whereby the same Persons are summoned to Parliament, the former being directed only to the Two Archbishops, or their Vicars-Generals, to summon all the Bishops, Abbots, Priors, and Clergy of their respective Provinces, without any particular Writs issued to any other Bishops, Abbots, Priors or Clergymen, as in Summons to great Councils or Parliaments; whereby there are commonly particular Orders to the Bishops to warn all the inferior Clergy in the manner but now mentioned; as Mr. Prym very well observes, in his First Part of his said Parliamentary Register, where you may see, there is a Writ of Summons to Parliament, of the 31st of Edward III. to the Archbishops of Canterbury, reciting that he intended a Parliament, for divers arduous and urgent Business concerning Himself and the Church and the necessary Defence of the Kingdom and Church of England; and then proceeds thus, Et quia Nobis pridie per quam Ardua bona Maximum deliberatione tam Prelatiorn Uet Cleri quam Magnatum, Et Communicatione ejusdem Regni, &c. And therefore it behoved him to summon the said Clergy, Great Men and Commons; and then requires him to summon all the Bishops, Abbots, Deans, and Priors, and Archdeacons, to appear personally, and the rest of the Clergy by two Procurators, with full Power ad trahendum, & conjunctum super praemissa una obviam, ad consensionem. Ihis que tum ibidem super dites negotios divina fuerunt Clementia contigerint ordinari.

M. But what can you say to their being omitted to be summoned in divers Writs to Parliament, as appears in Prym's Register you now cited; and from whence himself has there made this Observation, "That there is no Clause of " Premonstrarum, &c. in any Writs of Summons to Councils of State, but only to " Parliaments, and that not always, but at the King's Pleasure. Which Iheus plainly, that tho' they were sometimes summoned as a Part, yet were certainly no offential Constituent Part of this general Council, since they were omitted in so many of them; and had they been always a Part of this great Council; pray tell me, how they came to lose this Right, since the Clergy in those Days were not wont to lose any Right or Privilege they enjoyed.

F. I have already granted, that tho' the inferior Clergy have been no necessary Constituent Part of Parliament, for divers Ages laft past, yet does it not follow, that therefore they never were fo; since they have lost this Right by Degrees. And I shall now shew by what Steps it might have happen'd. First, therefore pray observe, that anciently all Abbots, and Priors whatever, as well tho' that held in Capite, as those that held in Frank Almoign, were all summoned alike to the general Councils of the Kingdom; as appears by the first Councils after your Conquest, that we have any Monuments of; nay it also appears from that very Writ of the 6th of King John, (if it were a Writ of Summons to Parliament) which as I have already proved at our last Meeting it is most likely it was not, whereby the Bishop is to summon all the Abbots and Priors of his Diocese, none excepted. And tho' I grant that in the next Writ of Summons of the 26th of Henry III. to the Archbishops of York, there is no Clause express'd of summoning the Abbots and Priors, and other Clergy of his Diocese, yet it is much to be doubted, whether this was a Summons to Parliament, or not, being without any Title either of ad Parliamentum or Concilium.

But that the Abbots and Priors, as well those that held in Capite, as those that held in Frank Almoign, were summoned to the great Parliament of the 45th of Henry III. appears by that Lift of their Names, which both Mr. Prym, and the Doctor have printed from the Roll. Nor do I believe that this was the first Time that all these Abbots and Priors, being 101 in all, were summoned to Parliament, notwithstanding your Doctor's Fancy, that Simon Montfort summoned so many of them, only because he was sure of them; since if we had the Rolls of the foregoing Years, as well as of this, we should perhaps find little or no Difference. For by another
another List of the Abbots and Priors, which the Dr. himself has given use of the 23d of Edward I. to the same Parliament above-mentioned, when the Inferior Clergy were likewise Summoned; there appears to have been Seventy Abbots and Priors summoned to this Parliament, of which not a third Part ever held in Capite; and tho' divers of them then pleaded Exemptions, yet they were many of them such as held in Capite as well as tho'fe that did not; as the Abbots of St. Edmund's-Bury, Waltham, St. Alban's, Evesham, &c. all which, as it is notoriously known, held in Capite, and were commonly summoned to all Parliaments afterwards. Now pray see how all this numerous Train of Abbots and Priors (which Mr. Prym confesses to have sometimes amounted to 122) who were summoned to some Parliaments and great Councils, came to be omitted; which is to be ascribed chiefly to their own Petition and Defire, when their constant Attendance in Parliament when held every Year, and frequently oftner, was counted a Burthen rather than an Advantage, by reason of the great Charge and Trouble of coming to those Assemblies, and their being bound to contribute to the general Aids that were then given the King. And thence it is we find on the Rolls so many Discharges upon their Petitions in Parliament, that they did not hold of the King by Barony, nor in Capite, nay the Abbot of Leicester, after having served in no less than 90 Parliaments, yet in the 58th of Edward III. procured a Writ of Exemption from the King, Quod non compellatur sur centre ad Parliamentum; the Lords in Parliament easily giving way to it, since they knew that the fewer Hands the Legislative Power was reduced to, the greater still were theirs that remained. To which may be added the King's Pleasure, who by Degrees began to omit summoning of divers of the smaller Abbots and Priors, before summoned; since it has been the Policy of divers of our Kings to reduce their great Councils or Parliaments, especially the Peers, into as few Hands as they could, because then they are most easily managed; and the Abbots and Priors never complained of it, for the Reasons already given. Thus most of them came to be struck off by Degrees, till at last, of all this numerous Company of Abbots and Priors, there were in the Reigns of Edward III. Richard II. and Edward IV. and even to the Difolution of Monasteries under Henry VIII. no more than 25 Abbots and Two Priors, viz. the Prior of Coventry, and of St. John of Jerusalem, summoned to Parliament. I have dwelt the longer on the History of these Abbots and Priors, because it sufficiently conveys your Doctor's Notion, of none but Tenants in Capite, appearing in Parliament.

But to give you some Account of the Inferior Clergy, how they likewise might come to be often omitted out of the Writs of Summons to great Councils, and not to make a constant Part of the Parliament, but only of the Convocation. This might happen two or three ways, and that without any positive Law for it. As in the first Place, pray consider the vast Increase of Power which fell to the Bishops, after Henry I. had given up his Right of Investitures to the Pope; by which means they depended not at all on the State, and took upon themselves a greater Power of Imposing upon, and making Temporal Laws for the Inferior Clergy in Parliament, as if they had been their Representatives; yet they could never represent all the Abbots and Priors, who held in Frankalmoign, for the Reasons already given, as also because most of them were exempted from their Jurisdiction: But that the Bishops could never impose Taxes upon the Inferior Clergy at their Pleasure, without their express Consents in Parliament, or Convocation, appears by this memorable Writ of 8th of Edward II. to the Archibishop of Canterbury, which Mr. Prym has likewise given us; by which it appears, that divers of the Clergy had contended to grant the King a Subsidy in the precedent Parliament, but only by Reason of the Absence of the said Archbishops, and others of the Prelates, and Clergy, it could not then be done; and therefore the Archbishop is thereby ordered to call a Convocation for that Purpose; which had been needles, if the Bishops alone could have taxed the Inferior Clergy in Parliament or Convocation, without their express Consents: So that it is plain, that in that Age they still retained a great Share of the Supreme Power, viz. of not being taxed, unless by Representatives of their own, either in Convocation or Parliament; as it continues to this Day.

But to fly you farther, how the Presence of the Inferior Clergy, and consequently their summoning to Parliament, became less necessary, we must have recourse to the Bull of Pope Boniface the 8th in the 24th of Edward I. by which he forbid all the Clergy of the Western Church, as well Superior as Inferior, to give
any more taxes or subsidies to temporal princes, without his Holiness's licence; whereupon the king summoned the bishops and clergy to parliament, at Sir Edward's bury in the 24th of his reign, where when they then refused to grant him any supplies, he, (as all the historians tell us,) held his parliaments at Welfington, Camberwolds, etc.; except a clergy, without either bishops, abbots or inferior clergy. Which was the first precedent of this kind, that we ever read of in this parliament; the king with the consent of the lay lords and commons seized all the temporalities of the clergy, as well bishops as others, and put them out of his protection, until they were forced to redeem themselves by paying a fifth part of their moveables: for doing of which they were afterwards forced to procure the pope's absolutions; some of which Mr. Pryn has given us in his said register; and for all this, the pope maintained this power over the clergy for the future; so that they could not be taxed without his express licence, (which since it could not always be obtained;) no wonder if our kings did more frequently omit summoning any more than the bishops, and abbots, who were about to appear in parliament by their tenures; and to leave all the inferior clergy as usual.

The main bishop, and cardinals of their summoning to parliament, viz. giving of money, being now taken away by the pope's usurped power. To whom whenever his licence was obtained, yet that their own express contents in parliament or convention was necessary to this end, appears by that passage in the annals of bar ton in anno 1345, that if the inferior clergy be extraneous, and not oppressed between the pope and king, they sent their express Welfingtons when they met in parliament, who were to set forth their grievances to his Holiness. I have given you as good an account as I am able, how the inferior clergy, which was as well as the superior, did once make a convention of our great councils before the conquest, and so for about two hundred years after, did at least once to be fo, partly by the prevailing power of the bishops, partly by the usurpation of the pope, they chiefly by their own silence and content, not complaining of their want of summons to parliament, as long as they could. But now, and all the rest of the kingdom pay taxes. Notwithstanding which, the clergy of their acting and confuting with all the rest of the states in parliament, still remaining in the writing of summons, is a sufficient monument to posterity, to prove their ancient rights.

And the clergy of the lower house of convocation was fo feantible of this, that among certain petitions by them made to Dr. Dammon then archbishop of Canterbury, and the rest of the prelates in the highest house of convocation, in the reign of King Edward the sixth, and the second article of which runs thus. Also that according to the ancient custom of the realm, and the tenor of the king's writ for summoning the parliament, which now and ever have been directed to the bishop of every diocese, the clergy of the lower house of convocation may be adjourned; and aforesaid with the lower house of parliament, or else, that all such statutes and ordinances as shall be made concerning all matters of religion, and canons ecclesiastical, may not pass without the sight and assent of the clergy. And there is in the same place a second petition, as also a paper of reasons offered to queen Elizabeth, and after to King James, to the same effect.

And lastly, to these you, that the government of the church, and state of Scotland was anciently all one and the same in respect of their clergy as well as laity, with that of England in their great councils or parliaments, appears by the agreement between King Edward the first, and the states of Scotland, concerning the marriage of his son Prince Edward with the princess of Norway, and their heirs of Scotland, which is published at large in Mr. Pryn's first volume of the pope's usurpation, where you will find this agreement to have been made between the said king Edward, ex anima, et cancellaries Patres eclesiasticis, (cell. Scotiae) episcopos, abbates, et suorum clericis, comites, et baronibus, versus Communicantem Regem Scotiam, ex aterio, de matrimonio contrahendo, &c.

From whence you may observe, that as the same stile was observed there in the titles of their general councils or parliaments as with us, and as the inferior clergy there put after the bishops and abbots did not hold of episcopus, but Frank Abbey, so likewise in that kingdom, to likewise by the same analogy between the lowest temporal state with the spiritual, the commonalty of Scotland here filed communitatis.
ministras Scotiae could not then confine only of Tenants in Capite, as your Doctor, and those of his Opinion suppose it did.

M. I must confess you have shewn me more for the Inferior Clergys being once a Constitute Power of the Parliament, than ever I knew before, I will take Time farther to consider them: But that the Word Populus must needs then take in any more than the Tenants in Capite, I much doubt, since the other Word Plebs, which you so much infift upon from the old Book of Ely, signifies no more than Populus, which as the Doctor shews us in his Glossary, in it self signifies nei-

ther great nor Little People, but only Laity; and therefore as it is used and re-

traline, signifies either the Lay Plebs, or the Lay Magnates, as I can shew you by several Examples, as particularly out of Mat. Weismunster, Anno Dom. 1295, p. 424, R. 39.

2d Edward I. where speaking how the Pope's Legates were received in England, who came to make up the Differences between England and France, he thus relates their Reception: Quos in regno Anglia applicatos except Plebs debito, honores, ac cita per Regem apud Wefmonsterium Primatum, & Optimum suorum Catenus. Here the Plebs were the Great or Chief Men of the Laity, that is, the Earls and Barons which he had called to Weismunster, who so honourably received the two Cardinals.

So likewise the same Author, Anno Dom. 1297. 25. Edward I. in the King Ed. 430.

and Barons being at some Difference about the Observation of Magna Charta, and the Charter of Forest, speaking how the King declared that he intended to observe those charters; after this he relates, that the King thereupon required to be given him by the Incolae or Inhabitants, the Eighth Penny; and says thus, Articulis in probatis chartis contentis, innovari injurio & obsesvari Rex Mandavit, exigendo pro hac Concilliis ab Incolis Oblatum denarium sibi dari, qui max Concussis est a Plebe, in juus Camera tunc Circumstant, petit etiam a Clero Sibi-

dium. Qui respondit se velles summo Pontifici Literas Supplicatorias dirigere pro Conferendi Licentia obítenenda. So that the Plebs here mentioned by the Histori-

ans were only the Lay Nobility that stood about the King in his Chamber. Now pray consider, that the Word Plebs is of a much more vulgar Signification than Populus, so that the former did not signify the Commons as now understood, the latter cannot do so. And therefore I see no Reason to suppose that these Words must signify the Commons. The Like Error, I must tell you by the way, the Gentlemen of your Opinion have fallen into, concerning the Word Vulgus in the old Coronation Oath in Latin, when they ignorantly Translate these Words in B. G. p. 34.

the old French Oath, les les quêtes les la communaute aura eleu, leges & Convecti-

tudines quas vulgus eligerit, to the great Confusion of this Nation in the beginning of the late Troubles: Whereas the Community here understood in this Oath, was the Community of the Bishops and Abbots, Earls and Barons, and great Men, and the whole Body of Tenants in Capite, expressed before in this Oath by Clerus, and Populus, for by them alone could these Demands be made for the Vulgus, i.e. the Multitude or Rabble could never come near to make these Demands as so great and solemn.

F. This is but to urge the same Thing over and over again; for that under the Word Populus were also comprehended the Commons, I have already sufficiently proved, and can yet prove it further, from divers Histories and Records, both of Henry III. and Edward I. and Edward II. Reign. In the First Place therefore, I must still put you in mind of that Passage so often cited from Matth. Paris, in the Ed. 523, 9th of Henry III. where the Members of that Common Council in which Magna Charta was granted, is said to be Clerus & Populus cum Magnatibus Regionis, or as Mat. Weismunster in the same Year, almost in the same Words, Clerus & Popu-

lus cum Regni Magnatibus; with both which also agrees the Manuscript History of Walter of Coventry, who speaking of this very Council of 9th of Henry III. relates it thus: At the Punishment of the Virgin, there assembled at London the Proceres Angliae tabernae traducto, diffusore habebit cum Clero & Populo, the King then granted the Liberties of the great Charter, and that of Forests; and that there was granted a Comitibus & Baronibus, Clero, & Populo, ibidem Prasentibus quinta decima omniim mobilium de Comuni afferenta. Whence pray observe, what I before minded you of, that this Tax, as it was a general one upon all the Moveables of the Kingdom, took in all Sorts of Perfons, and so could never be given by the particular Order of the Doctor's Tenants in Capite, since it did not concern Tenures at all; and was levied on thofe that did not hold by Knights Service, as well as upon thofe that did.

But
But the Author of the Annales of the Abbey of Burton, is more full in this Point; for in Ann. Dom. 1555, being the 29th of Henry III, he tells us, a Parliament was held at Westminster, Convocavit ibidem Episcopi, Abbatis, Prioribus, Comitis, & Baronibus, & totius Regni Majoribus, in quo peribat [Rex] a Clero & Populo, de Laudio pecuniae usitata, & quae in his postea habeatur, & ad festos et postea a Populo Maiori & Minor ciuiteraque. From which as Paffage I shall obferve, that all the Clergy in general, as well the Bishops and Abbeys, as Inferior Clergy, are here called Clerus. Secondly, That the Nobility and Commons, or whole Body of the Laity, are all together called Populus. Thirdly, That this Populus is there also distinguished into the Major, and Minor; now as by the Mayor can be meant none but the greater Nobility, so the Populus Minor can signify none, but the Commons in general, unless you will suppute that the King's Design was only to extort Money from the Tenants in Capite, and no others.

But to put it farther out of all Debate, that this Word Populus, when put after and distinct from the Magnates Barones, and the like, in our Ancient Historians and Records, does signify the Commons alone, I shall prove to you by the Patent Roll of the 19th of Edward I. (the Year after your Doctor supposes the Commons were called to Parliament) where there is a Write directed to the Archiepisco, Episcopi, Abbates, Priores, Comites, Barones, & ommes alii de Regno, nam post alias de nobis & Progenitortibus nostris liberaliter fecerunt, to have lately freely granted him, which can be no other than that mentioned in the Record of the 19th unless you can suppute that there was a 15th granted Two Years together, which is very unlikely, and more than the Nation could then well pay.

So likewise by the Parliament Roll of 1 Edward III. it appears that Hugh in Dispensier, Jun. had been in the Reign of his Father, Per Confidereum Parvum, & Populi Regni, & per actionem Dominii Edwardi tunc Regis Angli. exiled and disfranchised for ever, as a Traitor to the King and Kingdom; that is, he was banished by the joint Consent of King, Lords and Commons. Now if Populus in these Records signifies the Commons after the Time when you own they appeared in Parliament, I would be glad to see some better Reasons than you have hitherto given me, to prove that this Word could not have the same Signification before the 49th of Henry III. or 16th of Edward I. Though I grant that Popular does alle sometimes signify both Lords and Commons, as appears from Nat. Welshman, where relating how King Edward I. in the 24th Year of his Reign, made his Son a Knight, then he tells us, Pro hoc Militia fuit Regn. Cencelius et Regi Thesaurum et Populo & Clero, Mercatores vero vicem Comitum servaret. Yet that the Commons had to a great part in this Grant, the Doctor himself acknowledges in his Glossary, under the same Heads in these Words, "It is evident from this Record, (meaning that of the 24th of Edward I. above-mentioned) who were the Populus, or People intended by the Historian in this Place, to wit, the Comites, Barones, et alii Magnates, nec non Multos Comitatum. Now I desire to know whether the Knights of the Shires were not then Commons as well as now, though reckoned among the Magnates, and as a Superior Order to the Citizens and Burgesses, here called by a general Word Mercatores, who then gave a 20th Part of their Moveables by themselves? But that the Word Plebs does not only signify the Lay Nobility, but the Commons too, in both the Quotations you have made use of out of Nat. Welsman, is allo as plain, & in the first Instance concerning the Reception of the Legates, is it to be imagined that none but Earls, and great Lords accompanied them, and that there were no Knights or Gentlemen amongst them? And as for the Words Priorates, and Optimates, I think I have sufficiently proved that those do not only signify the Lords, or greater Nobility, but the lefer allo: Nay, the Chief Citizens, and Magistrates of Cities and great Towns."
Dialogue the Eighth.

As for the next Authority concerning the Plebs that granted the Eighth Penny, it is much more evident that the Commons, as well as the Lords, must be comprehended under that Term. And that this is so, I need go no further than the Doctor's own Conception in the same Place a little farther, which you may read in the first Words, And that the Agreement for the Confirmation of the Charters here mentioned was made, and the Eighth Penny granted by the Earls and Barons, and perhaps the Knights of Shires; and that they were the Plebs that stood about the King in his Chamber, as clear from the Writ of Summons of Parliament for Two Knights in every County, Dated September the 15th immediately following, to come and receive the Confirmation of the Charters and his Letters, that the paying of this Eighth Penny should not prejudice the Commons for the future; and to do further what by his Son and his Counsell should be Ordained. So that the Doctor himself is forced to confess, (tho' sparingly) that the Knights of Shires were likewise there, and comprehended under the Word Plebs at the Time of this Grant. The King held this Parliament at his Palace of Westminster, in some of the Halls or great Rooms, and the Commons might very well fit in the now Court of Requests, (then called the Alba Aula, or White-Hall) (where Parliaments have been frequently held) and from thence be sent for by the King into the Painted-Chamber, or now House of Lords, where the King then sat, and which might, in respect of the Hall from whence they came, be very well called, Camera Regis; for none can imagine his Presence-Chamber, or Bed-Chamber, could hold all that Company; and in that Room the King might make that Speech to them which this Author mentions; and then upon his promising to renew the Charters, followed the granting of the Eighth Penny to the Bishop, by the whole People, who immediately granted the said Subsidy. Now the Doctor grants in this Place, That the Incolae here meant by the Historian were the Incolae Regni, such Inhabitants as used to pay Subsidies and Agis; only the Plebs must here signify the Lay Nobility. Now, if the Incolae Regni were so much as used to pay Aids and Subsidies, who made this Concession, can any Man doubt, but that this Grant was made by their Representatives, or the Knights, Citizens and Burghesses? For if the Tax was general upon the whole Kingdom, (as it appears it was) can you imagine that the Citizens and Burghesses were not there present when this Tax was given, as well as the Knights of the Shires, since it was to be levied upon all alike? Nor is the Doctor's Objection of any Weight, That because the King was not long after Summoned another Parliament when he was beyond Sea, to meet his Son Prince Edward at Westminster, that therefore it was not probable, that if the Commons had been at the Agreement, and granting of the Eighth Penny in the King's Chamber, they would have been dismiffed, and called again about the same Business in so short a Time, seeing the Confirmation of the Charter was dispatched in Six Days, when the Parliament met Octobris the 5th. For the Doctor is very much mistaken to imagine that this was the fame Bulkness they met about before, when the very Writ of Summons flew the contrary. For the Tax was given already, and therefore they could not meet about that, but the Truth was, the King went away in Haste into Flanders, without confirming the Charters. So that before the People would give any more Money, his Son, Prince Edward, was forced to confirm them, (as the Doctor himself confesses in the same Place,) after the Confirmation of the Charters, and that the Earls and Barons were satisfied. But as for the Doctor's wondrous Difcovery of the false bad Translation of the old French Coronation Oath, I do for far indeed agree with him, that the Words le Commune aura elu, are not to be Translated, which the Commons, or vulgar People, but the whole Community shall chuse; rendered here by the Word Vulgar, by the Old Monkish Translator; yet this can by no means signify only the Bishops, Abbots, Lords, and Tenants in Capite, (for who ever knew the Word Vulgar to signify the Superior Clergy and Nobility?) and so to exclude the whole Body of the People in general. But Mat. Westminster tells us, Concessas est (viz. to Edward I.) Novembris Denarius 1 . Vulgaris, fi. 431. 111. 112. a Clero vero Deus ad Scutorum Pertinaciam reiprimentam, who had then invaded Northumberland, and harafted the other Northern Counties. Now pray read the p. 34. Doctor's Comment upon these Words in his Glossary. Here Vulgar is the same with Populous and Plebs, when opposed to Clerus, or joined with it as a distinct Body of Men; and Clerus & Populus, Clerus & Plebs, Clerus & Vulgaris, are the Clergy and Laity, in the Meaning of this Historian, whether the Earls and Barons alone, or the Temporal Earls and Barons with the Commons were understood by them; that is, the Commons represented in Parliament, and not the Magnitude of Nobility. Which indeed
Indeed is a worthy Discovery of the Doctor's. Nor do I know any body so mad as to render it in the Coronation Oath; but that this Word 
Valvus, when put for the whole Liberty of the Kingdom, is very ancient in that Oath, see the Old Coronation Oath in Tottel's Collection of old Statutes, who transcribed it out of some Ancient Latin Copy of that Oath, or else from that Clause in the Coronation Oath of King Richard II. which is still to be seen upon Record.

I beg your Pardon for speaking so long upon the true Signification of these Words Ceres and Populous, Plebs and Valvus, since there was a Necessity for it, by reason of those false Glossies that the Doctor has with so much Artifice put upon them, still using them like Charms to bewitch and impose upon his unwary Readers; especially since a right Notion of these Words is absolutely necessary for the right understanding the true Sense and Meaning of our Ancient English Historians. So that after all this Pother the Doctor makes about the Signification of these Words Populous, Plebs, and Valvus, as Synonymous as he grants them to be, they must all signify the whole Body of the People, as well the Common as the Lords, represented in Parliament, by his own Confession; or else, I leave it to your self to consider, who of the Two is guilty of levelling Notions, your Doctor or Mr. F. since one does but affect with the general Content of Ancient and Modern Writers, that the Words Barones and Baronia Anglie did ancietly take in more than the Lords, and Tenants in Capite. And the Doctor straightforward calls him a Man of Leveling Principles, and that jumbles the Commons together with the Lords. Whereas your Doctor can when he pleases, make the Words Plebs and Valvus to signify the great Lords, and Tenants in Capite, contrary to the Subject Matter on which he discourse, and to their Genuine Signification, either in Ancient or Modern Latin.

M. Yet notwithstanding what you have now said, methinks you have not been yet so clear in your Explanation of the Word Populus; for admitting I should grant you, that there were in some sort Commons in Parliament as represented by the lesser Tenants in Capite, who were not Lords, yet does it not therefore follow that there must have been another Rank or Order of Persons beneath, or different from them, since (as I said it is, but now) 'tis only the Culfom, and Law of every Country, that can determine what is the Community, or Representative Body of the People, so that there is no such certain Analogy between the Ceres, when taken for the Inferior Clergy, and the Populus when taken for the lesser Nobility, or Tenants in Capite. Since in Scotland, though their great Council or Parliament, might consist of the Abbots, and Inferior Clergy, as with us, who did not hold in Capite; yet you cannot deny, but that the Temporal Estate or Laity, (at least of late Ages) wholly consisted of the Earls, Barons, Lairds, or smaller Barons, together with the Burgesses of Royal Boroughs, all which held in Capite; and for ought as I can see from any clear Proofs you have brought to the contrary, did so from Times beyond all Memory: And so it might have been in England too, for ought as I know, for though you have taken a great deal of Pains to Answer the Doctor's and my Arguments against the Tenants in Capite being the Representatives of the whole Kingdom in Parliament, before the 49th of Henry III. and 18th of Edward I. and also to prove that the Words made use of in our Ancient Historians, Records, and Acts of Parliament, are of a more comprehensive Signification than to be confined to them alone: But you have not as yet proved that these Gentlemen who you suppose to have had Places in our great Councils, besides the Tenants in Capite, were Knights, Citizens, and Burgesses; or whether all the Lords of Manors, or great Freeholders in England, appeared there in Person for themselves, and their Under-Tenants; then I may be a little more clear in this Point, and shew me some Authorities that the Knights of Shires, Citizens and Burgesses, have been always constant Members of Parliament ever since the Conquest: For methinks you waver in this Matter, and sometimes you seem to affect the former, and sometimes the latter.

F. I confesse it is not my Humour to be positive in any Thing that is in the least doubtful or obscure; and therefore as I will not maintain that Knights of Shires were always a conuentient Part of Parliament before your Conquest, or previously to that, nor is positively affur'd by the Authors of the Modus tenendi Parlia-
mentum; since the Antiquity of that Piece is fully questioned by Mr. Selden and other Modern Antiqurieks. So on the other Side, I shall not affect that they were not there from the beginning. But thus much I think I am able to prove, that they were Summoned to Parliament long before the 49th of Henry III. or 18th of Ed-

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ward I. But as for the Cities and Boroughs, that they had their Representatives in Parliament, at or presently after your Conquest, I think I can prove from as undeniable Testimonies as can be expected: Since all the most Ancient Rolls and Records of great Councils and Parliaments are long since lost and destroyed.

Yet to shew you that we have some very ancient Authors that seem to mention not only the Citizens and Burgesses, but Knights of Shires to have been summoned before the Times you insist upon; and if it prove so, whether they were there from the very Time of the Conquest is not material; since if I confute your, and your Doctor's Opinion of the 49th of Henry III. and 18th of Edward I. I carry the Cause, and you may then invent if you can some other Epocha whereunto to fix their first appearing at our great Councils.

I shall therefore give you another Quotation out of the same old Monk Scalacard, which immediately follows the Conclusion of the Charter of King William I. to the Abbey of Weisminster, but now cited: And it has been made use of not only by Mr. P. in his Ancient Rights of the Commons, &c. but by Sir William Dugdale himself, in his Origines Juridicatae; as also by the Author of Argumentum Antimormanticum, to prove the Commons to have been summoned to a great Council, in the 9th Year of King William I. Anno Dom. 1075. The Words, as cited in Sir William Dugdale, are these, That after the King had subscribed his Name to this Charter, with the Sign of the Cross; adding many of the Bishops, Abbots, and Temporal Nobility, instead of Cum multa alia, hath thee Words, Multis praecox illiusfimurn verorum veramin, & Regni Principibus diversi Ordinis omnes qui haec Confirmationi piumm affluunt tectes & factus suarum: Hi ante illum temporis & Regia potestate diversi Provinciae: & urbis ad uniterum Synodum pro causis cunhijub et Cerebra ad praemissa consensum Carobami quod Weismonsalam dictum Comune. Now I shall only observe from this Author, that Mr. Selwin in his Titus of Honour, and Sir Henry Spelman in his Glossary, p. 273, do always render Provincia for a Country or Shire.

M. I pray give me leave to examine this Quotation, because I confess it seems very specious at first Sight; but if it be thoroughly examined, will make nothing at all for you. And to this End, pray let us read the Doctor's Observations on B. A. A. 302: this Passage at the end of his Anfwer to Argumentum Antimormanticum.

F. But you need not read from the beginning of that Paragraph, since I so far agree with the Doctor, as that by Principes diversi Ordinis, &c. &c. Provinciarum, &c. &c. the Chief and Principal Men of several Ranks or Conditions, but the Chief and Principal Men of both Orders, viz. of the Clergy and Laity; yet will it not therefore follow (as the Doctor here would have it) that these Principes diversi Ordinis were only Bishops, Abbots, and great dignified Clergymen only; and the Proceres and Magnates, the Earls, Barons, and Temporal Nobility alone; for though I grant he produces several Quotations out of Florence of Worcester, Hatimbury and Eladder, to prove that Principes Regni Ecclesiastici & Secularis Ordinis, Primates Regni ururiae Ordinis, &c. were at these Councils, yet I have already proved that the Words Principes and Primates do not in their proper Signification signify none but Bishops, or dignified Clergymen, or the Temporal Nobility only; since these Words mean no more than Chief, Principal, or most considerable Men both of the Clergy and Laity, who had by reason of their Offices, Dignities or Estates, any Place in our General Councils at that Time; and which did certainly comprehend the Inferior Clergy also, though the Doctor has made bold to pass them by, without any Notice taken of them; and if they were then there, by the same Rule the lesser Nobility or Commons were also summoned from divers Provinces, Cities, and great Towns.

M. Well, but pray see here; does not the Doctor prove plain enough, that this bid. Gentleman he writes against is mistaken in his Translation, by applying the Words Provinciarum, & Urbis, to Chief Laymen from divers Counties, Cities, and Boroughs; whereas the Doctor here proves that the Words mentioned in this Passage cannot here mean Laymen sent from County to Cities, but only the Bishops, whoseSeats are here called Urber; and which, as the Doctor shews us, were by a great Council held in London in the Year 1077, being the 14th of King William, translated from Villages to Cities, as were Sheriff and Deans, removed to Sarum; Selvey to Chichester, Lithfield to Chester, which was before this Council at bid. p. 302. Weisminster cited by Scalacard, which this Author places in the 14th of this King, And
And the Doctor here farther proves that these Words following, pro causis causibus Christianae Ecclesiae, that this Universal Synod being called for hearing and handling the Causes of every Christian Church, that these Words, every Christian Church, must certainly mean many Churches in England, which in Reason and Probability could not be meant of the small Parthick Churches all the Nation over; and therefore must be understood of Cathedrals or Churches where Bishops Seats then were, or where they had been, or were to be removed.

P. Pray give me leave to answer this Comment of your Doctor's, before we proceed farther. In the first Place, suppose I grant him that by Urban may here be meant such Cities as had Bishops Seats, yet does it not therefore follow that it shall signify no other Cities or Towns but Bishops Seats only; for I grant in the Modern Acceptation of this Word Urban, here in England, a City and a Bishop's Seat are one and the same; yet it is plain, that at first it was not so; for then there had been no need of the Law you mention, whereby it was ordained that Bishops Sees should be removed from Villages to Cities; nor were they all of these removed at the Time of the holding this Council, which was held Two Years before the said Decree: Nay, the Doctor tells us from this very Place here cited, that some of them still remained in Villas & Vicoi, in Villages and small Towns. And tho' the Doctor here supposes (I know not on what Ground) the Bishops summoned by the King to this Synod, from Provinces and Cities, were such as were concerned, or able to advise the King in this Matter, of the Convenience of the Places whither the Removals were to be made, as Deans, Archdeacons, and other dignified Persons, and Church-Officers, as well of the Clergy as Laymen.

In the next Place pray observe, that the Doctor owns that by these Prinicipes universi Ordines, were meant the chief Clergymen and Nobility be there matters up; but paffes by, or else did not consider the whole Context of these Words, by aeternum telo tempore dierum Provinxii & Urbanii, &c. universalem Synodum Concilii, which must certainly refer to the Principes Regni diversi Ordines, to the chief and considerable Men both of the Clergy and Laity of the Kingdom, who were alike summoned from divers Countries and Cities, and great Towns, to this Synod. Now may you or your Doctor tell me (if you can) what Earls, Barons, or great Noblemen, were then summoned from Cities, or great Towns, as well as the Bishops and Deans of Cathedrals: Which if you cannot do, I fee no Reason why we may not understand these Principes Regni, who were also summoned from the Countries and Cities, for the Representatives of the Commons of these Cities and Towns at that Time.

In the next Place, I think the Doctor is as much out in his Interpretation of the Word pro causis causibus Christianae Ecclesiae, for the Caused of every Cathedral Church, since it must certainly mean not only Cathedral Churches, but all other Churches, whether Parochial, or Conventual; for that it takes in the latter, appears by one great Caufe of the summoning this Council, which was chiefly for the Confirmation of the Privileges of the Abbey of Westminster, which fene was no Cathedral Church, and yet must be some Church, or Ecclesiastical Corporation, or else this Synod could have had nothing to do with it: And I doubt not but this General Synod might, if it had pleased, have either made more Parthick Churches, or unite others where there were too many and should it not then have been laid to have met pro causis causibus Christianae Ecclesiae, for the Buiiness of each Parthick, as well as Cathedral Church? Lastly, The Doctor will have all these great Clergymen and Laymen only to meet at this Council, to advise the King about what farther Removals were to be made of Bishops Seats, as if theretupon he had had the sole Power of making Laws about them, without their Consent, or that of the Lay-Nobility, who the he will have to be always present in such Synods and Assemblies, yet does he not give them any Votes therein; whereas it appears by this Charter in Saxe-Scitania that now cited, that the Bishops, Abbots, Earls and Barons, whose Names are so in it confessarum & signorum, and it was ab ipso Rege & supradicta Personas submissa, conformata & auctoritate, which if I understand Latin, signifies not only that they witnessed, but also attested, to, authorized and confirmed it, which appears more fully by the Conclusion of the Charter by the Signature of the Great Councils of the Kingdoms then now cited, all which the Doctor paffes by as fily as a Commentator does those Words in a Text of Scripture that make against his Sense; for this had quenched and destroyed his fine Notion of the great Councils of the Kingdoms then wholly con-
confinit of a few Bishops, Abbots, dignified Clergymen, and great Noblenen, who had nothing else to do there but to look on, whilst the King alone made the Law.

To conclude, I shew you that this Assembly was not only an Ecclesiastical Synod, but Civil Council also, or Parliament as we now call it, I will give you two good Testimonies for it, that we are not alone in this Opinion: The first is from Mr. Somner’s Glossary, *Parliamentum Synodus magna vocatur*; and to confirm this there is written in an old Hand in the Margin of this Manuscript of *Sylverus* over against the Page now cited, this Note: *Notas hic omnes vocavimus a Rege sua autoritate ad canfas Religionis terroristas tam notables de Clero, quam Principes Regni cum suis inferioris gradus quorum conventio uideretur esse Parliamentum.*

Yet I suppose you cannot deny but that the Doctor has plainly proved from several Quotations from *Gerus of Canterbury, Richard of Haguiffad, and the Continuator of Florence,* that the Word *Provincia* in this Place signifies a Bishop’s Diocese; and therefore that the *Principes Regni* who were summoned out of these Provinces or Dioceses, were only the Bishops, Abbots, and other great Clergymen.

F. I will not deny but that this Word *Provincia* does sometimes in our ancient Authors signify in an Ecclesiastical Sense the Diocese of a Bishop, as the Author (the Doctor has here cited) newes us; yet that it must be taken in a more unlimited Signification in this Place, is also as certain, since besides that this Word *Provincia* does most commonly signify a Shore or County (as I have already shown) the very Context sufficiently proves it; since *Sylverus* says expressly, that the chief Persons of both Orders were summoned from the Counties, or Provinces, as I already said; when it refers to Lay-Men as well as to the Clergy, I hope you will not affirm that it can signify Dioceses only; but that besides the Bishops and Abbots, there were a great many more Persons present at this Council, both of the Clergy and Laity, the Doctor himself confesses. Let us therefore consult the Authorities themselves which Dr. Bradly has cited for the Sense of this Word *Provincia*, and let us see how fully he has dealt with them. Now pray Sir observe, it is true, the same Words are almost repeated *verbatim* in every one of these Historians, *R. Haguiffad, Gerus of Canterbury, and the Continuator of Florence,* who all speak of a General Synod held at *Wtitlemister Anno Dom 1138.* being the Third of King Stephen, in these Words, *De cima tertia die Decembris celebrata est Synodus apud Witlemister. cui praefuit Albnerius Hollisensis Episcopus Domini Papa Legatus, cum Episcopi diversarum Pro- vinciarum numero XVII. Abbatibus fere XXX.* Here the Dr. concludes with an *Etc.* Now see what lies hid under this *Etc.* in R. of Haguiffad, and the Continuator of Florence, it follows thus, *Cum Cleri & Popoli multitudine numero cent.* in *Geru- saph of Canterbury almoft in the same Words, Cum innumeris Cleri & Populi mul- titudine.* Now pray tell me ingeniously what could be the Doctor’s Meaning (who pretends to be fo exact in all his Quotations) to leave out this fo material a Passage in every one of these Authors, with this *Etc.* unless it was that he was afraid his Readers should take notice how numerous this Council was, both of the Clergy and People, which if he had done, it would have quite overthrown and destroyed his Notion of *Tenants in Capite,* and let the World have known that this Council consisted of a far greater Number both of the Clergy and Laity, than 17 Bishops, and 30 Abbots. Now had such a Thing been done by Mr. Petry, it would have "been branded by the Dr. with the hard Terms of taking away, or leaving unre- cited fuch Words and Matters as he thought would either advance or destroy his "Affections, as he (how justly, I leave it to you to judge) accuses Mr. P. in his "Title to his first Edition of his Answer to him." But

*Turpe est Doctori, cum culpa redarguit ipsum.*

M. I cannot believe the Dr. had any finer Meaning in leaving out this Passage, but did it either because (as I said but now) he supposed those Expressions as only Hyperbolical Phrases, by which those Monkish Writers used to express all the Ecclesiastical or Lay-members of those Councils, or else because he did not think it worth while, since he might not look upon this innumerable Company of Cler- gy and People here mentioned to have had any Share or Voice in this great Coun- cil, but only to have come thither as idle Spectators, as the Dr. shews us the *Pro. B. A. D. p. 30.*
BIBLIOTHECA POLITICA.

puer did at the making of Lanfranc Archbishop of Canterbury; nor yet that they, or the Bishops and Noblemen chose him, but only all applauded the King's Choice. But that the Dr. was not afraid to take notice of the great Multitude of People that in those hollie capable Days were wont to flock to such Assemblies, pray see what he says in his Series of English Great Councils, or Parliament, at the End of his Introduction to English History, where speaking of the Election of Archbishop Anjelm, he recites this Passage out of an Epistle in Eastme, Hic Eleemos auxilium Episcopi, Abbas & Principes Regni, & ingens Populi multitudine. The ordinary People (says the Dr.) came to shout and make a Noise at such Meetings, and only for good VVitals and Drink.

F. Very well; I think I shall easily answer your and the Dr's learned Observations. First, as for the Monkish Hyperbolical Phrases of innumera or numerosa Cleri, & Populi multitudine: I confess, you might suppose there was somewhat in them, if they had been peculiar only to one or two of them; but when all these Writers do with one Confident agree, in almost the same Words, to express all the Members of such Councils, I cannot see how they could have writ thus, unless they intended to be understood literally, that there were great Numbers both of Clergy-men and Laicks, who appeared as Members of those Assemblies, far more than the Dr's Tenants in Copite. And that they had also Votes therein, appears by that Passage in the Conclusion of King Stephen's Charter, which I quoted but now out of Sulcardus; when speaking of this very Council in the Third of King Stephen, which we left mentioned, that not only the Comites, & Baronet Regni, but the innumera multitudine Cleri & Populi, were not only present, but Religioso favore voluntatem, & Admonitam, & Privilegiis praemunierunt, i.e. yielded their good Wills and Confents to this Charter of Privileges to the Abbey of Westminster. And to show you farther that this Infinite Multitude of Clergy-men and Laicks were also part of this Council, pray rememaber the Passage I but now cited out of Florence, of the Council held at London, cum innumera Cleri & Populi multitudine, who all alike gave their Confents to the Constitutions, by places, places, places, and consider what the same Sulcardus has said in the next Council of the Fourth of King Stephen, when after Concilium adnatum Cleri & Populi, et a Recital of the Bishops, he concludes with Monasterburs & Clericorum Elebigyque infinitae multitudinis, as all alike Members of it.

Now I shall leave it to your self, or any sober unprejudiced Person, to consider, whether it is likely that so Grave and August a Thing as the Royal Charter of a Prince should take notice of the frothy Confent and Applaude of the mere Rabble or Mob, (whether of the Clergy or Laity), or so judicious a Writer as this Author, and the rest of the Historians (now cited) should have nothing else to do, but to record to Pottorty for a very remarkable Transicion, That a great Multitude of the ordinary or vulgar Sort of People came to these Assemblies only to shout and make a Noise, for good VVitals and Drink: And therefore the Dr. and you, I hope, will pardon me if I still keep my former Opinion, that both the Archbishops Lanfranc and Anjelm, were not only named or proposed by King William the First and Second, in the Common or General Council of the Kingdom, but were also therein Elected or Chosen by the Clerus and Populus, according to the Manner of that Age, and the literal Meaning of those Ancient Authors, whole Words the Dr. either leaves out, or strives to wrest to quite another Sense. Nor are his Objections against the Election of Lanfranc at all considerablc. For as to the first Objection against the literal Sense of the old Author, printed at the End of Towy's Gavelkind, "That he could not be declared confent ur totius Populi Anglie, because, who can believe that all the People of England, or the Hundredth Part of them, ever knew or understood of Lanfranc's being made Archbishop? Now may let me ask you this Question; supposing this Election had been made in a General Synod of the Clergy alone, and the Words had been instead of totius Populi, totius Cleri Anglie, would it not have been meer cavilling, to ask how all the Clergy of England could leave their Livings, and come up to give their Confents at this Election, or that the Hundredth Part of them ever knew of it? Since every Body is sensible these Words are not be understood in a literal, but legal Sense, that is, the whole Clergy are said to give their Confents to a Thing, when they do it by their lawful Representatives, the Bishops and Procuretors of the Inferior Clergy? And why may not the whole People of England be as well said to give their Confents to this Election by their lawful Representativos.
Dialogue the Eighth

tives at that Time? But that we are not singular in this Opinion, pray see what Archibishop Parker says in his Antiquitates Britannicae, of this Election of Lanfranc's, Celeberrima eft autem bujas, pra ceteris Eledio, &c. Eledio eft enim à Majoribus Cantuariensibus Eccliefe, tum acceptus Procerum, atque Praefatum, totiusque quafi Populi confentius in Aevae Regis, quando sané eft influæ Senatus seu Parliamenti Anglicani. As for the next Objection against this Election of Lanfranc's, it is yet weaker than the former, because the Dr. has answered this Question himself. How the English Saxons Bishops, Barons, and the whole People should chuse a Stranger, a Person they had never known, and知识点中没有完整的句子，无法判断这句话的完整内容。


Now if the English had then no Estates, they could fure have no Places or Votes in that great Council when Lanfranc was chosen. But if to solve this you will say as the Dr. does in his Answer to Antinormannicum, that this Council was held about the Fourth Year of the Conqueror, some Years before he had made an absolute Conquest, and that the English Bishops, and Barons, and Free men had still some Estates left, and therefore might then make the major Part of this great Council, when Lanfranc was made Bishop, who would never have elected him had it been left to their Choice: Pray tell me if the bare Fear of refusing be a sufficient Reason that he was not elected, whether or not it will not be a strong Objection against his being elected by the Senior Monks of the Church of Canterbury, as Gervase expressly tells us he was. Because (says the Dr.) they did it by "Order and Direction from K. William, and their Proceeding being no other than it is now by the Chapters of other Churches upon the Conge d'Elfeire, they could "not refuse him." And now supposing his Power to have been as great in the Common Council of the Kingdom, as in the Chapter of Canterbury, why may we not say almoft in the same Words, They could not, they durft not refuse him (who was already elected by the Prior and Chapter of Canterbury) for fear of lofing their Estates. But if an Election that cannot be refused, is none at all, the Dr. may do well to consider whether there was then, or is now, any Canonical Elections of Bishops in England at this Day.

P. 300. M. I shall not farther difquire this Matter at this Time; therefore pray go on to the ref of your Authorities out of our English Historians, proving that any Knights, Citizens and Burgeffes appeared in Parliament before the Times we allow them to have been there.

P. 307. F. Tho' I think I have sufficiently proved at our last Meeting, from the Charters of King John, and Henry III. as also from the Words Commentes, et le Com- mune, that the Common Council of the Kingdom confifted of many more Mem bers than your Tenants in Capite; yet to let you fee that the Historians and Anna lists of those Times did comprehend all thefe Orders under the general Titles of Clerus and Populus, or Magnates and Proceres, you may fee in the Chronicles of Thomas Wikes, Anno Dom. 1237. Where it is only faid in general, that the Clerus and Populus Regni did in that Year (being the Ninth of Henry III.) grant the King a 20th of all their Moveables for the Confirmation of Magna Charta; and which is more remarkable, the Parliament which was held in the Year 1264, being 49th of this King (and in which you grant the Commons were prefent) is only thus briefly mentioned by this Author, in an Historical way, transalfo quidem vicecumdo die Nativitatis Domini fæc. 3. Lond. per Comiten (till Leyceltirrie) Convoca tio non minima Procerum Anglicorum, &c. In the Annals of Waverly in this Year, it is only faid, Folland eff Parliamentum magnu Londonia, &c. Now pray observe, that either the Commons are mentioned by Wikes under the Name of Proceres, or not at all; and that under the Word Parliament the Commons were then comprehended, appears by the Agreement between the King and the Barons there extant, which is faid to be made, de unanimo effe facra, de voluntate noftra (fol. Regis) Edward Villi nofri Prelatorum, Comitum, & Baronum, & Communis tis diei Regni nofri; Now it must be granted, since it appears by the Writs of Summons of 49th Henry III. that the Commons were there, and consequently must be comprehended under this Phrafe of Communis Regni; and if this had been the fift Time they had been summoned, 'tis strange none of these Authors should take G s 2
take any notice of so remarkable an Alteration and Change of the **constituent** Parts of our English Parliaments.

But that the Knights, Citizens and Burgesses were also summoned in the next Year, in a Parliament of the 50th of this King, you may see in the Title of Wikes's Chronicle, *Anno Dom. 1265*, where he sets down all the constituent Estates of Parliament, which were summoned to meet at Westminster, at the Translation of St. Edward's Reliques, in the Words, *Convocatio universi Anglie Praelatu & Magnatibus nec non cantharum Regni sui Civitatam portier, & Burgorum potentioribus ut Translatationem Solumnia Celebris illustrarent*, where the Knights of Shires are comprehended under Magnates, and the Citizens and Burgesses are here styled Potentiores Civitatum & Burgorum. And that this was not only for a sole Ceremony, but for Parliament Business also, see the next Page, where it tells us, *Celebrato tamen tanta translatione solemnitate caperunt Nobilis (i.e. all the Estates above-mentioned) ut abstinent, Parliamentationem genere de Regi & Regni negoisis praebere*, &c. And in which Parliament the King so far prevailed as to obtain a 20th Part of all the movable Goods of the Realm. And yet the Continuator of *Mat. Paris* in the Affairs of this Year takes no Notice of this Parliament, but only says in general, that St. Edward's Body was this Year translated into its new Shrine. And the Annals of *Rexduc* under this Year make mention of this Parliament in general Terms thus, *Fossil Convocatione Episcoporum, Comitis, Baronum, Abbatum, Priorum, & mulierum aliarum*. So uncertain a Thing it is wholly to depend upon the general Expressions of Monkish Writers, without comparing them and the Records together, and considering the Subject Matter about which they treat. Nor can we suppose, that the **constituent** Parts of our Parliament were chopp'd and changed as often as they did their Pirates and ways of expelling the Parts of them. For they not foreseeing the Differences that might arise about these Matters, had no Reasoun particularly to recite the **constituent** Members or Estates of Parliament, as often as they had occasion to mention them, it being very well known who they were at that Time. But to prove further, that it was not likely there was any Alteration in the **constituent** Parts of the Parliament, from what it was in the 49th, may appear by this *Wit* still extant among the Patent Rolls of the 54th of this King, where it is expressly recited, *That it not seeming safe to the Praelatia, Magnatibus, & Communitiat Regni nostri*, that Himself and his Son Prince Edward should be both out of the Kingdom at once in the Holy Land; and that therefore he gives the whole Subsidy of a 20th, granted him by the whole Kingdom, to his said Son. And that it continued so in the beginning of Edward I. Reign, appears by a Petitionation in the 4th of this King, as it is found in the Patent Rolls, wherein he recites a 15th to have been granted him of all Moveables, by the Comites, Baronos, et aliis Magnatis, & Communitiatis Regni nostri. So that unless the Senfe of these Words *Communitiatis Regni must alter every Year, there is no Reasoun for us to believe any Change to have been in the **constituent** Parts of Parliament since the 49th of Henry III. This I think may be sufficient to shew you that before the Time you mention, not only the Knights of Shires, but the Citizens and Burgesses did appear in Parliament both before your 49th of Henry III, and 18th of Edward I.

M. Perhaps indeed since that the Commons might be comprehended under the general Words *Magnates & Proceres* by Wikes's Chronicle in the 49th of Henry III, or else not be mentioned at all, which I rather incline to believe; that the other Passages out of the same Author concerning the Citizens and Burgesses being summoned either to a great Council or Parliament in the Reign of Henry III. is more than I before ever took notice of. Yet this Author does not tell us, whether it was to the one or the other, not how many of them were there; whether one only, or more, for each City and Borough-Town; or whether they were elected by the People, or nominated by the King to appear there; But as for the Words *Communitiat Regni* mentioned in the Agreement of the 49th of Henry III. tho' it might signify the Body of the Commons in that Record, yet if they were not again summoned to Parliament, till the 18th of Edward I. it signified only the Body of the lesser Tenants in *Copite*, till after the 18th of that King.

F. I am sorry to see Prepossession and Prejudice has so much over-run you as to hinder you from clotting with the Truth, for pray tell me, If this Author hath mentioned could in the 9th of Henry III. (when the Commons were summoned without Dilpate) comprehend all the Estates of that Parliament under the general Words
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Words of Process and Magnates; and the Knights of Shires are understood by the same Word in the next Passage cited out of the same Writer; why may not other Men do so too in other Parliaments? As for your next Exception, it is a very small Cavil; for it appears that this Summons of the Citizens and Burghesses at the Translocation of King Edward's Relicks, was to a Parliament, by the Words that follow, Nobies ut aseles Parlamentationis generes de Regn. & Regni negotii per

traitare: And why thefe Citizens and Burghesses should not be as well elected by their respective Cities and Boroughs this Year as well as the last, as it appears they were by that Writ to the Cinque Ports, which the Dr. and Mr. Prym has given us; I defire you would give me any satisfactory Argument to the contrary.

As for your Objection against the Words Communitas Regni being to be understood for the Body of the Commons in 54th of Henry III. It is altogether as unreason- able, since this is to make the Constituent Parts of the Parliament alter, not only when Writers shift their Phrases, but when they do not; and that without any other Reason, but because the Writ of Summons and Parliament Rolls of those Times are all perillus. And to deny the Commons were there, only for that Reason, is altogether as unjust as for any Court of Justice to turn a Man out of the actual and long Possession of an Estate, merely because his Writings and Evidences by the Carelessies and Roguery of his Servants have happen'd a great many of them to be lost or burnt.

But fully to convince you (if possible) that Dr. Brady's Opinion of the Commons not being again summoned from the 49th of Henry III till the 18th of Edward I. is a mere Fancy of his own, and contrary to the express Authorities both of Historians and Records; and to come to plainer Proofs; I pray in the first Place take notice, that it appears by a Writ of the 11th of King Edward I. to the Archbishops of Canterbury, acquainting him with the Rebellion of Lewes, that he had de Consilio Prelatuum, Procerum & Magnatuum Regni, nec non totius Communis in eisdem, resolved (God willing) to put an end to this Welf Rebellion: So that this War seems to have been resolved upon at the Parliament held the Year before, and now mentioned in this Record; a War which that valiant and fortunate Prince effectually concluded by the total Subduing of Wales, and the killing of Lewes, whose Head was cut off and sent to London; the Particulars of which War Knighton, as well as other Historians relate at large; and also that shortly after, David, the Brother of this Lewes, the Cause of all these Mischiefes, was (as this Author shows us) in Magno Parliamentensi Col. 2483, at Shrewsbury, condemned, and after wards hang'd, drawn and quarter'd.

Wallingham is more short in the Relation of this Parliament; only says, that in the 11th of Edward I. Habituem eft Parliamentum at Shrewsbury, in which this David was condemned and executed as before. But Thomas Wikes, who lived at this very Time, in his Chronicle but now cited, will better instruct us than either Wallingham or Knighton; and his Account of this Parliament is as follows.

Anno 1289, Cesa Felix Stii. Michaelis Rex convocavi fecit apud Salop, de quibus etiam Majores Regni fui et Sapieniores tam de Cruibus quam de Magnatibus & fecit il- luc adductus David, qui apud Rothelen fuerat captivitus ut super exigentiam Delici sui corporis subire Judiciem, &c. And then relates at large the Manner of his Execution. From which Passage we may observe, that this Author makes it plain who were the Communitas Regni mentioned in the Record of the 11th of this King, and who constituted this great Parliament at Shrewsbury, viz. Majores & Magnates Regni, which last, as I have often proved, takes in the Knights of Shires, and the welch of the Citizens.

But yet this Author says no more, but that the Majores Regni & Sapientiores tam de Cruibus, quam de Magnatibus, were called to this Parliament where- in Lewellyn was condemned: Now it doth not appear that thefe Cruer were elected, or that there were any Burghesses chosen for the Boroughs, or that there were any Knights chosen by the Counties; there were indeed Magnates called to this Parliament, but they might be all Tenants in Capite.

F. Well then, since you will not be satisfied without direct and evident Proof, such as neither your self nor Dr. B. can deny; pray take this which Mr. Petye has not long since communicated to me; and which he has lately discovered in Rotulo Wallia, in a Bye Roll not taken notice of by any body as I know on before. It is a formal Writ of 11th of Edward I. for summoning the Temporal Lords to be with that King at a Colloquy, (or Parliament) apud Salop in Cra-

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Rt. Wallis,

8. A. P. p. 140. 

Fin's Parlia-

ment Regius,
BIBLIOTHECA POLITICA

Sino St. Michaelis; and there is in the same Roll a second Writ directed to several Cities and Boroughs for electing Two Citizens, and two Burgesses to this Parliament, with a void Space to insert more Names. And also a Third Writ is therefore directed to the Sherif of every County in England to cause to be chosen Two Knights, pro Communitate ejusdem Comitatus. And lastly, there is a Fourth Writ directed to the Justices and other of the King's learned Council, with the same Freambles to each of them, all being commanded to appear at the same Time and Place. Now what can Dr. Brady say to this? That he was so long Keeper of the Records, and sure ought to have perused them, (as he did many others of the same Reign,) yet has either willfully or carelessly paffed by this memorable a Record. And so I hope this will convince you for the future of the Danger of being over-positive in an Opinion, because it could not pretend to be confined; and let you see that it is not at all improbable, but that the like Writs of Summons would appear as well before the 49th of Henry III. as in the reft of the Years of his own and his Son's Reign, had not those Records been lost and destroyed: Which considered, we have Reason to thank God for those that the Iniquity of the Times have yet left us.

M. I muft confess you have told me more than ever I yet thought could be produced against the Dr.'s Opinion; and I should be throughly convinced, could you show me any Writs of Expences for the Knights, Citizens, and Burgesses, who appeared at this Parliament.

E. I hope you will not aver against an express Record, tho' the Writs of Expences for that Year are lost (being never entered upon the Roll) by the Omnifion of the Clerks, who as Mr. Pryn acknowledges, oftentimes neglected the Entries of Writs of Summons themselves, as well as of Expences. But if this were any material Objecion, then there should have been no Commons summoned to any Parliament from the 49th of Henry III. to the 28th of Edward I.; when the first Writs of Expences (except those of the 49th of Henry III.) do first appear upon the Rolls, and you must then go from the Doctor's new Notion of the Commons being again summoned in the 18th of this King. But to shew you that these Expences for the Knights, Citizens and Burgesses could be no new Things, Pray perufe the Clause in this Second Writ de expen. Milirum & Burgenfium, of the 28th of Edward I. we have upon the Rolls: The Writ is to the Sherif of Somersetshire to pay to the Knights of that County, Yenentibus ibidem nobis unam de diversis negotiis nos, & Populum Regni moifter specialiter tangeribus rationabiles expenfas suas in tempore ad nos ibidem, morando, & inde ad propriam redeundo (and now observe what follows) prout alius in Cafu Conflimite fieri concurrit. Now pray tell me, how this last Clause could ever be true, if the Knights of Shires, Citizens and Burgesses, had never been summoned to Parliament since the 49th of Henry III. which was but 32 Years; or the 18th of this King, but 10 Years before this Writ was published all over the Kingdom.

M. I confess what you now say, seems to carry some Weight with it; but yet in my Opinion falls far short of a Prefcription, since a Thing might be laid to be done as in like Cafes was accustomed, tho' it had never been practis'd above 20 or 30 Times.

E. I see neither you nor your Dr. by Reafon of your different Employments, had ever any true Knowledge of the Nature of Tenures and Prefcription according to the Laws of England; which he is not to be blamed for, had he not taken upon him to be so great a Maker in both: Therefore to set you right for the future, you must know, the Knights, Citizens and Burgesses have ever claimed being summoned to all Parliaments by Prefcription, as I shall prove by and by; but as for that Part of it called Culfonm, my Lord Coke tells us in his Notes upon Littleton, 'That in every Culfom there be Two Efficient Parts, Time and Uage,' 'Time out of Mind, and continual Peaceable Uage without lawful Interruption.' Now the Commons have in all Times beyond the Memory of Man, challenged to have enjoyed both these efficient Parts of Common Law or general Culfonm. So that these Words, Prout Causa Conflimite conferitur, must be by Implication of Law extended beyond the Times of Henry III. and Edward I.

And for Proof of this, I shall shew you what Claims the Commons have made to this Uage from Time immemorial. Therefore I shall begin with Mr. P.'s first Argument in his Rights of the Commons afferred, where the Burgesses of St. Albans in their Petition to King Edward II. in Parliament, Annas Regni 8, let forth, that they
Dialogue the Eighth.

Sicut ceteri Burgherfes Regni ad Parliamentum Regis (when it should happen to be summoned) Per duos combergentes suas venire debeat, pro tuis retrodatis temporibus venirecognovissent, tam tempore Domini Edvardi, regi Superior Angliæ et de St. Albanis, patriis Regis, & Progenitorum suorum, as in the Time of Edward II. Semper ante infans Parliamentum, &c.; and farther declare that the Names of such Burghesses coming to Parliament were always enrolled in the Rolls of the Chancery; notwithstanding all which, the Sheriff of Hereford, at the Procuration, and in Favour of the Abbot of St. Albans and his Council, refuted Burgherfes prædictos præmuniere seu nomina eorum returnare præst ad ipsum permittat, &c. and therefore they pray, Remedy The King and Council’s Answer whereunto was thus, Sunt enim procula, &c. de Cancelleria præd. temporibus Progenitorum Regis Burgherfes prædicti solebant Venire vel non, & tunc eis super hoc justitia vocavit evocandas eis necesse fuerit. Whereby the Words last retrodatis temporibus, &c. must be understood that they and their Predecessors were always accustomed to send two Burghesses to Parliament in all former Ages, not only in the Time of Edward I. but his Progenitors; therefore in King John’s Time, his Grandfather, at leaft, and to long before the 49th of Hen. III.

M. I confess the Gentlemen of your Party make a great deal of Noife with this Quotation, but if it be frankly lookt into, I believe it will prove of no such great Consequence as you would make it; &c. P. hath concealed the main Cause of these Burghesses pretending a Right of finding Members to Parliament, and therefore will not be amiss to give you the Ret of it at large.

Ad Petitionem Burgherfum villa de Sando Albano Saggernetum Regi quod lictor si tenet villam præludit de Rege in Capite & lictor suos ceteri Burgherfes Regni ad Parliamentum cum ea summaris continget per duos Combergentes suas venire debeat præst totis retrodatis temporibus venire cognovissent pro omnibus sustitutis Regi vacantis, &c. By which Words, as the Dr. very well shews us, it is evident, that the Burghesses of St. Albans claim’d not, nor prescrib’d to come to Parliament as merely from a Borough, but as from a Town that held in chief of the King; and this Service was incident to their Tenure, and was such as the King’s Progenitors had accepted in lieu of all Services due by reason thereof.

And farther, the Answer to thisPetition is remarkable, which amounts to no more than this, That if it did appear by the Rolls of Chancery, that the Burghesses of St. Albans were wont to come to Parliament in the Time of the King’s Progenitors, then such as have been called (i.e. to Parliament) should be called when there was necessity for it. Hence’tis clear the King and his Council were equally judges when it was necessary to call them, and for them to come; as they were of their Rights and Pretences to come.

F. I very much wonder a Gentleman of your Understanding should be so much imposed upon by such weak Inferences: For in the first Place it is a great Mistake in Matter of Fact, that these Burghesses of St. Albans claimed to come to Parliament no otherwise but as Tenants in Capite; for tho’ the said Petition recites, that they held the said Town of the King in Capite, yet they do not likewise say, that they claim’d to appear there only by that Tenure, for then they should have recited that they suæ cæteræ Burgherfes Tenentes in Capite, and not suæ cæteræ Burgherfes Regni ad Parliamentum venire debeat. And tho’ it is true they set forth, that they appeared there for all Services, yet do they not say, that their Tenure in Capite was the only Cause of their Appearance in Parliament; since divers Towns and Boroughs of the Kingdom, which held not in Capite as all, had the like Privileges before; of which I can give you divers Instances, which I shall read to you out of this Note, which a Learned Friend of mine, since deceased, hath taken out of the Rolls in the Tower, the’ when he lent it me, he through Hafle or Inadvertency, hath forgot to fet down the number of the Roll to moft of such Boroughs who never held in Capite, and yet have always been fent Burghesses to Parliament by Prescription; as first, The Borough of Arundel, which always held of the Earls, and never of the King, being granted by Henry I. to Hugh Montgomery Earl of Arundel. Secondly, The City of Bath appears to hold of the Bishop of Bath and Wells. Thirdly, The City of Wells itself, which always held of the Bishop, and never of the King, and is therefore called Villa Episcopi in all publick Writings belonging to that Church, and was made a Free Borough in the Third of King John. Fourthly, Beverly was made a free Borough by Thorfin Archibishop of York, which was confirmed by King Henry III. Fifthly, The Borough of Bedmin, which always held of the Earls of Cornwall, Sixthly, Bridgewater; for 5 m. 14. King
King John granted it to William Brewer, Quod Broughton, sit liber Burgis.
Seventy, Coventry, which was always held of the Earls of Chester, and pleaded
in the Reign of Edward I. to have never been taxed with the King's Deemales,
but with the Body of the County.
Eighty, Bishops-Linnen, for King John
granted to John Bishop of Norwich, Quod Burgis de Lenna sit Liber Burgis in
perpetuum: All which by the Wars we have left us, four Burgesses to Parliament
as early as any that held in Capite. Thes I give you only for a Taffe; but I doubt
not, but, if I had Time, I could give you Three Times as many, especially in
Cornwall, where the Boroughs did almost all hold of the Earl of Cornwall,
and not of the King. But besides the Doctor's Error in supposing that no ancient
Cities or Boroughs had any Right of sending Members to Parliament, but only
as they held of the King in Capite, his Mistake is yet much more gros in his
continuing those remarkable Words in the King's Answer to the Burgesses of St. Albans,
Et tunc fut est super hoc Jus liti, evocatis evocanda s necesse fuerit, thus, "And
then let them have Justice in this Matter, and such as have been called, may be
called, if there be necessity. Upon which Words you have also from the
Doctor put this pleasant Gloss: "Hence 'tis clear the King and his Council were
equally Judges when it was necessary to call them, and for them to come, as they
were of their Rights and Pretenences to come. But I must needs tell you, I think
nothing can be more absurd, and contrary to the genuine Sense of this Record,
than the Doctor's Contraction, who will needs have the Words evocatis evocanda,
only to mean a Calling, or Summoning to Parliament, which is quite contrary to the
true Sense of the King's Answer to this Petition, for if that had been his Meaning,
that those only should be Summoned to Parliament whom the King
pleased to call, to what Purpose were these Words, scutos temporibus Progenitorum Regis Burgenses prudelli solentem venire vel non?
For if their coming to Parliament had been a Matter of meet Grace and Favour,
and not of Right, and so wholly left in the King's Breast whether they should come
or not; it was in vain for him to command the Rolls of Chancery to be searched,
whether any Burgesses us'd to come to Parliament or no, in the Times of his Pro-
genitors. Or if it had not been a Matter of Right, why should it be here said, that
upon search of the Rolls, Tunc fut Jus liti, Let Justice be done, if there never was
such a Right of Prefription by which they claimed? But I much wonder that the
Doctor (to great a Critick in Records) should ever construe them evocatis evocanda,
a summoning or calling to Parliament; and I desire you would shew me
in what Parliament Roll, or Ancient Record you can hint evocare ad Parliamentum,
to summon to Parliament: But I more admire that you, who are a profess'd Citizen,
should not better understand the Sense of your own Terms; whereas if you would
have but consulted any Civil Law Dictionary, you might have found evocare Texit,
always signifies to summon Witnesse, and I can shew you by Twenty Precedents
both from our Common Law Records, as well as your Canon Law Forms, that
evocatis evocanda, does always signify the Summoning such Witnesse as are to
be summoned in a Caufe; and in this Sense it is to be understood in this Record,
that not only the Rolls should be searched, but also Witnesse summoned to prove
their Claim, if any Difpute or Doubt should arise about the Matter of Fact.
M. I shall no longer contend with you about the genuine Sense of these left
Words, since perhaps you may be in the right; but yet for all that, it does not
appear, that the King and his Council did by this Answer allow this Petition of
the Town of St. Albans to be true, That they had sent Burgesses to Parliament in
the Time of his Predecessors, much less that any other City or Borough in England
were then allowed such a Right by Prefription.
F. I grant indeed that this Petition doth not absolutely allow the Matter of
Fact (as it concerns the Dispute between them and the Abbot) to be true, as it is
there set forth; neither yet does it condemn it for false. But whether it were true,
or false, it matters not; for both the Petition and the Answer do sufficiently prove
the Point for which we make use of it (viz.) that it was then received by a
general Custom, or Law, Time out of Mind, That the Cities and Boroughs had sent
Members to Parliament according as in the Petition is set forth; otherwise it can
scarcely be supposed (much less believed) that the Burgesses of St. Albans, or the
Penman of this Petition, should dare to tell the King, and his Learned Council, in
the Face of the Parliament, so ridiculous a Novelty, to be recorded to Potterty, as
that they and their Predecessors in the Time of King Edward I. and his Proge-

P. R. C. p. 10.
Dialogue the Eighth.

nitors, had sent two Burghesses to every Parliament, or that the King and his Coun-
cil should have ever received this Petition without Indignation, and a severe Rebuke
for their Impudence; if all the World then knew, (as certainly they must, were
it true) that there was never any Election of Burghesses to Parliament before the 49th
of Henry III. (which was but Fifty Years before the 8th of Edward I.) from thence
had appeared no more till the 18th of Edward I. which was but 24 Years before the
Delivery of this Petition, a Time which must have been then fresh in the Memories
of most of the King's Council there present: Whereas they allow this general
Claim of Prescription. And every Person, (tho' but meanly skill'd in our Law) does
understand a general Prescription, viz. a tempore cessit contraria memoria bominum
non existit, what it was then, and so remains, by the Law of England at this
Day, as appears by our Ancient Records, Law-Books, and Judicial Proceedings.

And surely the Burghesses of St. Albans did not ground their Petition of Right upon
baren Affirmation, but the Justice and Certainty of their Claim, as they very well
knew, wherefore so they prayed it might be examined by uncontrollable Proofs,
the Rolls of Chancery. And the King, Chancellor, and all the Council, did no less
know there were such Entries on the Rolls, and therefore order'd their Search.
Whereas if the very Ground of their Petition had been notoriously false and idle (as
it must have been, if neither this, nor any other Borough had sent Burghesses to Par-
liament before the 49th of Henry III) then instead of recording this Petition and
Answer, to future Ages, they would with Contempt and Indignation have rejected it;
or would the Abbot of St. Alban's Council, and the Sheriff of Hertford, against
whom this Petition was exhibited, have been wanting in their own Defence to have
shown that this Ancient Prescription, not only of this, but of all other Boroughs,
was a mere Chimera and Fable. But instead of this, we do not find they made any
Opposition against it, because they knew they had been summoned and appeared at
divers Parliaments before that Time; as you may see in [Prin's Parliamentary Register]
they were in the 28th of Edward I. which is almost as early as we have any Writs
of Summons left us to the Commons of this King's Reign. And tho' it is true, the
Sheriff of Hertford in this 28th Year, returns that the Bailiffs had made no Return
of the Precept sent them, yet this plainly proves that they were then look'd upon
as a Borough, and it was very well known that it was wont to send Burghesses
to Parliament, or else it had been a vain thing for him to have sent them any such
Precept at all. And tho' it is also true, there are no more Returns from St. Al-
bens left us till the 35th of Edward I. yet that is no good Argument against their
Appearance in the former Years; since the Writs and Returns upon them being in
loose bits of Parchment, might very well be lost, as well as they are for many other
Places. But that the Burghesses of St. Albans were summoned, and appeared in Par-
liament in the 35th of Edward I. appears (tha' the Returns be lost) by the Writs of
Expenditure of this Year (being the first we have left us in Prin's Parliamentary
Register) for the Cities and Boroughs, in which Liff, the Burghesses of St. Al-
bans are first upon the Roll. And that they were in Parliament before this
Time, may further appear by that Claus in the end of the Writ which I have
already taken notice of, viz. That they were to have their Expenditure for coming,
staying, and returning, prout in casu coniuncti hanc coniunctur, which words rela-
t to Ancient Custom, and extend to St. Albans, as well as to any other Bo-
rough there mentioned. And that they also were summoned at the same place of
primo & secundo of Edward II. (in whose Reign this Petition was exhibited,) you
may see in Prin's Parliamentary Registers, both Third and Fourth Parts; in the left
of which you may find the Names of the Burghesses return'd in the First and Fifth
of this King, as they might have been seen also in the Second, had not the
Return (as Mr. Prin then acknowledges) been torn off; tho' it is plain that they
appeared there; and so may be likewise lost for all the rest of the Years of this
King, till the Second of Edward III. when we find they appeared again, and so
continue to send Burghesses to this Day. And if it be a good Argument of
their Non-appearance from the defect of Records, I'll undertake to prove that
London and several other Cities did not send any Citizens to Parliament in sever-
ar Kings Reigns, as you may see in this Lift of Towns (where Writs of Expenditure
we now mention) of the 35th of King Edward I. where London, and
most other great Cities are omitted, and yet St. Albans is in. To conclude,
it is certain, that this was no new Claim of this Borough, as appears by a

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Writ
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a Writ of the 5th of Edward II. to the Sheriff of Hereford, that the Bailiffs of the Abbot having refused to levy the Expenses for Ralph and Peter Picot, who had served as Burgesses for the said Town in the last Parliament, whereupon the said Ralph and Peter set forth before the King, that the said Town used not to be taxed with other Boroughs of the said County for the Expenses of Knights, temporaebus retrodatae; but that it is a Free Borough, and used to be summoned to Parliaments, which have been summoned by the King and his Progenitors temporaebus retrodatae; and that the Burgesses of the said Town used to receive their Expenses as the Burgesses of other Boroughs of the Kingdom. To which Plea and Petition of the said Burgesses, when the King had appointed a Day both to the said Burgesses and Bailiffs of the Abbot, to appear before him inChester, they failing at the Day appointed, the King therefore illuded out this Writ to the Sheriff of Hereford to summon the said Abbot and Bailiffs to appear again before him, to shew Caufe why the said Ralph and Peter should not receive their Expenses aforesaid.

M. I will consider further of this Argument; for I must ingenuously confefs I never heard or understood fo much of this Matter before: But pr'yce proceed to the ref of your Authorities.

F. But that it was not only the Opinion of the Borough of St. Albans, and admitted by the King and his Council, but that also it was the Belief of succeeding Parliaments, that the Commons were part of the great Council of the Kingdom long before the 40th of Henry III. for Proof of which, I defire you to call to mind that King John in the 14th of his Reign made himself and Crown tributary to the Pope.

But Anno 40 Edward III. when the Pope demanded the Answer of this Tribute from the King, the Prelates, Dukes, Counts, Barons and Commons, upon their full Deliberation in Parliament, resolved with one Accord, that neither the King, nor any other could put the Realm, nor People thereof into such Subje&ion, sans affent de eux, without their Affent, viz. as well of the Commons as of the Lords; and that it appears by many Evidences, that if he had so done, it was done sans leur auent, and contrary to his Coronation Oath, &c. Now what can be more plain, than that above Three Hundred Years ago there was not the least Dispute that the Commons of England, (of which the Citizens and Burgesses were then undoubtedly a Part) ought to have been present in the Commune Concilium Regn, or Parliament of King John's Reign, and to have attented to that King's Resignation, to make so legal and valid, as well as the Prelates, Earls, and Barons.

M. As for this Argument, I need trouble my self no farther than to give you the Dr's Answer in his own Words, viz.:" All that the Resolution of this Parliament in this Cafe proves, is, that King John could not subject himself, his Realm or People, without their Assent; but proves not who they were that in such Cafes at that Time gave or denied their Assent, or how they did it; or whether 153 Years before this Resolution, the Commons were represented by Knights, Citizens, and Burgesses as at this Day. The Prelates and Barons gave their Answer first, that such a Subjection could not be made without their Assent, and then the Commons were asked what their Thoughts were, and they answered in the same Manner, and in the same Words the Barons had done, and when they answer all together, they do it in the same Form of Speech, conceived first by the Barons, without any Consideration whether the Commons were the same Body of Men, at the Time of executing the Charter of King John's Subjection, &c. as at that present, or no.

F. I must tell you, I am not at all satisfied with this Reply of the Dr's. For if there is no need to be taken of the House of Commons Answer to the Pope, given in fo solemn a Manner as this was, there is no Credit to be given to any Thing they do, when they once supposed to speak like Parrots by rote, and only as they were taught by the Lords, without any Consideration of the Truth of Falshood of what they averred. And tho' the first Proposal of this Matter was by the King to the Lords, yet the Pope then threatening to excommunicate the King, and put the whole Realm under an Interdict; it was certainly the Interest as well of the Commons as the Lords, to avoid the Blow by a wary and true Answer to the Pope's Demands. For had their Answer been so idle and frivolous, as you would make it, it would have been Advantage enough for the Pope to have returned in Answer to this Letter, (had what the Dr. alleges been true) that the upbraiding House of Commons had nothing to do to meddle or treat of any such Matter, since
since they were none of the Parties to the Agreement, nor one of the Estates, at that Time when King John resigned his Crown, and made himself and Kingdom tributary to his Holiness's Predecessors. Not was the Space of an Hundred Fifty Three Years, from the Time of King John, to the 40th of Edward III, so far beyond the Memory of Man, as that to memorably a Translation could not be well known to the Pope, as well as to the House of Commons then in being; since the making them a Third Estate, fell out but in the Time of their Grandfathers, so that it is scarce possible that the Memory of so remarkable a Translation, of which the whole World then rang, should be lost in Two or Three Generations.

But I shall now proceed to shew you, that as it was the express Judgment both of the Lords and Commons, that King John could not make the Kingdom Tributary to the Pope without their Contents in Parliament; so was it the Judgment also of the whole House of Commons in the Second of Henry V. and admitted by that Noble Prince and the House of Lords, that they ever had been a Member of Parliament, and that no Statute or Law could be made without their Consent; as appears by a Petition or Protestation presented by the said Commons to the King in Parliament, a Copy of which I shall now read to you, as far as it concerns the Matter in Question, "Our Soveraign Lord, your humble and trewe Lieges, that ben come from the Comune of your Lord, byfech'ing unto your riht wilshfes, that soo as it hath ever been their Libertie and Freedom, that they shoulde noo Statute, no Law be made, of les or they yaf thereunto their Consent, confideing that the Comune of your Lord, the which that is, and ever hath be a Member of your Parliament, been as well Affentors as Petitioners, that fro this Time loon noone shoulde be a Member of the Comune of my Skilful, asking Remedy by Mouth of their Speaker for the Commons, ourthe elfe by Petition written, that there never be no Law made thereupon and ingreded as Statute and Law, neither by Additions, neither by Diminutions by no manner of Term, no Terms, the which that should change the Sentence and the Intent asked by the Speakers Mouth, or the Petitions by forelaid yeven up in Wry systems by the forelaid without their Consent of the forelaid Comune, &c. This Petition is toplain that it needs no Comment, therefore pray tell me what you think of it."

"And I shall further give you the Dr's Answer to this Argument, which is to this Effect: "The Design of this Petition was not to set forth the Antiquity of their Existence, but their Right, that nothing might be enacted without their Consent contrary to their Intent and Liking; and to shew you it was never done since the Commons were a Third Estate, or (as they say) a Member of Parliament, therefore 'tis needless to prove that no body denies, that the Affents of the Commons was then and is now required to the making of all Statutes and Laws. But pray give me leave to ask you (with the Dr.) What were the Commons of England as now represented by Knights, Citizens and Burgesses, ever an essential Conduit Part of the Parliament from Eternity, before Man was created? Or have they been so ever since Adam? Or ever since England was People? Or ever since the Britains, Romans, and Saxons inhabited this Island? Certainly there was a Time when they began to be so represented. And that this is the Question between us, concerning which, whether you or my self be in the Right, I dunt leave to any impartial Judge."

"But notwithstanding your Dr's Answer, I think the King and Lords did here allow the Subsistence of this Petition or Claim, as the main Ground and Foundation on which it was built, viz. That the Commons had ever been Members of Parliament, and therefore that no Law, or Statute should be made without their Affents (which Encroachment upon their Liberties, it seems had been before endearcd by the King and Lords, and therefore let me tell you, that the Answer of the King in Parliament, is rather a full Concealment of the Truth of the Commons Claim, otherwise it is not to be imagined that the King and Lords would have left such a Claim..."
a Claim as of ancient Right, without any Denial or Protestation against it. But instead of this, the King and Lords allow the whole to be true; only the King referred to himself his Negative Voice of granting or denying what he pleased; which the Commons themselves do also allow him in the Conclusion to the Petition it saw, as you may see, if you please to read it at large. And farther, that this Affirmation of the Commons was no other than a Renovation, or Memorial of the ancient Law of the Land, in that Point, is more fully explained and confirmed by a Petition to King Edward II. in Parliament, of all the Bishops, Prelates, Counts, Barons, and others of the Commons, in the 18th of his Reign, about an 100 Years before this of the 8th of Henry V. setting forth, That they held their Manors of the King in Capite, as well within the Forests as without, to which Manors they held Cotise (i.e. Woot) Appendant, and of which the Seignories had been rent off by the Acre, half Acre, and Hoo, in improving their said Manors, and that thereupon the Officers of the King had made Seizure thereof, because they had not the King's Licence so to do, and therefore pray they may improve their said Manors, &c. To which Petition it was an answer by the King and his learned Council in Parliament, That this could not be done without a new Law, to do which the Commons of the Land would never Assent; and concludes, Infra coronem Regis. From whence I make these Observations, That the King and his Council do hereby declare it, (as the ancient Custom of England, that no new Law could then be without the Assent of the Commons or Commons of the Land,) and also, that this Commons was a distinct Body from the Commons of the Tenants in Capite before-mentioned, who were the Peers that put up this Petition.

And besides this, I can show you divers Precedents to the same Purpose, and particularly a Declaration or Protestation to Edward III. by the Commons in Parliament, that they would not be obliged to any Statutes or Ordinances, without the Assent of the said Commons. Which is also farther confirmed by another Petition of Right, or a Protestation of the Commons to King Richard II., as it is to be seen in the Parliament Rolls of the 6th of Richard II. (Pr. r. 68.) wherein they pray against a pretended Statute made by the King and the Lords, against those who in the Statute of Henry IV. are called Lollards, in which they set forth, that such Statute was never affirmed to by the Commons; and therefore pray that it may be amended. And pray observe the Reason, for it was not their Intent to be just, nor to oblige themselves, or their Successors, to the Prelates, more than their Ancestors have been in Times past.

From all which we may observe, that the Commons do by all these Petitions and Protestations, make as strong a Claim by Precedent for themselves and their Ancestors not being bound by the Acts of the Bishops and Lords, a-the King could make for himself and his Ancestors, touching his own Prerogative by Precedent. But as for your Queries on this Petition, since they are not your own, give me leave to tell you, I look upon them as impertinent: For who ever supposed that the Commons claimed a Right by Precedent ever since the Creation, or ever since the first Peopling of this Island? Since any body may fey, that this Word ever is to be understood according to the Nature of the Subject in hand, viz. from the first Institution of the Saxon Government in this Island. Now pray give me leave to put you a Cafe; Suppose you should affirm, that the Crown of England hath ever been Successive, and not elective, would it not be more cavilling, to ask you, whether it was so, jure Divino, ever since Adam? But as you will leave it to any immediate Judge, who is in the Right, you or I, so shall I likewise leave it to them to consider, which is most likely. That your Right, your Dr. and some of our Modern Antiquaries, should make the House of Commons no ancletner than about the latter End of Henry III. or middle of Edward I's Reign; or the Stanton Judgment of both Houses of Parliament, with the Assent of the King, and his learned Council, who have infallibly upon the Content of the Commons, as their ancient and undoubted Right, beyond all Time of Memory.

At 9th you have proved it go enough, that it was the constant Opinion of more than one Parliament, that the Commons have been before the 49th of Henry III. Members of the great Council of the Nation; but how long before that, they do not set forth. But since Parliaments are no more Infallible than general Councils, I hope you will pardon me, if I do not give Affirmative Credit to their Testimony, since in an illiterate Age, as that was in which the Commons
Dialogue the Eighth.

moss make this Petition, it might happen that not only they but the King himself, and his Council at that Time, might not certainly know, how long and how all the Writs of Summons to them before the 49th of Henry III. are lost, I pray them from this general Right of Prefcription you so much talk of, that there must have been Commons summoned to Parliament before that Time; for I have now somewhat very material out of Mr. Pryor's Parliamentary Register, to object to your Argument from the Pla of the Towns in ancient Deeds of the Shires (as you told me at our last Meeting but one.) But first let me hear the rest of your Arguments from this Prefcription of Knights, Citizens and Burgesses appearing in Parliament, before the 49th of Henry III. For since you have now proved the first Year were there by an undeniable Record in the 11th of Edward I. I shall now confine my self to Sir Henry Spelman's and Sir William Dugdale's (as well as the Dr.'s) Term of the 49th of Henry III.

I shall observe your Defires, and in performing of which, I shall pursue this Method: I shall first give you a general Definition of Prefcription, and I shall then prove, that the Knights, Citizens and Burgesses, have always claimed to appear in Parliament by virtue of this general Right of Prefcription. Now the Terms of the Law tell us, "That Prefcription is, when a Man claimeth any Thing for that he and his Ancestors and Predecessors, whose Estates he holds, had, or used anything in all Times whereas no Memory is to the contrary." Now pray let us see to what Time this is limited, that shall be laid to within Memory, and what was ancienly accused from a Point of Time in a Prescription; Which may be best learnt from a Petition of the Commons to King Edward III. in the 49th of his Reign, which is to be found in the Parliament Roll of that Year, wherein among other Petitions of the Commons, this one is, which I shall render and abbreviate out of French. "Inasmuch, because the whole Time of King Richard I. is held for temps de Memorie, that it would please the King further to limit this Time; so that it do pass the Coronation of King Edward, Grandfather to the King that now is. But mark the King's Answer to this Petition, "Let the Law continue as hath been hitherto used, until it be otherwise ordained." So that since there has been no Alteration in this Point from the Reign of Edward III. then the Time beyond Memory, or whereas there is Memory to the contrary, continues still beyond the Time of Richard I., for little Sir Edward Coke in his Comment upon him, says, "That this was intended from the first Year of his Reign, for (from that Time) being indefinitely, doth take in all the whole Time of his Reign, which is to be observed. Having fixed a certain Time of a general Prefcription beyond Memory, I shall now proceed to shew you, that the Claim of the Commons appearing as the Commons Council of Parliament of the Kingdom is beyond that Time. Which since I cannot do directly, (by Rescript of the Lords of the Records of Parliament of whole Times) any farther than has been already in the Case of the Burgesses of St. Albans (which alone is, I think, sufficient to satisfy any reasonable Man) we must (for such a Case) use of such Collaterall Proofs and Records, which they do not directly, yet by undeniable Consequence will prove the Point in Queston. I shall therefore in the first Place make use of a Writ in the Exchequer of the 24th of Edward I. directed to the Barons thereof, reciting, 'That whereas the Mayor of Borough in their Petition to the King, that the said Towne is an Army, Borough, nor Demesne of the King's, so that the Towncenemen were not to be taxed as Citizens, and Burgesses, or Tenants in ancient Demesne, in any Taxes granted to the King, and his Progenitors, but only with the Community of the said County of Warwick; and yet that the Taxers and Collectors of the said Towne have endeavoured to levy a 4th of their Goods (towards an Aid granted by the Communities of the Cities and Boroughs to the King) to their Damage and Improverishment; and therefore pray remedy: The King therefore orders, that the Rolls be search'd concerning such Taxations in the said Towne, and it evidently appears by them, that it is as they set forth, and that the said Men were always taxed with others without the Towns, Boroughs and Manors aforesaid, in all Payments of this Sort; that then they should not permit the said Taxers and Collectors to distrain the said Inhabitants to pay the King by reason of such Aids.
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"suid Conceision of a 26th, otherwise, quam in 26a temporibus retroversisti in hujusvis coacti est, nisi conferuetis, sic!" From which Record we may draw these Conclusions, First, That this Town of Coventry did not hold of the King, and yet was a Borough, and as such few Members to Parliament in the 26th, 28th, 29th of Edward II as appears by the Return of Writs of that Year. Secondly, That yet it is prescribed, retiveritis in all Times past, to be taxed with the Body of the County, and not with the Communities of the Cities and Boroughs, in all Taxes granted to the King and his Progenitors; which plainly shews, that the Cities and Boroughs granted Taxes by themselves in the Times of his Progenitors, that is, in the Times of King John at the least. Lastly, That the King orders the Rolls to be searched, which had been idle Directory, had it then been known or believed, that the Cities and Boroughs never gave any Taxes for themselves in Parliament before the 49th of Henry III, but little above Forty Years before the Date of this Writ.

I shall shew you a like Writ (which is to be found in the same Place) for the Towns-men and Tenants of Beverley in the County of York, in the 6th of Edward II, sitting forth in their Petition, that they had been taxed to the 26th yearly given to the King per Communates Comitatus, (i.e. the Commons of the County) by the Taxers and Collectors of a Subsidy of the 26th in the 1st of County, altho' they and their Ancestors had been accustomed to be taxed to all Alts, as well as the King, as to his Progenitors, granted per Communates Comitatum et Regnum, with the Community of the County, and not with the Communates Comitatus et Burgarum; yet that the Taxers and Collectors of the 15th, lately granted by the Commons of the Cities and Boroughs, do grievously distress them, to their great Damage, and therefore pray remedy. Whereupon the King commands that the Rolls be searched of such like Taxations; and if it appear that the said Town has been always hitherto taxed, as they in their Petition let forth, that then they shall be discharged from the said 15th.

From which Record we may conclude, that this Town of Beverley, tho' an ancient Borough, (and as such was summoned to send Burgesses to Parliament in the 26th of this King) yet did not hold of the King in Custom, nor in ancient Demesne. Secondly, That Alts had been given the King and his Progenitors per Communates Comitatum, i.e. by the Commons of the Counties, which could not be done but by their lawful Representatives, and that in Parliament. But how far these Progenitors must extend, I need not repeat so you, the Ground of which Petition being admitted by the King in Parliament.

M. Thos Authorities tho' material, yet do not in my Opinion reach the Point you were to prove, viz. That the Knights, Citizens and Burgesses appeared in Parliament before the Reign of Richard I, for both these Authorities, (the admitted for good) yet reached no higher than King John's Time, which is within Memory, as your selfe have now let forth, since the Word Progenitores need not be extended any farther than the Time of that King, who was great Grandfather to Edward the Fifth and Second, to whom these Petitions were made by these Towns-men, and so do not clearly amount to your full Time of Proscription, viz. before the Reign of Richard L.

P. Well, if you grant this, you have lost your Cause, since certainly the Reign of King John is long before the 49th of Henry III but since you will be so over-critical, I will shew you some Claims by Prescription beyond all Time of Memory, made by the Tenants in and about Demesne, from being taxed to contribute to the Wages of Knights of Shires; and if they thus prescribed, it is plain there must have been Knights of Shires chosen, against paying whose Wages they preferred to have had this Privilege. Now this Prescription must be very ancient, since in Mr. Lanchard's case we have the Place I have quoted, there has been no new Tenures in ancient Demesne, since the Time of William I. But pray see the Writ it self in the old Register of Writs, (which by the Bye is there put down only as a Form for recording all other Writs of this kind; there to be found, for other Towns, and particularly the Tenures of Edithune Hampstone, whenever there was occasion) and therefore it is not to be wonder'd that neither the Name of the King, nor of the Place be express'd in Words at length. The Writ it self is not very long, therefore I shall give you in Latin as far as is material. Ren Vivonnis L. salutem omnibus habituariis, nobis hominibus et Tenementis de Huis, quod vel de Antiquo Domino Corone Anglicus ut dictur, quaunde sit et curum Antecesoris Tenentes de eadem
Dialogue the Eighth.

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Adolem Materie à tempore quo non extas memoria; semper haftens quasi esse conu-

versum de expensis Multuum ad Parliamentum noster & Progenitorum nostrorum Regum

Angliae pro Communitate dEDIT Comitatum coeminentium, ut, & then proceeds, "That

a i leas the Sheriff diffuses the said Tenants to contribute to the Expences of

the Knights that came to the last Parliament, to their great Damage, otherwise

defit from his said Diffree, and do not compel the said Tenants to contribute

otherwise quam omnibus temporibus retrodata. And now tho' this Writ be

without any King's Name or Date, yet it appears at the Bottom it was inflicted

by G. L. Ejerepe then Chancellor, and William de Hereftrn, Clerk of the Chan-

cy, and this must have been before the 13th of that King, because it appears by

the Cloke Rolls of that Year, that in December the Great Seal was delivered to

William d' Ayremyn, under the Seals of William de Coffe, and the said William de

Hereftrn, Clerks of Chancery, who are often mentioned in our Records to have

been Keepers of fo temporis, till the Second of Edward III. when the said

William de Hereftrn had the sole Custody thereof committed to him.

But there is yet a perfecter Writ of this kind in the 50th of Edward III. extant

In the Rolls directed to John de Cobbon, and Four other Knights therein named,

exciting that whereas Simon Archbishop of Canterbury claims as well for himself

as his Predecessors, and their Tenants, hitherto à tempore quo non extas memoria;

for certainlands held in Gawel-kind in the County of Kent, which ought to be

free from the Expences of Knights coming to our Parliament, as well as those of

our Progenitors; and concludes with a Superedes to the said Sheriff nor to move

the said Tenants, until such Time as the King be further informed, and that

He by the Advice of his Council has ordained what is to be done in the Premisses.

From both which Writs we may draw these Conclusions; First, That there was

at the Time of the granting these Writs, a Claim by Prescription, Time out of

Mind, allowed for all Tenants holding in the Archdiocese in Gawel-kind, to be

exempted from contributing to the Wages of Knights of the Shire; or else these

Petitions, and the Writs upon them, had been idle and ridiculous.

Lastly, That this Claim of being thus exempted Time out of Mind (which as I

have already proved, extends beyond the Time of Richard I.) is allowed by the

King himself for good in both these Writs; only in the last the King will be

informed whether they are Tenants in Gawel-kind or not. So that the Conclusion

must be, That if these Tenants in Ancient Deemne, and Gawel-kind, were always

exempted from paying to the Wages of Knights of the Shire beyond Memory,

i.e. by Prescription, then certainly these Knights must have been chosen Time

beyond Memory. I could give you several other Writs of like Nature, but I

will not overcharge you. Now certainly if the Knights of Shires were thus

elected Time beyond Memory, the Citizens and Burghedels must have been so too,

since in Scotland where there were for a long Time no Commissioners for the Shires

yet the Cities and Boroughs ever sent Delegates to Parliament, as your Dr. himself

allows.

M. I must beg your Pardon if I cannot come over to your Opinion, concerning

this Prescription of Knights of Shires, Citizens and Burghedels appearing in

Parliament before the 4th of Henry III. since Mr. Prym in his Second and Third

Part of his Parliamentary Register has proved, 1. That all the Words you intit

upon to prove this Prescription, are to be understood in another Sense than what

you will now put upon them; so that tho' Mr. Lambard and others of great

Note lay the Original Title and Right of all our Counties, ancient Cities and

Boroughs electing and sending of Burghedels to Parliament, to be by Prescription

Time out of Mind, long before the Conquest; yet against this Opinion Mr. Prym

argues thus (whole Arguments I shall contract, because it would be tedious
to recite them all verbatim): That as for the Wages of Knights of Shires (which

is the Principal Thing you insist on in this Argument,) the ancient Writ extant for

their Wages, are those of 28th and 29th of Edward I. and no Records or Law-

Books I have seen, derive their Title higher than the Reign of Edward I. The first

Statute concerning them is that of the 12th of Richard II. which only enacts,

Cap. 12.

that the levying Expences of Knights shall be as hath been used of old Time.

The next Statute of the 11th of Henry IV. enacts that Knights of Shires unduly

returned, shall lose their Wages of the Parliament of old Time accustomed, not at, or

before the Conquest accustomed; Yes no Man can prove there were any Knights for

Counties

Vid. Observa-

tions on Writs

of Summons.

Part 2. p. 175.


Part 2. p. 175.

per iusum.
Counts elected, and sent to Parliaments by the King's Writs, before the 49th of Henry III, not to the Reign of the Conqueror, or before the Conquest, as Mr. Lambard would strain it. Now as for the Words Antecessores & Predecessores in the Writs you have cited, the former may very well signify the Ancestors of those Inhabitants of Boroughs or Towns, and the latter the Predecessors of the King that then was, which in the Time of Edward II, and Edward III, when those Writs were granted, need extend no higher than the 49th of Henry III: and as for those other Words in these Writs, as toto temporibus retrodatis, and a tempore quo non extat memoria, they must have the like Interpretation, or what is equivalent to it, viz., in all Times past, or Time out of Mind; i.e. before there were any Knights elected for the Counties, they were always free from contributing to their Wages; so that this Prefixedion need not extend higher than the 49th of Henry III: above mentioned; since which Time it is true (as they there let forth) that they and their Ancestors in all Times, or Time beyond Memory, have always used to be quit from such Expences of Knights: Now there were many Prefixedions and Customs in use in Edward III's Time, and since, which may be well said to be Time out of Mind, yet certainly had their Original not before, but long since the Conquest, as you may read in Brooks, Fitzherbert, and other Law-Books, Title Custom, and Prefixedion; and Cooke's first Inlinit. My Lord Hubbard in his Reports, That which hath been used, or preferred in but Two or Three Ages only, or out of the Memory or Mind of Men then being, is reputed a Legal Custom, or Prefixedion, 32 Hen. VI. Brook's Tit. Prefixedion. Therefore this Prefixedion of Tenants in ancient Demefne to be exempted from contributing to Knights' Wages, will no ways warrant Mr. Lambard's Conclusion from it; Ergo, there were Elec- tions of Knights of Shires before the Conquest. I am certain that at this Day Tenants in ancient Demefne can plead, that both they and their Ancestors, Time out of Mind, never were accustomed to pay Excife for any thing for which Excife is now paid; will it not therefore follow, Ergo, all other Places now subject to pay Excife, were liable to it before the Conquest, when it is a Duty imposed but since the late Wars? So that Mr. Pryn here proves, that your and Mr. Lambard's Argu- ment from the Tenants in ancient Demefne, and Gavel-kind, not paying in all Times past, or Time beyond Memory, to the Wages of Knights of the Shires, is altogether fallacious, and inconclusive.

P. Pray Sir give me leave to reply to your Answer before you proceed to speak of Boroughs. First let me tell you, Mr. Pryn, very much forgot himself when he here says, that the first Writs for Wages of Knights of Shires are but of the 26th or 29th of Edward I. since you know better, for your Doctor has printed the Writs of Expences for the Knights of Shires that served in this Parliament of the 49th of Henry III, and you yourself have urged it to me, that this was the first Time that these Knights had their Expences allowed them, because there was no Clause of prout in Casu simili, expressed therein, which I told you might only be through Inadverency of the Clerks; since the Doctor there gives us another Writ of the 42d of that King, whereby it appears that the Four Knights of Counties who had appeared before the King and his Council at the foregoing Parliament, were ordered their Expences, for going, returning, and staying at the said Parliament: Which thou makes these Writs were no new Things; and if so be these Knights had their Expences allowed them only for their Attendance at a Parliament, it is much more reasonable and likely they had their Expences allowed when they made a Part of it.

But to put this out of all doubt, Mr. Pryn himsell has cleared this Point, not only by printing this very Writ in the 4th Part of his Parliamentary Register, but by declaring in the very first Section of that Volume, that tho' after this Writ no more are to be found of this Sort extant upon the Rolls of Henry III till the 26th of Edward I. yet they were constantly issued out at the End of every Parliament held after the 49th of Henry III, till the 28th of Edward I. (being 35 Years Space) as this Clause in the Writs of the 28th, 29th and 32d of Edward I. prout aliquis in Casu constittit juris consequiat, affirms us. But all the Bundeles of Writs from the 49th of Henry III till the 29th of Edward I. being lost; and no Writs of Summons from the 49th of Henry III. entred in the Clause Rolls till the 22d of Edward I. tho' returnable into Chancellorry, no wonder that these Writs de Expensis (then not returnable at all) were
not enrolled till the 28th of Edward I. after which they were usually endorsed on the Claue-Roll till the Second of Henry V. So that by Mr. Prym's own Confession, the Lists of the Writs from the 49th of Henry III. till the 28th of Edward I. is no Argument at all to prove that there were no such Writs before the 49th of Henry III. unless you could prove to me, that the Writs and Records of all those Parliaments had been so well preferred, that there are none loft or embezzled, which Mr. Prym acknowledges to the contrary; for if they were loft after the 49th of Henry III. pray give me a Reason why the like Writs of Summons and Expences, might not be loft as well before that Time.  

Having, I think, sufficiently answered Mr. Prym's Argument from the not finding any Writs of Expences before the 28th of Edward I. from what he himself said afterwards upon better Consideration, I shall now proceed to reply to that other Part of his Argument, from the equivocal Use of the Words, old Times accustomed, and in a tempore quo non existit memoria; which he will have to signify a Space of Time only beyond the Memory of any Man living: Whereas the Words Custom and Accustomed, when used of any general Custom or Usage all over the Realm, is still to be taken in much larger Acceptation, as all our Law-Books will teach you.  

But I shall not dwell upon this, but shew you that those Authors, whose Works you have read, had not true Notion of this Expression in our ancient Records and Pleadings; viz. a tempore cujus contrarij memoria non existit, which has been always understood (as Littleton here tells you) for a Time beyond the Reign of King Richard I. So that wherever you find these Words, totis temporibus retrodis, ut de Tempis dont memoria des voucher non curse aut contrarij, in any Records, they are always to be understood of a Time older than that now mentioned. You may prove a contrary Usage, but before that Time no Deed can be given in Evidence, nor Custum alluded beyond it: And that this is not the Sense of Littleton alone (who indeed makes a Query about this Time beyond Memory) I appeal to all our Year-books, and if you please to see all the considerable Law-Learning at once about this Point, pray consult Roll's Abridgment (or Common-place-book) p. 264.  

Title Preceptio; where he gives you these Conclusions, from the Year-books, which I shall here read to you in English.  

1. "It is clear enough, that there was a certain Time called Time of Memory in a Preceptio; and for this he cites the Year-books of 12 H. 6. 75. per Newton.  


2. "The said Time of Memory in a Preceptio was from the Time of King Richard I. 20 H. 6. 3. Dyer Mar. 119. s 3 4. B. The Time of King John is within Memory, Lit. Sed. 170. 34 H. 6. 36. B. 47. So that the said Time of Memory was from the Beginning of the Reign of King Richard I. (who was Brother to King John, who was Father to Henry III.) for the whole Time of his Reign was within Time of Memory, 20 H 6. 75. per Newton again, 12 H. 4. 9. B. where the Seifin of King Richard is allowed for a good Title, and for a Warrant in his Time.  

3. "So it seems by these Words a tempore cujus contrarij memoria non existit, is properly and generally intended for all the Time before that, and before the Statute of Limitation, was meant of that against which no Proof could be made to the contrary, either by Testimony or Evidence in any Time before, without any Limitation of Time. The 34 H. 6. 36. B. 37. seems to prove this; so that the Time of all Preceptio was in those Days the same with the Time of Limitation of Seifin in a Writ of Writ, as Littleton tells us.  

And since you have not as yet brought any considerable Proofs (but only bare negative ones which have been answered,) against this Preceptio of the Election of Knights of Shires Time beyond Memory, what you have said to the contrary is little to the purpose; for all the Modern as well as Ancient Law-Books are against this Notion of Mr. Prym's. For in Judge Tertiens's Reports, Gibbon and Holcroft's P. 31, 32. 

Cafe, you will fee that whereas Unity of Possession is by the Statute of the Dif
dolution of Monasteries a good Discharge of Tithes; yet if the Monastery were founded deince Temps de Memorie (as this Abby of Vale Royal was in the Time of Edward I.) a mortant Unity since the Foundation, was held by the whole Court for no good Discharge of Tithes by Preceptio as the Plaintiff had laid it; for the Defendant shewing that the said Abbey was founded since Time of Memory (theo above Three Hundred Years old) was a sufficient confestling and avoiding.  

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So that Mr. Prym's Arguments whereby he would have the Words, all Times passed, and Time of which no Memory is to the contrary, to signify a much less Space of Time in thefe Wris than I have now cited, and to be reftained within the 9th of Henry the Third, will not signify much, fince they are expreffly againft all our Law-Books: Neither doth he cite any Cafes for his Opinion out of Brook or Fitzherbert, tho' he quotes their Titles. But as for this Quotation from Cook's first Inflitutes, there is nothing there to connnance his Notion, more than he tells us that from Braden and Vela, (upon the Words de Temporis dont memoriæ, &c.) doceere oportet longum tempus ... qua quæ exceedit memoriam hominum, tale eun tempus sufficit pro jure; but without telling us what was then under foot by this memoria hominum; and a little after upon thefe Words, Auge proof al contrarie: For if there be any fufficient Proof of Record or Writing to the contrary, albeit it exceed the Memory, or proper Knowledge of any Man living, yet it is within the Memory of Men: For Memory is twofold: First, by Knowledge; as by Record, or fufficient Matter of Writing. Secondly, by his own proper Knowledge, and for this he cites divers Year-Books in the Margin. But as for all that long Quotation Mr. Prym has here given us, I know not whence he had it, for there is not any Thing in Hobert's Reports to that Purpofe, in the Places he has cited. And as for the Year-Book of 34th of Henry the Sixth, and Brook, they are both directly againft his Notion, as you may fee by what Rolls has been already quoted from the fame Places. And though it is true in Prefcriptions of Ways, and Commons, and other fuch petty Things laid Time beyond Memory, the Judges or Jury are not fo exed, as to make the Plaintiffs prove their Prefcription on beyond the Time of any Man then living: Yet if they preface for never fo long, it is fill in the Power of the Defendant to prove that there was no fuch Prefcription; and this as high as before Richard the First, but no higher. And thus high we affert the Coming of Knights of Shires to Parliament; for I do not pretend to lay it as high as the Conqueff, or before, as Mr. Lambard does. If it prove beyond the Time now specified, it is fufficient to diſprove Mr. Prym's Notion. But to let you fee I am a fair Adverfary, I will admit for once, that this Time beyond Memory shall be taken in a strict literal Sense, for only as far as is beyond the Memory of any Man living: Now, pray, fee what you will get by it; if you remember that the Wris I but now cited from the Regifter, for the Tenants in ancient Demefne their being discharged from contributing to the Wages of Knights of the Shires, was laid, a tempore cujus contrariis memoria non exiftit: And thefe Wris are prob'd alfo to have been infh'd within the 15th of Edward the IId: and if fo, pray reckon backwards, and fee if the 49th of Henry the IId, (when you fuppofe Knights of Shires to have been firft chof'n) does not fall within the Memory of moft Men then living; for Henry the IId reign'd fomewhat more than Seven Years after this 49th, to which Seven Years, if you add the almoft 35 Years Reign of Edward I. it makes 42 Years; then add thefe 15 Years of Edward II. and, if you pleafe, fee if the whole makes above 57 Years; which certainly was within the Memory of many Men then living: And it had been a tenfeles Thing for the Chancellor, and Clerks of Chancery, that then were, to have granted thefe Wris of Exemption for a Time beyond Memory, when they themselves might have remembred when Wages for Knights of Shires firft began.

M. As for what you have faid for this Prefcription of Knights of Shires, I will not difpute it farther with you, fince it is a Point of your Common Law, (in which I confess my felf but meanly skill'd,) but I fhall take farther Time to ad vive with thofe that know better. In the mean time, as for the Cities and Boroughs, let them have appeared when you will, their coming to Parliament could not be fo ancient as before the Time of Richard I. much lefs the Conqueff, as you fuppofe; fince Mr. Prym hath, in the fame Second Part of this Parliamentary-Regifter, traced the Summoning of the Boroughs to their very Original, and proved it could not be ancienter than the 49th of Henry the IId. I fhall here contrad this Argu'ment, and give you them, as I did the former. First, He here proves, that there were never but 170 Cities and Boroughs, who fent any Members to Parliament, of which 170 (in his Catalogue) Nine of them never had but one or two Precepts, and others but four Precepts of this Nature fent them upon none of which Precepts the Sheriffs made any Returns of Burgeldes, as thefe: Bellivi Libertatis sullum mihi dedarams responsiam, or minde insecutum, are left: Whereupon they never had any more Precepts of this Kind fent them to this Day, Christ-Church in Humphries only excepted.
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excepted; which of late, Years hath sent Burgesses to Parliament; so that in Truth, there were only 161 Cities and Boroughs in England that ever sent Members to Parliament, during all the precedent Kings Reigns; viz. From the 26th of Edward the first to the 12th of Edward the IVth. Secondly, That 22 more here named, who seldom sent any Burgesses, though they were summoned by the Sheriffs Precepts to elect Burgesses, without any great Intervals of Time, to Six or Seven succeeding Parliaments, yet most of them had a long Discontinuance of Time; some of above 200, others above 300 Years Distance, between those few respective Returns: Of which, he here gives you several Instances, and refers you to his precedent Catalogue of Returns for the Proof of it. So that there were but 112 Cities and Boroughs (taking in the Cinque Ports and all) who sent Members to Parliament in the Reign of Edward the first: Seven of which made only one Return, and no more, for ought I can discover, before or after Edward the IIIrd's Reign, till of very late Years.

Yet that in Edward the IId's Reign, there were Precepts issued by the Sheriffs and Returns of Burgesses for 19 new Boroughs there named, which (for ought I can discover) never elected any Burgesses before. Fifthly, That under this long Reign of Edward the IId, there were Sheriffs Precepts issued to 19 more new Boroughs, and Returns made upon them to serve in Parliaments, of great Councils, who never sent any Members before; and Precepts issued, that made no Returns at all thereupon. As for the Cinque-Ports of Dover, Romney, Sandwich, Winchelsea, Hastings, Hythe, and Rye, though there be no Original Writs for, or Returns of their electing and sending Barons to Parliament now extant, before the Reign of Edward IIIrd, yet it is apparent, by the Clause-Rolls, that they sent Barons to Parliament in 49th of Henry, and during the Reign of Edward I. and II. Of which more anon. Sixthly, That King Richard II. Henry IV. and Henry V. created no new Boroughs at all, neither were there any Writs or Precepts issued to, or Election of Citizens or Burgesses by any new Cities or Boroughs, but such as elected them before their Reigns. Seventhly, That about the midst of King Edward the IVth's long Reign, there were Precepts issued to, and Returns made, by Five new Boroughs, and no more, which never sent Burgesses to Parliaments before, viz. Gatton in Surrey, Hattlesbury, Hyndford, Wessbury, and Wootton-Bayett, all in Wiltshire; yet very poor inconsiderable Boroughs, though they elect Burgesses at this Day. That during Edward the IVth's Reign, there was one new Borough, (here named) which began to send Burgesses to Parliament under him, though it never sent any before.

F. Well, but how came this about, that so many new Boroughs were made in some Kings Reigns, and few or none in others; and so many omitted, that had served before in other Parliaments?

M. Pray read on, and you will see, this Author gives us a very good Account of that; and imputes it to Two Causes. First, The Partiality and Favour of the Sheriffs, and the Ambition of the Neighbouring Gentry, who desired to be elected in such new Boroughs. Secondly, The meer Grace and Favour of the King, who by divers Charters to new Corporations have given them the Privilege of sending Burgesses to Parliament. For Proof of which, pray see what this Author here farther says. It is evident by the precedent Sections, and Catalogue of ancient Cities, Boroughs, Ports, and their Returns of Writs and Elections before specified with the general Clauses after them, non sunt alia, or utile Civitates nec Burgi in Bal- ibid. P. 228, liva met, or in Comitatu pradit, prater Wycombe, &c. As you may see by the 229, 234 Return of the Sheriff of Bucks, Anno 26. of Edward I. where he denies there were any Cities or Boroughs in his whole County; and yet the very next Parliament but one, within Two Years after, the Sheriff of Bucks returns no less than Three Boroughs; viz. Aynstones, Wycombe, and Wendover, with the Burgesses Names that were elected in them; So that the 78 new Boroughs, here named, were lately set up in the Counties since Edward the IVth's Reign, by the Pratice of Sheriffs, and the Ambition of private Gentleman seeking to be made Burgesses for them, and

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Consent of the poor Burgess of them, being counted and sealed by them for their Votes, without any Charters from the King, and are all mean poor inconsiderable Boroughs, set up by the late Returns and Practices of Sheriffs.

And tho' others may conceive, that the Right of our ancient Boroughs or Cities electing and sending Burgesses and Citizens to our Parliaments, proceeded originally from some old Charters of our Kings heretofore granted to them, and to which Opinion I once inclined; yet the Confederation of the new Discovery of the old Original of Writs for electing Knights, Citizens, and Burgesses, I found in Cesar's Chappel, hath rectified my former Mistake herein, and abundantly satisfied me, that neither ancient Custom or Precedent before or since the Conquest, nor our King's Charters; but the Sheriffs of each County's Precepts and Returns of Elections of Burgesses and Citizens for such Boroughs and Cities, as they thought meet by Authority and Power granted to them, in and by this general Clause in the Writs of Summons to every County before every Parliament, enjoining them in these Words, This præcipuum forniner injungentes, quod de Comitibus prædire duo ministis, & de quibus citatis duos Gece, & de quibus Burgo duos Burgenses de difcreteribus, etc. per dilatationem legit, etc. pro ad nos ad quos, etc. Etc., etc., etc. was the true Cause, etc. By virtue of which general indefinite Clauses used in all Writs of Summons ever since the 23d of Edward I., without designating what particular Cities or Boroughs by Name within every County the Sheriff should call to elect, or send Two Citizens or Two Burgesses, but leaving it wholly to each Sheriff's Liberty and Discretion to send the Writ directed to him to what Cities and Boroughs he pleased; thereupon every Sheriff used a kind of Arbitrary Power in the Execution of this general Clause, according as his Judgment directed, or his Affections, Favour, Partiality, Malice, or the Solicitations of any private Boroughs to him, or of Competitors for Citizens or Burgesses Places within his County, swayed him. This is most apparent by some Sheriffs in several Counties returning more Boroughs and Burgesses than their Precedents, others fewer; some omitting those Boroughs returned by their Precedents, others casting Elections and Returns to be made for such new Boroughs, which never elected or sent any before, nor after their Sheriffs' defaults, as is evident from the Returns Anno 32. 33. E. 1. and 34 of E. 3. for Devon. Anno 26. E. 1. for Dorset. Anno 33. E. 1. for Oxfordshire. Anno 28. E. 1. for Hampshire. Anno 33 and 34 of E. 3. for Somerset. Anno 25. 27. and 28. H. 6. for Wiltshire, etc.

So that the first Writs or Memorials of any extant on Record for electing Knights, Citizens, and Burgesses to come to Parliament, are those of the 49th of Henry III. but these Writs only commanded that the Sheriffs should cause to come Two Knights, &c. of each County; and the like Writs were directed to the Cities of London, Lincoln, and other Boroughs of England, to elect Two Citizens and Two Burgesses for each of them, and the rest of the Cities and Boroughs in England; the like Writs were also directed to Sandwich and the rest of the Cinque Ports, without expressing their Names, or Number in each County: And this Form I conceive (says Mr. Payne) continued till the 23d of Edward I., when the afore-mentioned general Clause authorizing and intrusting every Sheriff to cause Two Citizens and Two Burgesses to be elected, &c. out of every City and Borough in his County, was first put into the Writs, by Authority and Colour whereof every Sheriff sent Precepts to what Cities and Boroughs of his County he pleased.

F. I have with Patience heard this long History of Mr. Payne's concerning the Election of Citizens and Burgesses, from which I must notwithstanding make bold to differ. For tho' I own him to have been a Man of great Learning and Industry in Matters of Records, yet I doubt he was often too quick in taking up his Opinions upon slender Grounds. Therefore for the answering of him, I shall first throw the Improbability of his Suppositions, and in the next Place shew the Use of no other Conclusions than what his own Book will afford us, as to the Writs of Summons, Returns, and other Things he lays too much Stress upon. In the first Place, for the Notion of Sheriffs sending Precepts to what Cities and Boroughs they pleased, and consequent Members making as few or as many as they pleased to Parliament as they would; that this was not so at first is evident from those very Writs of the 49th of Henry III., by which it appears that they were not then directed to the Sheriffs, for any more than to the Counties; but as for the Citizens and Burgesses, and Baron of the Cinque Ports, they were then directed
directed to themselves; and he also confesseth, that this continued so from that Time till the 23d of Edward I. So that all this while (being about 28 Years) it seems the Nomination of what Cities and Towns should send Members to Parliament did not depend upon the Will of the Sheriffs, but upon some other end. And I have asked you once (tho' without receiving any Answer) what Rule Simon Monford went by, to tell what Cities and Boroughs were to send Members, and what not, since the Words are only in general, de quotufet Burges, &c. And therefore pray answere me now if you can.

M. I conceive in the first Place, as for the Cities, Simon Monford Tint to those that were anciently esteemed so, as such as had Bishops Sees annexed to them, such as London, Lincoln, particularly named in those Writs, and others of the same Rank; and as for the Boroughs, tho' we have not the Returns of them left us, yet I suppose they were such walled or other Towns, as were of some considerable Note in England; such as he thought were most proper for his Turn.

F. That this could be no Rule, appears by this clear Proof. First, That neither Canterbury and Lincoln, tho' the Sees of the Bishops, were counted Cities in the Time of Edward I. nor long after, nor yet Ely; for it appears by the Lifts that Mr. Prym hath given us, that it never sent Burghes but only once, and that only to a great Council, till of late Years. So that the Sees of the Bishops was it seems no general Rule to make Places capable of sending, or not sending of Citizens to Parliament.

And in the next Place as to Boroughs, that is pure Imagination, that none but considerable or walled Towns sent any Burghes at first: Whereas in the first Lift of Returns which Mr. Prym has here given us of the 26th and 27th of Edward I. which are the first extant, for ought I know, (except those of the 23d, which I have never yet seen) besides the Sixe Towns of the Counties, there are Returns of a great many small Boroughs, which never had any Walls, nor yet (for ought as we can find) had any Thing remarkable to make them be pitched upon to send Burghes more than others. But of these I shall speak more by and by: only shall remark thus much, that there must have been some other Rule besides Monford's own Will, for all this; and what this Rule could be, unless an ancient Presumption in those Towns to send Members, I define you or your Doctor would shew any good Reason or Authority to the contrary.

And after the 23d of Edward I. when Mr. Prym supposeth that the Sheriffs by this general Clause in the Writs began to take upon them this new Authority of finding Precepts to, and making Boroughs of what Towns they pleased: This could not in the first Place extend to such as were before that, Counties of themselves, such as London, York, Bristol, &c. nor yet such as were ancient and opulent Cities, such as Canterbury, Lincoln, Exeter, &c. who were not made Cities by having Bishops Sees annexed to them, but were such long before Christianity was preach'd to the English Saxons, as I have already proved. Nor could this Power of the Sheriff extend to the Cinque Ports, whole Right of sending Two Barons for each Port was very well known and settled in the 45th of Henry III. as appears by the general Words at the Foot of the Writ, fimiliter mandatim et juxta Partibus pro fe, without naming them in particular; so that if it had not been sufficiently known what Ports were thus to send, all the considerable Sea-Port Towns in England might have had Precepts sent them as well as the Cinque Ports; who had at first their Summons directed to the Barons and Bailiffs in general. Nor is there any Writ found directed to the Warden of the Cinque-Ports to summon each of them to send Burghes, till the 17th of Edward II. as Mr. Prym here shews you: So that in all these Elections and Returns, (being above Twenty) the Sheriff could have no Power, and therefore did not depend upon his good Will and Pleasure alone, as this Author would have it.

But to come to that which Mr. Prym chiefly infirmt on, viz. the putting in and leaving out divers of the smaller Boroughs in so many King's Reigns, and which he attributes wholly to the Favour or Partiality of the Sheriffs. I shall first argue against the Improbability of the Notion, and shall then confute it by plain Proofs from Mr. Prym himself. First, It is not at all likely, the King should ever trust the Sheriff with this great Prerogative of making what, or as many, Boroughs as he pleased in a County, since that could not be then done without some particular Writ or Charter; for otherwise this had made the Power of the Sheriff more arbitrary than that of the King himself; if he had in those Reigns you treat of, no other Rule to go by than his
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his own Humour, Paffion, or Interest: Nor would the King have ever endured such an Innovation, since it would have been in the Power of the Sheriffs to have made as many Boroughs as they pleased, and to have increased the House of Commons to an unreasonable Bulk, which was against all Rules of Policy for him to suffer. Lastly, Ne\r\n\r\nther would the House of Commons themselves have suffered this Encroachment: For since mott of the Cities and Boroughs of England sent Members to Parliament before this Innovation of the Sheriffs began, they would never have quietly permitted new Men to be sent in among them, from obsolete Places they never heard of, without either turning them out themselves, or complaining to the King in Parliament of so great an Abuse. Nor yet would these smaller Boroughs themselves have thought it a Privilege in those Days, when they paid their Burgeffes Wages all the Time of their Service in Parliament, to be thus forced to elect and send Burgeffes to Parliament, whenever the Sheriff pleased to send them a Precept to do.

M. But what can you say against direct Matter of Fact? Has not Mr. Pryn here plainly proved to you, that the Sheriffs did in those Times exercise an Arbitrary Power in this Matter, returning some Towns out of Ill-will to charge them with electing Burgeffes, to make them liable to the Payment of Wages to them, omitting of others also out of Spite, as appears by this Petition of the Towns-Men of St. Alban's you have now cited; a great many of which were so long omitted, that they came at last to lose all Right of sending any more, till it came to be again revived of late Years (as in the Case of divers Boroughs, whose Names Mr. Pryn has here given us) who by Orders of the Long Parliament in 1640, again sent Members to Parliament after some Ages Intermission? Pray now tell me, what other Satisfactory Account can be given, for the making of so many new Boroughs, and omitting to many old ones, but the Arbitrary Power of the Sheriffs, who then took upon them to do what they pleased in this Matter, as appears by so many Inflances he has here given us?

F. Well, since the Improbability, (I may say Impollibility of the Thing) will not satisfy you, I doubt not but to shew you, that though the Sheriffs might sometimes abuse the Trust committed to them, in sending Precepts to the Boroughs that were not liable to them, yet that for all this they never exercised that Arbitrary Power you fancy, of making and unmaking what Boroughs (and consequently as many Parliament Men) as they pleased. Now to prove this from Mr. Pryn's own Inflances and Authorities, I shall reduce all the Cauties of this Abuse to these Heads: 1. The Favour, or Maleice of the Sheriffs. 2. The Ambition of the Neighbouring Gentlemen, who deified to get to be elected at such Boroughs. Or, lastly, From the Defire of those Towns themselves, to get this Privilege among them of Electing and Returning Members to Parliament. To begin with the first of these, it could never proceed from the Favour of Sheriffs to such Towns, because the Charge of Wages to the Burgeffes was then so great (when Two Shillings a Day was more than Ten Shillings is now) that they could never look upon it as a Favour, to have this Charge imposed upon them; unless it were found in, who were very rich, and in a rich and flourishing Condition, and those always sent Burgeffes to Parliament before the Sheriffs had this Power committed to them, as you suppose, by that general Clause in the Writ of sending Summons to the Cities and Boroughs. Nor could the Sheriffs (if they would) have long continued to lay this Burthen upon any Town out of Maleice, for if such Towns could not afford this extraordinary Charge of sending Burgeffes to Parliament, they might have escaped it whenever they would, either by making no Returns at all to their Precepts sent them, as Mr. Pryn here shews, in the Lists he has given us of Returns, very many of them did; or else they might have taken that Remedy against it, "which (as this Author here expressly acknowledges) divers Towns did," who being maliciously charged by the Sheriffs to send Burgeffes, when both unwilling and unable, and who upon their Refusal to elect, returned Burgeffes for them according to their Wills, whereupon they complained to the King or Parliament of the Abuse, and to be reliefed of this Charge and Trouble, or else defended themselves: Other Boroughs growing very Poor, and unable to send Burgeffes to Parliament, and defray their Expences, were therefore disfranchised by the Sheriffs who made no Special Returns in their Favour, and of these he gives you several Instances, in his Collection of Returns for the County of bucks, as also in the Case of Lan\r\ncaster), whilst others procured perpetual, or else temporary Exemptions from the King and his Council from sending Burgeffes to future Parliaments, and upon
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"Some one or more of these precedent Grounds, they quitted, waved, or lost their ancient Privilege of sending Burgesses, which they rather reputed a Charge, Burthen, and Oppression, than an Honour": And of this he gives us a remarkable Influence in Toriton in Devonshire, which after having elected and returned Burgesses to no less than Thirty two Parliaments yet in the end of Edward III. upon their Petition to the King in Parliament, obtained a Patent to be exempted for ever, which he here gives us, as also a temporary Exemption from King Richard II. to the Town of Colchester for Five Years, in regard of their great Charge in building their Town-Walls: Which shews that the Burgesses Wages was then a great Burthen even upon Towns rich and flourishing in Trade, which were then able to wall their Towns at their own Expense. And I could shew you more such Exemptions as these, were it not too tedious; and I doubt not but there were many more such than what are entred upon the Rolls.

Now that we may apply what Mr. Prym has here said, to our present Purposes, it is granted, that tho' the Sheriffs might sometimes oppres some Towns by sending Precepts to them to elect, who ought not to have sent Members to Parliament at all, yet that he could not make new Boroughs without the Inhabitants Content, is plain by his own fliwing, since they could be eased of that Charge whenever they pleased. And I desire you, or any one else, to shew me any City, or considerable Town in England, that this began first to send Citizens or Burgesses to Parliament by the Sheriff's Arbitrary Power. Not but that some Towns might complain of this Abuse of the Sheriffs without any Juff Caufe, as in this Petition of Toriton now mentioned, where they set forth, quod villa prædicta ad mittend, aquis hominum pro dista villa ad Parliam enta non fiera oneratur non debetur, nec aliquorum hominum prædicta villa, ad Parliamenta non fiera vel Progenitorum nosterorum miseret, nec materre convenerit ante annum Regni nosteri cœsitionum primam, &c. Now tho' this Petition was falf in Matter of Fact, since it appears by the former Returns that they had sent Burgesses to Parliament long before, in the Reigns of Edward I. and II. yet the Ground of their Petition was right, that they ought not to send any Men to Parliament, unless they had been accustomed so to do in the Time of this King's Progenitors; which had been a vain Plea, if it had been in the Sheriff's Power (as of Right) to have summoned what Towns they pleased to Parliament, since then there could have been no Custom pleaded against it.

This being granted by Mr. Prym, and proved from the Nature of the Thing, we shall come now more particularly to give an Account how several Towns might come to be put in or left out of the Sheriffs Lists of the Boroughs, without granting them this Arbitrary Power of making what Boroughs they pleased. Now these 170 Cities and Towns Mr. Prym has given us, and which have had Precepts sent them at any Time, may be divided into these Three Ranks: The First is of those (who being nine in Number) which he saies never made any Returns to the Precepts sent them, and so continue to fend no Members to this Day (except Christ-Church in Hampshire.) Now these Nine Towns either had a Right to send Burgesses to Parliament in the King's Reigns, in which they received those Precepts, or they had not; if they had such a Right, the Sheriffs did but their Duty to send them Precepts as well as to the rest of the Boroughs of the County. For sure they had some Rule for doing it, more than their own private Fancies; since the very Writ of Summons (from whence you would deduce this Power to the Sheriffs) only recites de qualibet Civitate, &c. & de qualibet Burgo, &c. which had been mighty uncertain, if had not been then very well known what Towns were then Cities, and what Boroughs: And sure these Nine Towns must have then been Boroughs (in Reputation at least) or else they could never have had one, two, or more Precepts sent them (as Mr. Prym here owns they had) and they might have had much more such for ought we know, had all the Sheriffs Precepts, and the Returns upon them been preferred, as most of them are lost or mislaid, as I shall shew more at large by and by. Or if these Towns had no Right at all to send Burgesses to Parliament, it was not in the Sheriff's Power to impose it upon them; since they might have refused it if they pleased. And so take it either way, nothing can be argued from the Lofs or Mitigation of the Returns for those Boroughs, that they either had, or had not any former vid the Patent of Exemption, Rot. Parl. Reg. part 2.
former Right to elect, since this might happen from the Negligence of the Bailiffs, or Contables of the Town, or else from their own Defire to be excused from the Charge. Thus in the 28th of Edward I. the Sheriff returns, that the Bailiffs of St. Alban's had made no Return of his Precept: Neither is there any Returns of such Precepts to this Borough all the Reign of this King: Does it therefore follow, That this Town had no more Precepts sent them in all his Reign? When I have shewed you the contrary by the Wris of Exequence in the 23rd of Edward I. Or that they had no other Right to appear in Parliament as a Borough, but what the Sheriff's Precept first gave them; when you see they claimed by their Petition to Edward II. to send Burgesses to Parliament in the Reign of this King and his Progenitors.

The Second Rank of Towns are such for which are found, for some one, for some three, and for others more Precepts, with Returns of Elections made thereupon; and yet those that have made the most Returns do not amount during the Reigns of Edward I., II., and III. Richard II., Henry VI., and V. to above Thirteen Returns. Well, granting all this, will it therefore follow, that they had no other Right than the Sheriffs good Will and Pleasure? Since if they had a Right, and were willing to preserve it, they might have petitioned the King in Parliament against this Abuse of the Sheriffs. And if they were willing to give up their Right, by Reason of the great Charge and Trouble of sending their Members, volentis non fit injuria. Now does it therefore follow, that no others had any other Right to elect, but what the Sheriffs Precept gave them; only, forfeit, because no more Returns appear either in the looie Bundles of Returns, or upon the Clave-Rolls? Or that therefore there were never any more Elections and Returns made than what Mr. Prym has here given us? Which is a veryfallacious Argument, considering how imperfect those Bundles of Returns are, out of which he has extracted them; most of the Precepts and Returns being no doubt lost and broke off the Files, in the removing of the Records from one Place to another; besides the whole Bundles of Returns of several Years in divers Kings Reigns, that are quite lost, or so mislaid, that no body can find them. And for the Truth of this, I appeal to Mr. Pety, who affirms me, he found the Returns of the Knights, Citizens, and Burgesses to Parliament of the 23rd of Edward I. in an old Chaff in the Exchequer, among other Things of a quite different Nature, which Mr. Prym never saw, or else certainly he would have given us the Returns to this Parliament, as well as he does the Wris of Summons to it: And yet that even these were not always entered upon the Clave-Rolls, but lay scattered up and down the Chapel of the White-Tower. Mr. Prym also himself confesses, (in his Introduction to his third Part of his Parliamentary Register), “That he found no less than Ninety five looie Original Wris for Elections and Returns of Knights, Citizens, and Burgesses to Parliaments and great Councils, in the Reign of Edward III. which were never entered on the Clave-Rolls; and lay there until he found them buried in Dust and Rubbish, as well as Oblivion, in a confus’d Chaos, scattered from each other, and intermixed with many Hundred Thousand of other Wris and Records of various Kinds”. Now what if these Wris and Returns had never been found? So that by his own Shewing, it is no ways certain that there were never any other Wris issued, or Returns made for the Counties, Cities, and Boroughs, than those he had before found and published. And he himself also here concedes, “That by reason of the Negligence of Record-Keepers, there are more Wris and Returns of Elections extant from some Counties than for others, though all had the like Wris sent them. And if this was so, it was to the Counties, and not to the Cities and Boroughs; the Returns of which are commonly indorsed on the Back of the Precepts; and where they were not so indorsed, were much more likely to be lost. And farther, that the Clave-Rolls are no exact Rule for the Summons of Knights or Barons of the Cinque-Ports and Burgesses, appears by Mr. Prym’s own Shewing; viz. That there are no Wris of Summons to the Cinque-Ports entered on the Clave-Rolls, for most Part of the Years of the Edwards I., II., and III. in the Lift he has here given us of those Years. Now if so many considerable Boroughs, as the Cinque-Boroughs, could be thus omitted, what can we expect for most of the smaller, and most inconsiderable Boroughs in England?”

To conclude this Head; If by Mr. Prym’s own Confession, the Entries of Elections, and Returns upon the Clave-Rolls, are so very imperfect; and that the looie Bundles of Summons, Precepts, and Returns, are far more imperfect (to many of them
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them being left) pray tell me, How can he, or any one else, frame any Argument from these that remain, that there were never any more Precepts to, and Returns from Cities and Boroughs, than those he has published.

For as to his Third Rank of Boroughs, viz. Such as for whom there appear no Precepts nor Returns, till the Reigns of Edward II, and III, and other succeeding Kings; all which Boroughs he therefore supposes to have been newly made in those King's Reigns, because there are no Precepts or Returns from them found sooner. It must therefore follow that the Sheriffs made all these Boroughs at their Pleasure; but Mr. Prym has done well here to add, that they never elected or returned any before, for ought he can find to the contrary; since it might appear to the contrary (for ought he could tell) if the Returns of the Sheriffs in the Reigns of the former Kings had been still preferred; as appears by the Instance of the Cinque Ports I just now mentioned: Or how could Mr. Prym tell, but divers of these Towns might have been created Boroughs by the King's special Writs or Charters, tho' now lost, or perhaps unknown to this Author, who could not be supposed to understand the Original of all the Boroughs in England, their sending Members to Parliament? But that he is certainly mistaken in making several Boroughs to have been but new, because no Returns are to be found from them before the Reign of Edward II. may appear by these for Example. First, Hitchfield, which was long before Edward III. a Bishop's See; and sure then if not a City, yet an ancient and considerable Borough. Secondly, Old Sarum, which was in the Reign of Henry III. a Bishop's See (till it was removed) and if not, was certainly a very ancient Borough, and as such sends Burgesses by Prescription to this Day, tho' the Town be quite destroyed. The like I may lay of Gposite in Surrey, which tho' Mr. Prym will have but to be a new Borough, because no Returns appear to have been made for it by the Sheriffs, till the Reigns of Henry VI. yet this is no certain Rule; since it was a very old Borough, and had anciently been so considerable, as that we find several great Councils held at it in the Saxons Times, tho' it be certainly now reduced to a small Hamlet of half a score Houtes. Now I will leave it to your self to judge, whether the Sheriff would have pitch'd upon so small and inconsiderable a Place as this to make a Borough of; had it never sent any Burgesses to Parliament before that Time. And I doubt not, but those Gentlemen that know the rest of the smaller Towns Mr. Prym has there mentioned with Gposite, could as much for their Antiquity as Boroughs, if you please to enquire about them.

But I have held you too long upon this Point; and therefore shall proceed to thefe Two that remain, viz. The Ambition of neighbouring Gentlemen to make as many Boroughs as they could, that they might be chosen at them; and the Defire of such Towns to be made Boroughs, to receive the Advantages of the Money spent among them at such Elections. The first of these, in the Times we are now speaking of, could be no Caufe of their sending Members to Parliament: Since it is certain, that before the Reign of Henry VIII. none were elected for any City or Town, but Perfons free of, or actually reftident in such Cities and Boroughs, as appears by the Statute of the Fifth of Henry V. which does but recite and confirm this ancient Custom. So that this Trick of chusing Members for Beef and Ale has been introduced but of late Times, viz. since the Reign of Henry VIII. when Gentlemen began first to be chosen for Cities and Boroughs: And if that is so, the last Caufe falls of it self, viz. The Defire of such small Towns to elect; since if they could get nothing, but rather lose by their sending Burgesses to Parliament, and paying them their Wages (as they must do as long as they chufe from among themselves) it is unreasonable to believe, that they ever should defire this as a Privilege; and therefore it is only since the Necessity of this good old Law for Wages, that so many Boroughs (which Mr. Prym here mentions to have had Precepts again from them of late Years to elect Members after some Age's Intermission) defired to have this Privilege renewed to them, as was done in the Café of those Boroughs he here mentions; which yet certainly had been very gros, and contrary to all common Right, if the Houfe of Commons had not then believed those Boroughs to have had higher Right by Prescription than the Sheriffs Precepts gave them. As for the last Rank, viz. those Boroughs created by the Writs or Charters of our Kings, I need lay but little, since this Author here grants such Creations to have been good before the Statute of the 5th of Richard II. but not since; tho' I cannot see any Reason for it why he should give

Ibid. p. 235

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Ibid. p. 227.
the Sheriffs such Power of making new Boroughs after this Statute, in the Time of *Henry VI.* as he does in the Cafe of *Gauton,* and those other Boroughs he there mentions with it; and yet deny this King the like Prerogative. And I find no such Grant till the Reign of *Edward VI.* But yet for all this, as I will now at there were none; fo are there but very few Examples of Charters, that confer upon any City or Borough, a Power to fill Members to Parliament, who had it not before by Precepture; tho' I grant that Privilege, may be mentioned in the Charter, and fo put it in the Power of the Mayor and Aldermen to elect for the future; when it was the whole Populace, or all the Inhabitants of that Town that were to elect before: Of which I could give several Instances, were I not frightned in Point of Time.

But to shew you from the very Statutes themselves that Mr. *Pryn* has here cited, that the Right of the Cities and Boroughs to appear in Parliament, was not anciently looked upon to have had no other Original than the Favour of the Sheriffs; pray read these Clauses of the Statutes he has here quoted: The first is that memorable Statute of the 5th of *Richard II.* 2 *Parl.* c. 5. (now mentioned, and which I have already cited) which expressly enacts, "That all and singular Persons and Commonalties which from henceforth shall for Time to come have Summons of Parliament, shall come from henceforth as before to Parliament in the Manner as they be bound to do, and hath been accustomed within the Realm of *England* of old Time. And whatever Person of the said Realm, which from henceforth shall have the said Summons (be he Archbishopp, Bishop, Abbot, Prior, Duke, Earl, Baro, Banneret, Knight of Shire, Citizen of City, Burgell of Burgh, or other singular Person or Commonality) do absent himself, and come not at the said Summons, (except he may reasonably and lawfully excuse himself) to our Sovereign Lord the King) he shall be amerced, and otherwise punished, according as of old Times hath been used to be done within the said Realm in the said Cafe. And if any Sherif of the Realm be henceforth negligent in making his Returns of the Writs of the Parliament, or that he shall leave out of the said Returns any Cities or Boroughs which he bound, and of old Times were wont to come to Parliament, he shall be punished in the Manner as was accustomed to be done in the said Cafe of old Time, in the French (d'Anciente)."

From which Statute we may draw these Conclusions: First, That the Knights, Citizens and Burghelles, are supposed by this Statute to have a like Right to have Summons to Parliaments as hath been accustomed of old Time, as well as the Lords Spiritual and Temporal here mentioned. Secondly, That by these Words, have been accustomed of old Time (or d'Anciente, as it is in the French Recor) we are to understand a general Custom of the Realm, Time out of Mind, that is, by Prefecture: So that if the Bishops, Abbeys, and Temporal Lords, are here acknowledged to have had a Right to fit in Parliament by Prefecture, so have the Commons likewise by the same Words equally applied to all the Orders here mentioned. Lastly, That if any Sherif shall neglect in making Returns of any such Cities and Boroughs, which were thus bound to come to Parliament of Old Time, he shall be punished, as hath been accustomed to be done in all Time past (or d'Anciente). Now pray me with what Colour of Justice the Sheriffs could be thus punished, if there had been no certain Rule to know what Cities and Boroughs were bound to come to Parliament of Old Time, but it had been wholly left at the Sheriff's Discretion which they should summons, and which they should omit? Let us here compare this with the Statute of the 23d of *Henry VI.* c. 15. (which Mr. *Pryn* has here also given us) reciting, "That divers Sheriffs of Counties have sometimes returned none of the Knights, Citizens and Burghells lawfully chosen to come to the Parliaments; but such Knights, Citizens and Burghells have been returned, which were never duly chosen, and other Citizens and Burghells than those which by the Mayor and Bailiffs were to the said Sheriffs returned, and moreover by no Precepts to the Mayors and Bailiffs, or to the Bailiffs or Bailiffs, where no Mayor is, for the Eleeting of Citizens and Burghells to come to the Parliament; and then appoints the Penalties for the said Abuses and Neglects.

Now pray tell me, whether this bare Abufe of the Sheriffs, and Neglect of the Duty of their Office, here condemned by this Statute (and for which the Statute of *Richard II.* declares them punishable at Common Law, as this Act makes them liable to it by Statute-Law) could give them such an Arbitrary Power, as this Author franchises, much less can serve to corroborate his Opinion (as he here supposes..."
Dialogue the Eighth.

"Supposes it does" concerning the true Original, Continuance, Discontinuance, "Reviving and Antiquating Parliamentary Cities and Boroughs, not by Charters, and "Patents from the King, or Precept in Time of Milt, but by the Sheriff's "Power and Arbitrary Returns, by the forenamed general Clauses in their Writs? But since I confess I have dwelt too long on my Answer to Mr. Prym's Arguments, I shall conclude with only giving you one Record, which I hope will sufficiently satisfy you, that not only St. Albans, but several other ancient Boroughs claimed to send Burgeffs to Parliament by Precept: Which appears by a Writ or Commission from the King, reciting a Petition of the Town of Barnstaple to King Edward III. and his Council in Parliament, which is also to be found in the Patent-Rolls of the 27th of this King, setting forth, That the said Town hath been a Free Borough at tempore cujus contraria memoria non existit; and as such, enjoyed divers Liberties, and Free-Customs, by a Charter of King Abraham: And this among others, ac quod ad singularia Parlamenta nostrae, & dictorum antecepetorum nofrorum, (among which the said King Abraham must certainly be reckoned for one) duros Burgeffes pro Communitate ejusdem Burgi mutare solabant: and therefore that Charter being lost, they defire a Confirmation of it from the King. Whereupon he by this Commission directs a Writ of Enquiry to several Gentlemen and others therein mentioned, to enquire if the said Burgeffs had enjoyed all those Liberties so granted by the said Charter of King Abraham, or not. Which would have been ridiculous, if the King and Council had been satisfied that no Cities and Boroughs sent any Members to Parliament under the Saxon Kings, or at least before the 49th of Henry III. And this Authority is the more remarkable, because Barnstaple is one of Mr. Prym's modern Boroughs, for which he can find no Precepts or Returns earlier than the 26th of Edward III. tho' no doubt, as appears by this their Petition, in the 17th of this King, it had sent Burgeffs to Parliament many Ages before, tho' the Precepts and Returns upon them be all lost.

And that not only the Cities and Boroughs do thus claim by Precept, but that the Knights of Shires have always claimed the same Privilege, may appear by another Petition of the Commons House, extant on the Parliament-Rolls of the 51st of Edward III. which I shall contrac and put into English out of French, reciting thus, "Because of Common Right (in the Roll de Commerce droit) of the Realm, there are, and shall be elected Two from every County of England to come to Parliament for the Commerce of the said Counties: And also the Prelates, Dukes, Barons, Counts Barons, and such as hold by Baronry, which are, and shall be summoned by Writs to come to Parliament, except the Cities and Boroughs, who ought to elect from among themselves such as ought to answer for them. Whence we may conclude, that the Commons then claimed to come to Parliament of Common Right, (that is, by Common Law, or general Custom of the Realm, Time out of Mind) as much as the Bishops, Abbots and great Lords. 2. That neither the Bishops, Lords, nor Tenants in Capite, had any Authority to impose Taxes, or make Laws for the Commons of the Counties, or those for the Cities and Boroughs, without their Consents; because they had each of them Representatives of their own Order to answer for them in Parliament. M. I must confess this would have been absolutely convincing, could we have seen this Charter of King Abraham, but since the Towns-men of Barnstaple do only in their Petition (among others) set forth this Privilege of sending Burgeffs to Parliament; now who can tell whether there were any such Thing in their Charter or not, since they confessed they had lost it? Or granting it was as they set forth, yet this will sufficiently evince, that the Right of Cities and Boroughs to send their Representatives to Parliament, was not, as you suppose, as ancient as the Government, but had its Original from the Grants and Charters of former Kings. E. As to these Objections, we can have but all the Proof that this Subject is capable of at such a Distance of Time: But if I were a Jury-Man in this Matter, I should rather believe that the Town of Barnstaple had such Charter not long before they made this Petition to King Edward III. and that there was such Clause therein as they here set forth, than that these Towns-men should be so impudent as to defire a new Charter of Confirmation from him of all their Privileges (of which this of electing Burgeffs was one) if there had never been any such Clause in it at all. Jot is for the other Objection. That if it were so, then it appears that all the Right of Cities and Boroughs sending Members to Parliament, is derived from the Grants and Charters of former Kings; it is very fallacious; as you will find..."
find if you consider and compare the ancient Right of the Bishops and Abbots, as also of all the Temporal Nobility, to come to the great Council of the Kingdom. Which, as to the first of them, I proved to be as ancient as Christianity itself, among the Eng.

lish Saxons: And as for the Priesthood and Nobility in general, to have been as old as the Institution of the Government itself. Now, though you grant that long before the Conquest our Kings had the Nomination of Bishops and Abbots, and also the making of Aldermen, Earls, and Thanes, who made the Temporal Nobility in those great Councils, will it therefore follow, That because our Kings were thus entrusted by the People with this Prerogative of naming and investing Bishops and Abbots per Annulun & Barouhium, and also of creating those great Men now mentioned, that therefore all the Right either Order had to appear at those Councils, not only proceeded from, but depended wholly on the King's good Will and Pleasure; and that he could have chosen whether he would have named any Bishops or Abbots to vacant Sees and Abbeys, or made any Aldermen, Earls, and Thanes, or not, but have changed the whole Frame of the Government into an Absolute Despotic Monarchy, by destroying or omitting the Members of the great Council of the Kingdom; whether you believe the Clergy, Nobility, and People would have suffered any of those Kings to have made such an Innovation? Apply this to the Right of most of the ancient Municipalities in England, and you'll find it do as well agree with this parallel Case of the Bishops, Abbots, and Temporal Nobility, since as there were Priests and Nobles, who from the very first Institution of our great Councils did not owe their Original to the King, but brought it with them out of Germany, and to whose Suffrages the first Saxen Kings owed their Elections; so no doubt there were divers Cities and Towns in England so confederable from the Time of the Expedition of the Britons, that was thought fit to pitch upon them as most able to send Representatives to the great Councils of our Nation, that so they might imitate their old Government in their own Country, in which the great Cities and Towns had always a confederable Share, as they have in the German Diets to this Day, so the King might then (as he is now) be entrusted with the Prerogative of making new Cities and Boroughs with like Privilege with the old ones; tho' this was but rarely practiced till the Reign of James I. The Two Universities being some of the first Corporations on which he conferred this Privilege by Charter of Eleemos and sending Burgesses to Parliament; which Power has, I confess, been exercised even to a Grievance in the Reigns of his Son, and Grandsons, so that it were to be wished, that there was a Law passed, so as no new City or Borough should be made for the future without an express Act of Parliament.

Now I would very gladly hear what you can farther say to so many weighty Authorities, which I have now given you; for evident it is, that if they are compared and considered in Series of Time, that neither Edward IId or IIId, nor their Judges or learned Councils, nor the Parliaments of their, and succeeding Times, had ever heard any Thing of Dr. Brady's Annae Mirabilis, or 45th of Henry III, which was but 43 Years before the Reign of Edward II. his Grand-child, and little above 60 Years before that of Edward his great Grandson.

M. Well notwithstanding all this, whatsoever will reflect upon what the Doctor hath writ, may suffer that the Judges (say Parliament) were very ignorant in the History of this Nation, or that they spoke out of Desegue. And it is a great Argument that the Lawyers studied and knew only Popular and Usurped Law, and not the Constitutions of the Nation before their own Time. And the' I must confess what you have now said may seem to me to carry some weight with it; yet since I do not easily change my Opinion, upon the first hearing of a new Argument or Authority, give me leave better to consider what you have said. But in the mean Time, since you have now mentioned the German Difts, pray Sir, before we leave off, shew me what you undertook to prove at the first Entrance on this Subject, viz. That in all the Great Councils or Assemblies of States in Europe, where are derived States in Europe, where are derived from the Germans, and Gaffs, there are found Representatives for the Plebeians or Commons, dissident from the Clergy, and greater and iffer Nobility.

F. I readily agree to your Defires, but since my own Notes concerning this Matter are very long, and that I have them not about me; Pray give me leave to make use of the Authority of Dr. Heylin, an Author you have no Reason to look upon as partial, since he was not only remarkable for his great Skill in History, but also as being a great Friend and Delent to Sir Robert Filmer in Politicks, was a vehement Aector of Absolute Monarchy, and an utter Enemy to the Power of Parliament;
Dialogue the Eighth.

Parliaments; yet this very Person in his Treatise called, The Stumbling of Disobedience and Rebellion, &c. printed 1678. in his 5th Chapter (I have already quoted for the Inferior Clergy being ancienly a Part of the great Council or Parliament of the Kingdom) proves the Uniformity of the Three Estates to have been the fame in all the Chrisitian Kingdoms on this side of Europe. He runs through them all, beginning with Germany, which I shall contract, because he there says a great many other Things not so material to our present Purpose.

And first, beginning (as of right) with the German Empire, Tumane gives this Answer. On this Note in general, Imperium in tris omnia membra divisiisset, that the Empire is divided into Three Estates; over all which the Emperor is the Head or Supreme Prince. Of these the first Estate is ex facie Ordinum, of the holy Hierarchy, composed of the three Spiritual Electors, together with the Refidue of the Archbishops and Bishops, and many Abbots, Priors, and other Prelates. The second is of the Nobility, consisting of Three Temporal Electors, the Dukes, Marchesules, Landgraves, Burgraves, Earls, and Barons, of which there is no determinate Number, the Emperor having Power to add daily to them, as he sees Occasion. The Third Estate is of the free or Imperial Cities, in Number Sixty, or thereabout, who represent themselves at the General Diets, by such Commissioners or Deputies as are authorized to that Purpose.

Next pits we over into France, and there we find the Subjects marthalled into Three Estates, whereof the Clergy is the first. Rex coebris tribus Ordinis, Sacerdotio, Nobilitate, Pibere, habendae rei pacis sanitate necessit. So Paulinus Emilus don't inform us, Out of these Three are chosen certain Delegates or Commissioners, for each Estate, as often as the King's Occasions do require it, the Time and Place whereof is absolutely left unto his Disposing: And these thus met do make up the Convocat Ordinum, or L'Assemble des Estates, as the Frenchmen call it, in Form much like the English Parliament. [And of the Meeting of these Three Estates, not only this Author, but all the other French Historians, and in particular P. dit de Cambes make frequent mention.] The next we cross over the Pyrenees, to the Realms of Spain, and we shall find in that same Three Estates, whose Meeting they call there by the Name of Cortis, pub. lib. 3.

(As Spain is the Corse, or chief Court, we see,) by Way of Eminency, consisting of the Clergy, the Nobility, and the Commissioners of the Provinces, and most Ancient Cities. For Proof of which, we need but look into the General History of Spain, translatied out of French by Grimaldi, and we shall find a Court of Parliament for the Realm of Aragon, consisting of the Bishops, Nobles, and Deputies of Spain, l. 14. Towns and Communities, having Place in the said Estates, convened by King James at Saragossa, anno 1325, for settling the Succession, and declaring the Right Heir. Also for Castile, we find a Parliament of Lords, Prelates, and Deputies of Towns summoned at Toledo by Alfonso the Noble, anno 1210, upon Occasion of an Invasion made by the Moors; Another before that at Burgos, under the fame King, An. M. 1179, for levyng of Money on the People to maintain the Wars. Also that great Convention of the States held at Toledo by Ferdinand the Catholic, 1479, for swearing to the Succession of his Son Don John, in which the Prelates, the Nobility, and almost all the Towns and Cities which sent Commissioners to the Assembly, are expressly named. Thus do we also find a Meeting of the Deputies of the Three Estates of Navarre at the Town of Tafalla, anno 1431, for preserving the Kingdom in Obedience to King Francis Philippine, being then a Minor, under Age. And for Portugal, that the Deputies of the Clergy, Nobility, Provinces and good Towns of Portugal, assembled at Tomar, anno 1581, to acknowledge Philip the IId for their King, and to settle the Government of that Kingdom for the Times to come.

Now let us take a View of the Northern Kingdoms, and full we find the People ranked in the Sefame Manner; and their great Councils to consist of the Clergy, the Nobility, and certain Deputies, sent from the Provinces and Cities, as in those before. In Hungary, before this Realm received the Gospel, we read of none but Nobles & Barons; the Nobility and Common People, who did come to the Election of their Kings; but no sooner was the Faith of Christ admitted, and a Clergy instituted, but instantly we find a Third Estate, Bishops & Sacerdotum Collegia, Bishops and others of the Clergy superadded to them, for the Election of the Kings, and the Dispatch of other Business, which concerned the Publick, as it continues to this Day. In Denmark we shall find the same, if we mark it well.
BIBLIOTHECA POLITICA.

For though Pontanus seem to count upon FIVE ESTATES, making the Regal Family to be the first, and subdividing the Commons into TWO; whereas the Yeomanry makes one, and the Tradesman or Citizen the other: Yet in the Body of the History, we find only THREE, which are the Bishops, the Nobility, and CRUDUUM DELEGATI, the Deputies or Commissioners of Towns and Cities. For §arden, it comes near the Government and Forms of Denmark, and has the same ESTATES and Degrees of People, as amongst the Danes; that is to say, Processe & Nobles, the greater and the less Nobility, Bishops & Ecclesiastics, the Bishops and Inferior Clergy; Crusates & Universitates, the Cities and Towns Corporate, (for so I think he means by Universitates,) as Thunam muttereth them. [To which we may also add (tho' here omitted by this Author) the Delegates of the Rutfrick is, Ulfsrand, who make a Fourth Estate in the Assembly of Estates in this Kingdom.] Where the Bishops and Clergy enjoy the Place and Privileges of the Third Estate (notwithstanding the Alteration of Religion,) to this very Day; the Bishops in their own Persons, and a certain Number of the Clergy out of every Sacer (a Division like our Rural Deantries,) in the Name of the right, having a necessary Vote in all their Parliaments. [And this Swedish great Council is the more remarkable, because it comes very near our Constitution in England, in which I proved the Interior Clergy, and the Commons (not excepting the meanest Freeholders) anciently had their Représentatives.

So that it had been the strangest Thing that could have been observed in all the Political Constitutions on this Side of Europe, if that of England, tho' defended from the same Gothic Original, and founded according to the same Model, shoul'd have had no Représentatives for the Commons or Plebeians in their great Councils, or Parliaments. Dr. Heylin here concludes with Scotland and England; the former of which, since you agree to have had from all Times, Citizens and Burgesses in their great Councils or Parliaments, I need not repeat what is there said, since it is no more than what your subject have granted; and as for England, he owns, (as appears by the Statutes I have already cited out of this Chapter,) that the Clergy, Nobility, and People were called to a Parliament held under King Henry II., at Clerkenwell.

M. I will not deny, but there were Représentatives of the Cities and great Towns, in the great Councils or Assembly of Estates of all those Kingdoms you have now mentioned out of Dr. Heylin's Treatise; yet whether they were there from the first frihst Institution of those Governments is much to be doubted. But since I have not now Leisure to enquire into the Original of all those Kingdoms, nor at what Time each State began to come to these great Councils, give me leave in the mean Time to remark, That all these Kingdoms (except Sweden) came nearer to that Constitution which we suppose to have been anciently in England and Scotland, and also other Kingdoms where Feudatory Tenures were not observed, and consequently none but the Chief Lords or Barons by Knight's Service, and that held of the King, so that all those Foreign Councils, or Dyets, &c. at first were all the same, as confitting of Emperors or Kings with their Earls and Barons, Bishops, and great Officers, as is evident from all the old German and French Authors. And since Cities sent Deputies in Germany and Italy, they were only from Imperial Cities; the like I believe would be found in France, and those other Kingdoms you have now mentioned; but you cannot shew me, (unless in Sweden) any Représentatives elected by the Common People, or Rufricks, distinct from the Nobility and Gentry, like our Knights of Shires in England. So that I still doubt, whether all the Représentatives of the great Lords, and other Nobility that appeared in the Councils of these Kingdoms were not all Tenants in Capite, and no other.

P. That this is a meer Surrise of yours, I think I can easily prove; for in the first Place, as for the Bishops, Abbots, and Clergy, who still made the first Estates in all those Kingdoms; nothing is more certain, than that they never any of them held of the King by Knight's Service, and therefore could not sit in the great Councils of Tenure; that Inheritance being for oure, as I know peculiar to England, and introduced by your Conquerors, as you your self acknowledge. And as for the Temporal Nobility, you will find, that in France, not only those Noblemen that held of the King by Military Service, but those who held in libero Aldo, without any such Service at all, had Places, either by themselves or their Deputies, in the Assembly of the Estates. So likewise for the
Cities and Towns that sent Deputies to it, I believe you will not find that any of the held of the King in Capite. And to come to Germany, you are likewise as much mistaken, in fancying that all the Imperial Cities were subject immediately to the Emperor before they became so. For Hamburg and Lubeck were once subject to their own Princes; the former to the Duke of Holstein and Steflawick, and the latter to Earls of its own; till at last they either purchased their Liberties, or else cast them off, and were after received into the Body of the Diet by the Bulls or Charters of several Emperors. And so likewise Brunswick was always a free City, till it was united to the Empire by its own Consent. I could shew you the like of several other Cities, now called Imperial, to held anciently not of the Emperor, but either of their own Earls, or Bishops; though I grant it was the Charters of the Emperor with the Consent of the Diet, that gave them a Place in those Assemblies. And though it is true, that in all the rest of these Kingdoms, the meer Rufficks or Peasants have no Representatives in their great Councils; yet this makes no Alteration in the Cafe, if you please to consider it; for the Nobility and Gentry are the only true and proper Owners of the Lands of those Kingdoms; all the Rufficks or Peasants being meer Vaffals, and in France almost Slaves to their Nobility and Gentry, who (as I have already said) had all alike Votes in their Assembly of Eftates, as well those who held of the King in Chief by Knights Service, as those that did not. Whereas it was always fair otherwife in England, where the meanest Freeholder was always as free as to his Perfon and Eftate, as the greatest Lord of whom he held. And hence it is, that we have had from all Times of the Degree of Yeomen, to peculiar to England, as Fortesque in his Treatise de Laudibus Legum Anglia takes Notice, who if they lived on their own Lands, had no more Dependence on the Noblemen and Gentlemen, than they have now; and therefore it was but Reason, that these should have their Representatives in Parliament, as well as the Inhabitants of the Cities and Boroughs, who had most of them a far les Share in the Riches and real Eftates of the Kingdom. Secondly, Pray take Notice, that in the rest of the Kingdoms of Europe, except England and Scotland, there was no Difference in Point of Privileges as to being Taxed, or having Votes in the great Council of the Kingdom, between the higher Nobility, such as had the Tites of Dukes, Marquesses, and Counts; and impple Gentlemen. Whereas in England it has been always otherwise (at least since the Conquest); and the Earls, and Barons had by their Tenures, Places as Lords or Peers in the great Council of the Kingdom, and made a difficulty Body from the rest of the People; whereas in other Countries, the higher Nobility and Gentry are reckoned as all one Eftate; and therefore it was but Reason, that the rest of the Inferior Nobility or Gentry, should have their Representatives in this great Council, or Parliament, or otherwise they would have been as ever Vaffals as to their Eftates, to the great Barons and Tenants in Capite, as the Boors in Germany, or the Peasants in France were to their Lords, by whom they were taxed at their Pleasure; which they never were in England, as we can find either from History or Records. So that though I grant that it is the municipal Laws of each Kingdom or Nation, that must determine what are the governing Part of the People in those Countries, yet though that was not absolutely the same in all of them as it is in England, yet we find it so in the main, and the Representatives of the Cities and Towns do sufficiently affer the Right of the Plebeians or Common People, who make the Third Eftate in those great Councils. But I must here except Sweden, in which it is certain, that the meer Rufficks or Boors had always their own Deputies in their Diets, as well as the Cities and Towns; and if Sweden had this Privilege, I cannot see why the English Gentry and Yeomanry (who with us make but one Body of Commons) might not have had the like, till you can shew me more sufficient Proofs to the contrary.

M. Well, Sir, I shall consider of what you say. But since it grows late, that we may wind up this Conversation as fast as we can, give me leave to tell you, that though I should admit all that you have hitherto averred for Truth, and that we should grant the Commons of England to have been as Ancient a Part of the great Council, or Parliaments, as any of the other Two: What is that to the main Point in Question between us, viz. that of Non-refistance of the King upon any Account whatsoever? Or how can you justify those of the Clergy, Nobility, and Gentry of the Church of England, for taking up Arms against the present King, and cont
tributing so much as they have done to the driving him away, and in bringing
Things to this Confusion they are now in? Since, let your Continuance of Great
Councils and Parliaments be never so Ancient, let us also for once supposethem (as
you do) to have a Share in the Legislative Power of the Nation, yet how can this
Authorize them (much less any private Persons out of Parliament) to take up Arms
against the King, or rob Commissioned by him? Since the whole Current, both of
Common as well as Statute-Law runs directly against you; and all with one Con-
sent. Let, That the Diplofa of the Military, or Military Force of the Kingdom, has
been even so absolutely in the King's Power, and at his Diplofa, that no Man
can without being guilty of Treason, take up Arms (whether offensive or defen-
dive) without his Commission to authorize him to do it. So that no Government
in the World is more averse to all forcible Resistence than our own; the King
having been even from your Time beyond Memory so fully pow'd of the whole
Military, or Power of raising offensive or defensive Arms in this Kingdom, that it is ex-
pressly forbidden by the Statute of the 7th of Edward 1. against him. By Parliaments
and Treaties with the Force of Arms; in which the King fes forth, That in the left Parlia-
ment, the Prelates, Earlts, Barons, and the Commonalty, (in Latin Communia, or
Body of the Realm) have said, that to us (i.e. to the King) it belongeth, and our part
it is through our Royal Seigniory, to defend that is, in old French, to forbid) Force
of Arms, and all other Force against our Peace, at all Times when it shall please us,
and to punish them according to our Laws and Usages of our Realm, and heretofore
they are bound to Aid us at their Sovereign Lord, as oft as need shall be. From
whence you may observe, that it is the King's Prerogative to forbid all manner of
Arms, or Armed Force within the Realm; so that no Man can lawfully Arm him-
self without his Authority. And this is further confirm'd by the Statute of 25
Edward III. concerning Treason; wherein it is declared, (without any excepted
Cafes to the contrary) That to levy War against our Lord the King in this Realm,
or to be adherent to the King's Enemies in his Realm, giving them Aid or Comfort
in the Realm, or elsewhere, is Treason. And Sir Edward Coke upon this Statute faith
thus, That this was High Treason before by the Common Laws, for no Subject can
levy War within the Realm, without Authority from the King; and if any Man levy
War to expulse Strangers, to deliver Men out of Prifons, to remove wicked Coun-
sel, or against any Statue, or to any other End, pretending Reformation, on their
own Heads, without Warrant, this is Levying of War against the King, because they
take upon them Royal Authority. From which Statute, as also from your own
Oracle's, (Sir Edward Coke's) Interpretation of it, you may observe that it was not only
Treason to make War against the King's Person, but to take Arms to make any
Reformation or Alteration in Church or State, without the King's Authority. Nor
can any Subject of England justify the taking Arms upon any Account whatsoever,
unless it be by the King's Commission. And therefore all the Judges of England, in
the Case of Dr. Story, who was Executed for Treason in the Reign of Queen Ed-
ward, did with one Consent agree, that the very Confusion concerning making
War against the Queen, shall be interpreted a making War against her Person, and
supposes a Deign against her Life. So that nothing seems plainer to me, than that
by the Ancient as well as Modern Laws of England, all defensive as well as offensive
Arms, are expressly forbidden and condemned.
F. I think I shall be able to make out, notwithstanding what you have now said,
That all Resilience of the King, or rofe Commissioned by him, is so far from be-
ing Treasen, as you supposethat it is every Man's Duty to oppose him, in Case
he goes about to fet up, instead of a Legal Monarchy, a Tyrannical Arbitrary
Power in this Nation, since this is but to preserve the Original Constitution
of Parliaments, which in some Cases cannot be maintained without such a Resilience
be allowed. But to proceed to the Authorities you bring from our Statutes As for
the first you urge, from the 7th of Edward I. I think that can by no means do
the Bufines for which you design it; for in the fled Place, this is only a Declaration
of the Bishops, Lords and Commons of the Land, that it belongs to the King to defend
(i.e. forbid) all Force of Arms: But mark, Sir, what Force: Sure it is only
meant of such Force as belongs to the King's Prerogative to forbid; viz.
Force of Arms against the Publick Peace, and such as he might punish according
to the Laws and Usages of the Realm; and therefore the Statute expressly declares
that (as Subjects) they are hereunto bound to Aid him their Sovereign Lord the
King at all Times, when Need shall be; but does this Aid any where lay, that
he
Dialogue the Eighth.

he hath an irreftible Power to disturb this Peace by his own private illegal Commissions, or that any Men are bound to affift him in it; or because (for Example) he hath Authority to punish all Men according to Law that shall come to Parliaments with Force of Arms, that therefore he hath an unlimited Power of raising what Forces he would, and imprifonning or destroying the whole Parliament if he pleased, and that no body might refist him, if he had gone about fo to do. The like may be faid, if the King should notoriously and insupportably by Force invade all the Civil Liberties and Properties of his Subjects, by levying Taxes, or taking away their Eftates by downright Force, contrary to Law. Now can any body in his Sentiments believe that the Act of 25th of Edward III. was made to prevent all Refiftance of such Tyrannical Violence, and that the Refiftance of those Forces (whether Foreign or Dometick) that might be sent by the King's private Commission to murder or enslave us, is making War against his Perfon, or that it comes within any of the Cafes express'd in that Statute? And therefore cannot fall within the Compaft of Sir Edward Coke's Comment upon this Statute, all the Offences therein specified being Treasons at Common Law before that Statute was made, nor is the Reformation there mentioned, to be underftood of a juft and necessary Defence of our Lives, Liberties, Religion and Properties, as furred and esjtablifhed by the Laws of the Land, to be looked upon as making War against a weak orTed King; but is rather in Defence of him and the Government, by opposing Tyranny, which will certainly bring both him and us to ruin at laft; fo the Reformation he there mentions is only to be underftood of such Inflammations and Rebellions as have been made under the meer Pretence of Religion, or obtaining greater Liberties for the Common Sort of People than they had by the Law of the Land; such as were the Rebellions of War Tyler in King Richard II.'s Reign, and Moritzema in Henry VI.'s Reign; not to mention the other Rebellions raised by the Papifts in the Times of King Henry VIII. Edward VI., Elizabeth's Reigns, all which being begun by evil-minded or Superflitious Men, were certainly rank Rebellions, and fo are and ought to be esteemed by all good Subjects.

M. I grant these Pretences seem very fair and specious; yet notwithstanding this your pretended Right, or a Necessity of Refiftance of the King, or those commissified by him, in Cafe of Tyranny, has been still looked upon as Rebellion in all Ages, and the Actors dealt with accordingly wherever they were taken.

F. I do not deny but as long as Arbitrary and Tyrannical Princes could get the better of it, and keep the Power in their own Hands, they still executed for Traytors whofoever opposed or refifted their wicked and unjust Actions, tho' they were never fo near Relations to them: Thus both Edward and Richard II. put their Uncles the Dukes of Lancaster and Gloucester to death, merely because they joyned with the rest of the Nobility and People to prevent their Designs. So that it is not the Execution of the Man, but the Cause that makes the Traytor, since Princes are seldom without a sufficient Number of Judges and Jurymen to condemn whomsoever they please to fall upon.

But the Clergy, Nobility and People of England have always afferfed this Right of Self-Defence, in Cafe their Liberties and Properties were unjustly invaded by the Tyrannical or Arbitrary Practices of the King, or those about him, I think I can prove, by giving you the History of it in so many Kings since your Conquest, as will render it indifputable, if you please now to give me the hearing, or else to defer it till the next Time we meet.

M. I confess I was so weary of fitting up fo long at our laft Conversation, that I made a Resolution not to do fo any more; and therefore since it grows late, let us leave off now; and I promise to meet you here again within a Night or Two, and then I will hear how well you can vindicate your Right of Refiftance from Law or History. But if you have not better Proofs for it than the Rebellion of the Barons in King John and Henry III.'s Reign, you will scarce make me your Convert; since Impunity does never sanctify a wicked Action, or render it the more lawful; and you have already given it me for an Axiom, that a Fals ad Jus non va-

en at consequentia.

F. I accept of your Appointment with Thanks; but pray do not forejudge my Arguments till you hear them; and as for the Axiom, I allow it for good, provided I may use it in my Turn; But in the mean Time I shall with you good night.

M. And I the same to you.
Biblotheca Politica.

Dialogue IX.

Whether by the ancient Laws, and Constitutions of this Kingdom, as well as by the Statutes of the 13th and 14th of King Charles the Second, all Resistance of the King, or of those commissioned by him, are expressly forbid, upon any Pretence whatever. And also, Whether all those who assissted his late Majesty King William, either before, or after his coming over, are guilty of the Breach of this Law.

Sir, I am glad to see you again so soon; for I was just now looking over some of our old Historians, that lie here upon the Table, to rub up my Memory for sufficient Instances and Authorities, that it hath been always the received and constant Custom and Practice of the Clergy, Nobility, and People of this Nation, to defend the ancient Government of this Kingdom by general Councils or Parliaments; as also their just Liberties and Properties, not only by Remonstrances and Petitions, but by Force too, against the King, and those commissioned by him, in case they found them evidently and violently invaded, beyond what any fair or gentle Means, as Petitions and Intercessions, were able to redress. And for Proof of this, I shall go as high as the Times of the Kings of the West Saxons, from whom all the Kings of England before the Conquest were descended, after the Kingdom of the West Saxons had prevailed over all the rest. I shall therefore begin with the Reign of Sigeberth King of the West Saxons, who, as I told you in our 6th Conversation, breaking the Laws and Constitutions of the Kingdom, and tyrannizing over all Sorts of People, was in a General Council of the whole Kingdom deposed, and expelled into the Forest of Andredswald, where he was afterwards slain by a Hogheard; as the Saxons Annals under the Year 755, as also Huntingdon, and Malmesbury, relate. I shall not mention the Deposition of King Edwin, by the Mercians and Northumbrians, and their chusing his Brother Edgar in his stead, because not done by the Common Council of the whole Kingdom; and that also for flight and insufficient Grounds.

Therefore since the Times before the Conquest do afford us no more Examples of this kind among the Kings of the West Saxons Race (to which I only confine my self) since those Kings being for the most Part at Wars with the Danes to the Time of Edward the Confessor, had somewhat else to think on than the making themselves Absolute, or Tyrannizing over their Subjects; But indeed, there is scarce to be found in History a Succession of more mild, just and valiant Princes, than Edwurd the First King of all England, and his Descendants.

Mr. Pray Sir tell me to what Purpose you cite these Instances of the Nobility and People of England depoing and calling off their Kings in the Times before the Conquest; is it that you would justify that Common-wealth Principle, that the Parliament hath the like Power to depose the King at this Day in Case of any Infringement
Dialogue the Ninth.

Infringement of the Fundamental Laws of the Kingdom, or Breach of the Original Contract (as tho' of your Party now term it) if you do, pray speak plain, and then I shall know what Answer to give you. And this I affir, as undeniable in Matter of Fact, that the English-Saxons did often exercise that Power they had referred to themselves, of Electing and Deposing their Kings, when they became insupportable for Tyranny or Misgovernment; as appears not only in the Kingdom of the Welf-Saxons, I have now instanced in, but in almost all the other Kingdoms of the Heptarchy; in which there are to be found many more Instances of the Depositions of their Kings, than what were in the Welf-Saxon Kingdom: And this was then very just and necessary, since these Kingdoms were all Elective, and none of them Hereditary; and that the general Meeting of the great Council of the Nation was always at far and constant Times, and did not depend upon the Will and Pleasure of the King, either to call or dissolve them, as I have already proved: And that this Power was no unusual Thing, I appeal to all the Ancient Kingdoms of Europe, founded after the same Model as ours, and which I mentioned at our last Meeting, so that nothing is more frequent in their Histories and Annals, than the Deposing of their Kings for the above-mentioned Crimes of Tyranny or Misgovernment. But that some of these Gottick Kingdoms, as Denmark and Sweden, whilst they continued Elective, have exercised this Power even till of late, is no novitiate in Matter of Fact, that it needs no Proof, since the Kings of those Kingdoms hold their Crowns at this Day by that Title, and on those Conditions which the Nobility and People gave them, after the Deposition of their Predecessors; But though this were so antiently also in England, it does not therefore follow that it must be so now; for since the Crown of this Kingdom became Hereditary, and that the Calling and Dissolving of great Councils or Parliaments came to depend wholly upon the King's Will, I must allow, that the Case is much altered, and that the Two Houses of Parliament have now no Power to depose the King for any Tyranny or Misgovernment whatsoever. The first Parliament of King Charles the Second, in the Aft for attainting the Regicides, have actually disclaimd all coercive Power over the King, and yet for all that, the Nobility, and People of England, may still have a good and sufficient Right left them of defending their Lives, Religion, and Liberties against the King, or those commissioned by him, in case of a general and universal Breach and Invasion of the Fundamental Laws of the Kingdom, or Original Contract, (if you will call it so), and not to lay down those defensive Arms, till their just Rights and Liberties are again restored, and sufficiently secured to them. So that though I will not bring the Custom of the English-Saxons as a Precedent for the Parliament's Deposing of the King, yet I think I may make use of it thus far, that this Nation has ever exercised this necessary Right of defending their Liberties and Properties, when invaded by the King or his Ministers, either by Colour of Law, or open Force. And that this hath been the constant Practice from almost the Time of your pretended Conquest down to later Ages, I think I can make out from sufficient Authorities, both from Histories and Records.

M. Though your Doctrine is not so bad as I expected, yet it is still bad enough; and I never knew this Right of Restitute carried home, but that it always ended in Deposing and Murdering of the King at the last; as we have seen in our own Times: But let the constant Practice have been as it will, I am sure such Restitution hath been always condemned by our Ancient Common Law, as well as Modern Statutes, as I shall prove farther to you by and by. And therefore pray give me leave to tell you, That the never so constant Practice of an unlawful Thing, can no more justify the doing of it, than that constant Ulage, Time out of Mind, for Thieves to rob between London and St. Albans. Not that I fore-judge you, or refuse to hear any Infinances and Authorities from Histories or Records to make good your Affirmation.

F. I thank you for your Patience: What therefore if I prove that such Restitution has been not only actually exercised by the Clergy, Nobility and People in former Ages, but that it hath been also allowed by our Kings themselves, and approved of by great Councils, or Parliaments in those Times, for lawful, and the Actors in it wholly indemnified and saved harmless; may, a Power given them, and that by the King himself, to refit him, and defend themselves, in case he broke his Charters and Agreements made to and with his Nobility and
People, or else with some Foreign Prince: Which may appear from this remarkable Instance of King Henry II. at the End of whose Reign Hoveden in his Annals, gives us the Conditions of the Peace made in the last Year of this King, between him and Philip King of France, with the Consent of their Bishops, Earls, and Barons; where, among other Articles, you will find this for one, particularly relating to the Barons of England, who were also to swear to the Peace, in these Terms; Et omnes Barones Anglie jurabant, quod si Rex Anglie nonucerit hae Conditiones tenere, quod ipsi tenenter cum Regis Franciae, & Comite Richardo, & eos adjacenbat pro jeuge contra Regem Anglie, &c. Whence we may without doubt conclude, that the Resistance of Subjects in some Cases against their Kings, was then allowed of, even by the King himself, and thought not inconsistent with the Allegiance they bore him, though it might subsist for a Time.

M. I confess, this Instance would be of some Weight, were it not for the Critical Time when this Peace was made; viz. when Richard Earl of Poitou, the King's Eldelo Son, had rebelled against his Father, and taken Part with the King of France; and had drawn over a great many of the Norman, and Poitanian, and English Barons to his Party; which when King Henry perceived, this very Author you have quoted here, tells you; Quod Rex Anglie in arth opositio Eorm fecit cum Regis Philippo; that is, was constrained to make Peace with him: So that King Henry being in this Strait, the King of France and Earl Richard, with the Barons of his Party, forced King Henry to sign what Conditions they pleased; for there is no such Clause so much as mentioned for the French Barons.

But make the most of it, it is but a Temporary Relaxation of Allegiance from King Henry to his Barons, and the King might surely thus release them if he pleased: But it is plain, they could not have acted thus, without this Condition had been expressly inferred.

F. Well, supposing King Henry to have been never so much constrained to the making of these Conditions; and that it was his own Act that rendered it lawful, it still proves as much as I urge it for; viz. That neither the Kings of France or England then thought this Resistance absolutely unlawful; for then the King's own Act could never have dispensed with it.

But to shew you farther, that the People of this Nation have ever maintained this Right of Resistance, even without the Allowance of our Kings themselves: And for the doing of this, I shall proceed with the earliest Instances of this Kind after the Conquest; viz. In the Time of King Richard the First, during whose Absence in the Holy Land, he had committed the Government of his Kingdom to William Bishop of Ely, who abused his Power by an arbitrary and insolent Carriage; affronting and oppressing John Earl of Mortain, the King's own Brother, and Jeffrey Archbishops of York, the King's safe Brother; whereupon they rose up against him, and having the Bishops, the Earls and Barons of their Side, appointed the said Bishop a Day, to answer to his Crimes in the King's Court, or great Council of the Bishops, Lords, and Tenants in Curia Regis, where, when he refused to appear, they all with one Consent came to London, and fought with the following: And on the Advice of the said Chancellor by the Way. When they came to Town, Earl John, with the Archbishops of York and Rouen, with all the Earls and Barons, together with the Citizens of London, met in St. Paul's Church-yard, and there it was proposed, that the said Chancellor should, for his Evil Government, be deposed and banished the Kingdom: And so he immediately was, by the general Consent of the Common Council of the Kingdom. So that you see the Nobility Clergy, and People, had then no Notion of an irretrievable Power in the King, and those put in Commission by him, when they found their Power to grow Tyrannical and Intolerable.

M. But if I forget not, you omit one material Circumstance in this Affair, which seems to make against you; which is, That the Archbishops of Rouen, and William the Earl Marechal, did, at that Time, produce the King's Letters, signed with his Seal, wherein he had appointed, that they Two should be associated in the Government with the Bishop of Ely; and that he should do nothing without their Privy and Consent, and of them associated with him, in the Business of the Kingdom; and that if he offered to do otherwise, he should be deposed. So that it seems what they now acted, was not so much in Opposition to the King's Commission as to the Bishop's, who had refused to obey his Commands,
Dialogue the Ninth.

F. I confess it was as you set forth; yet this makes nothing against my Opinion; since it is apparent that Arms were taken, and this Restitution made by the Major Part of the Bishops, Earls, and Barons, together with the Londoners, before ever it was known that such Letters were written by the King. And so it seems they would have done much the same Thing, if there had been no such Letters sent by the King at all. You may also remember, that all these Proceedings also were approved of, and confirmed by the King himself.

But that I may proceed in my History of Non-Restitution, I come to the Reign of King John his Brother; who when he had refused the Archbishop of Canterbury, and all the Bishops, Earls, and Barons of the Kingdom, to confirm the great Charter of King Henry the First, they, together with the rest of the great Men and People of the Kingdom, of all Degrees and Conditions, took up Arms, and made a vast Army, refusing never to lay them down, till he had new granted and confirmed the Charters of Liberties and Forests; till at last the King finding himself almost quite forsaken, so that he had scarce Five Knights left about him, he was at last forced to meet the said Bishops, Earls, Barons, and People, at Run-Mead, and there to grant them that great Charter, which has been the Subject of so much Difference between us. So that you see here that the Church of England, in those Times (if the Bishops and Clergy are the Representative, of this Church) had then no Notion of this Doctrine of Passive Obedience to the King’s Absolute Will and Commands.

M. I cannot deny the Matter of Fact to be as you say; but yet you may remember, that the same Author tells us, That the Pope thought the King hardly dealt withal in this Matter; so that he gave Audience to the King’s Ambassadors, concerning the Rebellions and Injuries which the Barons of England had committed against their King; and that upon a solemn Hearing of the whole Bishops, and after a Consultation with his Cardinals, he did, as Supreme Lord of England, (after King John’s Resignation of his Crown to him) by his Bull then published, make void the said great Charters of Liberties and Forests; and condemn all the Barons Proceedings, as against their Duty and Allegiance to the King their Sovereign Lord: So that it seems this was not approved of anywhere but by the Angels. The Pope thereupon excommunicating the Barons, and suspending the Archbishop of Canterbury for joining with them.

F. I believe you will make nothing of this Objection: For it appears from the same Author, that the Pope had before this excommunicated the King; and as far as lay in his Power, deprived him of his Kingdom, and absolved all his Subjects of their Allegiance: So that it is plain, it was not out of any true Principle, or Hatred of Rebellion and Restitution in Subjects, that the Pope had thus acted; but purely to gratify the King at this Juncture of Time, and to defend him in his Tyranny, and Breach of his own Charters, because he was then become his Vassal; and so he cared not how much he oppressed his Subjects, because he was thereby the more able to pay him the Tribute he had granted to the Kings of England and Ireland: And he could also expect the more securely to extort Money from the whole Kingdom. But that this Bull of the Pope’s was contrary to the King’s own Express Act and Agreement, appears plainly by that Clause which is still to be found in a Charter under the Seal of this King; and which seems to have been the Heads of the great Charter, (according to which it was drawn into the Form we now find it in Matthew Paris) in which it is expressly provided, and granted by the said King, That in case he should go about to break or infringe any Clause in the said Charter, and shall not amend it within the Space of Forty Days, that then, Hic Barone cum Communia totius Terrae dixisset et transsubstantiatus nobis omnibus quibus potuerint, et (sic), per captivum Castrorum, Terrarum, Polephorum, et alius modis quibus potuerint, donec fuerit emendatum secundum arbitrumorum, salvo persona nostra et Regiae nostre, et Liberorum nostrorum, et cum fuerit emendatum intentionis nobis fictae primum fecerunt. So that you see here in the Judgment even of the King himself, they might freely refile, and take up Arms against him, till he made good every Article of these Charters, if violated, and were not to return to their Obedience till it was amended. And the like Clause, almost Word for Word, is also to be found in the Conclusion of the great Charters, published in Matthew Paris.

M. I grant
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M. I grant the Clause is there as you quote it; yet I must doubt whether it was of any Validity, being no doubt drawn up by the Barons then in Arms, and which the King durft not at that time refuse, and so he was indeed under a kind of Duties when he did it. And bedefes, pray mark the Conclusion of this Clause, this Restitution was to be \textit{Solvit Peronsa nostra e Regno nostrae, & Liberorum nostrorum, cumJustic emendatum, intendit nos sic priversercat.} Now how this Security here referred for the King's Perfon, could conflit with that open War the Barons made afterwards against his very Perfon, and cafting off all their Allegiance to their Natural Prince, and calling in Prince \textit{Lewis}, Son to the King of \textit{France}, I cannot understand.

F. I think all this may very easily be solved: For in the First Place, King \textit{John} was no more compelled to agree to this Clause, than he was to the Charters themselves; and if those were lawful and reasonable, so was this Restitution too; since there was no other Way or Means left to preferre them, in case the King should go from his own Assizes, and break through all he had done; so that if the Ends were lawful, the Means to preferre it must be so too; or else those Charters would have signified nothing, any longer than the King pleased. As for the other Part of the Objection, that this Restitution was fill to be, having the Perfon of the King and Queen, 
\textit{&c.} and that this did not conftit with the Barons after making War against his Perfon, and cafting of all Allegiance to him: It was not their Faults, but the King's, if they could not perform this Agreement, since the King, by making War upon the Clergy, Nobility, and People, by his open and notorious Barons, and recalling of these Charters, calling in Strangers to his Affiance, and declaring he would no longer govern according to Law, had made it absolutely unpracticable to preferre their Allegiance to him any longer, so that they never cast off their Duty as Subjects, till he had cast off his Duty as a King; and then what was there else left to be done, but to provide for their own Safety, by calling in a Foreign Prince to their Affiance as soon as they could? Since there was no other way left them to defend themselves against those Troops of Strangers the King had invited over: And though many of them, with their Captain \textit{Hugh de Boves}, had been cast away, and drowned in a Tempelt at Sea, yet more were daily expected. So that if Tyrants should suffer nothing for the Breach of their own Charters and Oaths, they would be in a better Condition by their Violation, than the observing of them; for by the making them, they for the present quiet the Minds of their discontented Subjects, and when they please may break them all again, when they have got Power, if no body must presume to refhit them, or not think them as much Kings when they destroy and opprefl their People, as when they protect and preferre them, by governing according to the Laws of the Kingdom. But pray what have you to say against that general Restitution that was made by almost all the Bishops, Barons, and great Men of England, against his Son \textit{Henry} the Third, and about the frequent and notorious Violations of the great Charters which his Father and himself had so often sworn to, and confirmed, and for which he had received such great Benevolences and Subsidies from the Nation?

M. Before I answer this Queftion, pray take Notice that I am not at al fatified with your Arguments; That whenever Subjects shall think themselves injured, and opprefled by their Sovereigns, that then they may caft off their Allegiance to them, if they cannot have the Remedy they desire, since this were to make them both Judges and Parties in their own Cause, which is altogether unjust and unreasonable between private Men, much more between Kings and Subjects. But passing by this at present, I shall tell you my Opinion of this Restitution of \textit{Simon Montfort}, and the Earls, and Barons, his Adherents, that it was downright Rebellion, and tended only to Dethrone the King, and make him a meer Cypher, and to devolve the whole Government upon themselves; as appears by the Oxford Provisions recited by so many Authors of that Age; and which were afterwards condemned, and consequently those violent Means by which they were obtained (by Lewis the Ninth, King of France, who in an Assembly of his Estates, upon a solemn Hearing of the whole Difference between King \textit{Henry} the Third, and the Barons, declared thes Oxford Provisions null and void. So far was this good and pious King from countenancing any Rebellion (or Restitution, as you term it) of Subjects against their Lawful Sovereign.

F. For
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For all this, I cannot find that the King of France did then at all condemn this Defence the Earls and Barons had before made of the Liberties granted them by the great Charters; for though he reftored the King to his former Power, by avoiding the Oxford Provisions; yet at the same Time when this was done, (as the Continuator of Mat. Paris tells us) he expressly excepted the Ancient Charters of John, Universitatis [sic. Anglicae] concefts, and from which per illam sen- tentiam in nullum intendebat penitus derogaverat; and if he did not in the least intend to derogate from them, he could not without any Justice condemn the only Means the Barons had to maintain them; after so many Trials, and with Promises and Oaths of this sickle inconstant King, all broken and laid aside. So that you may as well or better alledge the Pope's infamous Abolition of this King from this Oath he had made to oblige the great Charters, as an Argument why they should not be any longer bound by them, nor the Barons obliged to defend them; as this Sentence of the King of France, to render the Resistance the Barons had made in Defence of the great Charters to be unlawful. And that King Henry himself did afterwards allow this Resistance for good and lawful, pray see the Agreement which was not long after made in full Parliament, in the 49th, between the King, the Prince, and all the Prelates, Earls and Barons of England, whereby he obliged himself to oblige all the Articles and Ordinances which had been before agreed upon at London in the 48th Year of his Reign. And then follows this Clause in the Record (which the Doctor himself has Printed in his Appendix at the End of the First Volume of his Introduction to English History) which I shall here translate "out of French, because it is very old and obscure; it is thus: "And if our Lord the King, or our Lord Edward, (viz. the Prince) shall go against the King and Ordinance aforesaid; or shall griev the Earls of Leicester, or Gloucester, or any of their Party, by Reaftion of any of the Things aforesaid; that then the great Men, and Commons of the Land, (in French, hace Homes, & Comun de la Terre) shall rise against them to griev them to the utmost of their Power, and shall be obedient to them in nothing, and in doing all Things as if they were bound to them in nothing, until these Things shall be amended and maintained according to the Ordinance of the Peace aforesaid. And to this our Lord the King, Montuerd Edwart, and the great Men of the Kingdom, have sworn upon the Holy Gospels, to keep and maintain the Things aforesaid. And with this Record agrees this King's Latin Charter, much to the fame Purpofe receiv in the".

Annuu of Waferly, Anno 1264, only the Words there are more general, That if Part 217. the King or Prince should break the faid Peace, by hurting or falling upon any of the said Earls of Leicester, or Gloucester, or any of the Persons above-mentioned, Liceat omnibus de Regno noftri contra nos injurege, & ad grauamen nofri, opem & operam dare juxta polle, ad quod ex preflenti praepuo noftri ommes & singulis volumus obligari, id est & homagio nobis dato non obfente. So that you see here, that by the Judgment of the King himself, and the whole Parliament, this Resistance might be exercised, notwithstanding the Homage tiey had done him. And this is that Form of the Peace which I have before cited to you to have been made, (as appears by a Write to the Sheriff of Yorkshire, to be seen upon the same Roll, and in the same Membrane unanimi confenffu & voluntate noftra, & Edwardi filii nofri Primogeniti, Prelatorum, Comitum, Baronum, & Communis Regni noftri, & c. Which Claufe Dr. Brady thought fit to conceal, and not Publish with the former Record, because the Word Communias did not at all fuit with his Notions in this Place.

M. I must confess this fo solemn an Agreement upon the Record would have been very considerable, had it been made whilft the King and Prince had been free, and in their own Power; whereas the Doctor has made it plainly appear, that the King and Prince were at this Time in the Power of Simon Montfort and his Adherents, who called that famous Parliament of the 49th, to which we suppose the Commons were first summoned; and therefore the Prince was not delivered at this Time (any more than the King his Father) out of their Power, and was only taken out of Dover Castle, and made a Prisoner at large under a Guard (as his Father was) until he made his Escape from his Keeper at Hereford Castle. So that I do not at all value this Agreement, because made by Duref; though I confess the Words of the Records are express, that it was de unanimi confenffu & voluntate noftra, &c. Edwardi Filii nofri. But it appears plainly, that by this Agreement

\[R. A. P. 135.\]

Id. 143.
Agreement the King had discharged himself of all Royal Power, and confirmed an Instrument, whereby the whole Government of the Kingdom, and Nomination of all the great Officers of the Crown was put into the Hands of Nine Earls and Barons.

F. At this rate, no Act that a King can do when he hath the worst of it, though confirm'd by a Solemn Oath (as this was upon the Holy Gospels) can ever be binding; for it is but alleging that it was done by Duces, and it is sufficient to render it null and void. But be it as it will, this was certainly the general Content, Act and Declaration of the whole Nation assembled in Parliament, and that owned by the King himself, and his Son the Prince, and all his Party. And farther, that this Refittance of the Earl of Gloucester (who was one of these Barons) was not after counted for Treason, or Rebellion, appears by that Pardon of the said Earl which we have before cited to have been made by this King, with Assent of the King of Almaine (his Brother) and the Counts and Barons, and Commons of the Land, in which he pardoned the said Earl, and all his Company, (and also all the Londoners) all Rancor and Ill-will, and in the same manner as the King quits and discharges the Earl, and his Company, so does the said Earl hereby for himself, and all his Company, remit to all those that were of the Party of the King, any Thing done since that Moment (that is, that Civil War, in which the Earl of Gloucester had so great a Share.) So that you see this Refittance of the Earl of Gloucester was within Two Years after the Battel of Boscum so far from being looked upon as Rebellion, that the Pardon is made mutual, not only for the Earl, and those that followed him, but also for those that had taken the King's Part.

But I shall come now to his Son, and Successor, King Edward the First; where we shall find this Doctrine of Refittance affted more than once, not only by private Men, but by the whole Parliament, as appears by those Letters that were written by the King's Command, (or Permutation at least, in the 29th of his Reign) in the Name of all the Earls, Barons, &c. tota Communitas Angelice, to Pope Boniface the Eighth, in Vindication of the King's Supremacy over Scotland; in which you will find this remarkable Passage, Nescit, nisi pervenisse, nec permittat, si est non ipsum nec domini praeclara amissa, solus, indebita, & praebenda, & aliqua manu, praebens Domino nostrum Regem, eodem modo vellet facere, modo quolibet attempitare. Which Refrain of the King's Will must certainly mean somewhat more than a bare Re monstrance or Declaration against it; since we have seen in our own Times, Kings make nothing of more verbal Declarations of the Two Houfes of Parliament, if they had a mind to do a Thing they thought belonged to their Prerogative, though the Parliament declared against it. And to let you further see that this Doctrine was at this Time generally believed, and practised all over Europe, you will find almost the same Clause in the Letters which were written in the Reign of Philip the Fair, King of France, anno 1263, (which falls about the 30th of our King Edward the First) and were sent to the same Pope Boniface, upon Occasion of the like Usurpations upon the Church of France, in the Name of the whole Clergy of that Kingdom; whereby it not only appears that this was done in a general Assembly of Estates, viz. of the Clergy, Barons, &c. Communitates Villarum; but they also there declared, expressissimis, vivis voce, Quod si preleatus Dominus Rex (quod obis) tolerare, vel displicat vellet, ipsi (fell. Episcopi, &c. Barones, &c.) nullatenus sustinerem. So that here you see not only the Temporal Estates, but the very Clergy declare, that they would by no means suffer the King to act thus (no not) if he would.

But the Barons and People of England, did actually put this Doctrine in Execution, some few Years before this Letter I now mentioned was writ to the Pope; which Transgression I shall give you almost verbatim out of Mat. of Weismanfield, and Henry de Kingston, in Anno 1297, (being the 26th of Edward the First) when the King having extorted a great Sum of Money from the Clergy and People, contrary to Law, and being then going into Hanmer, he called a Parliament at Weismanfield, where most of the Earls and Barons refused to appear, until such Time as their Petitions for the Ease of their Country were heard; and that the King would again confirm Magna Charta. Yet nevertheless the King
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King upon Conception of his Male Administration, which he made before all the People, with Tears in his Eyes, and Promise of Amendment, then obtained of the Commons an Aid of the Eighth Penny of their Goods. But as soon as the King was gone over, the Confable and Earl Marechal, with other Earls and Barons, went to the Exchequer, and there forbade the Judges to levy the said Tax upon the People by the Sheriffs, because it was done without their Knowledge, without whose Consent no Tax ought to be exacted, or imposed. So that the said Earls and Barons being thus gathered together, and the greater Part of the People joining with them; at last Prince Edward, then Lieutenant of the Kingdom, was forced to call a Parliament, to which the Earls and Barons came attended with great Multitudes, both of Horse and Foot, but would not enter the City of London, till the Prince had in his Father's Name confirmed the great Charters, and had passed the Statute de Tullagio non concedendo; both which were afterwards again confirmed by the King his Father some Time after his Return.

And this will serve to explain the last Article in this Statute. "Which comprehends the King's Pardon or Remission to Humphrey Earl of Hereford and Ely,
then Confable, and Roger Signor, Earl of Norfolk, Marechal of England, (the Two principal Leaders in the late Restitution,) with all other Earls, Barons, Knights, and Equites, of their Party; all Leagues and Confederacies, as also all Rancor and Ill-will, with all other Transgressions against them, &c. And pray see Sir Edward Coke's Comment on these Words;" If you compare our English Histories with this Act of Parliament, the Old Saying shall be verified, Thos Records of Parliaments are the truest Histories. The King had concealed a deep Distressure against the Confable, Marechal, and others of the Nobility,
Gentry, and Commons of the Realm, for denying that which he so much de-
spised; yet for that they stood in Defence of their Laws, Liberties, and
Customs, &c. (I suppose he refers to the Restitution but now mentioned)
whereupon he did not only restore the same to them, as aforesaid, but granted
special Pardon to those against whom he had conceived so heavy a Distress-
sure, &c. and such a one as you will scarce read the like. And after a short
Glos upon the Words Rancor and Ill-will, he thus comments on these Words,
Atium transgressiones si quas feceritis: Here the Words, si quas feceritis, were
added, lest by Acceptance of a Pardon, they should confess they had transgressed.
So careful were the Lords and Commons to preserve their Ancient Laws, Liberties
and Customs of their Country. So that it is plain, that Sir Edward Coke
thought the Lords and Commons had not transgressed, in thus standing up,
though with Force of Arms, for their just Rights and Liberties; and which suf-
ficiently proves that this Author did not conceive such a Restitution to be making
War against the King, and to Treat at that Time at Common-Law, and con-
sequentially not to be afterwards Treatie by the Statute of the 27th of Edward the
Third (as you would have it); since that Statute does not make any other Over-
Acts to be Treatie, but what had been so by Common-Law before this Statute
was made.

But in the Reign of this King's Son, Edward the Second, there were much
more pregnant and Fatal Proofs of the Exercice of this Right of Restitution by
the Earls, Barons, and People of England, against Pierce Gaveston; whom having
been before for his Misgovernment of the King, banished the Realm by Act of Imag. Hft.
Parliament, and coming over with the King's Licence, but without any Reverson of
the said Act, Thomas Earl of Lancaster, the King's Uncle, with the rest of the
Earls, Barons, and Commons of the Land, took up Arms against him. And tho' he
raised some Forces by the King's Commission, yet they fought with him, and
took him Prisoner, and beheaded him near Warwick. Some Years after which,
the said Thomas Earl of Lancaster, with Humphrey de Bohun, Earl of Hereford,
together with divers other Earls and Barons, took Arms, and spoiling the Lands
of the Two Spencers, Father and Son, came up to London, where the King had
called a Parliament; in which the King was forced to banish the said Spencers
out of the Kingdom, though they quickly returned again: Against whom, when
the said Earls above-mentioned, and divers other Earls and Knights, again took
Arms; but being fled by some of their Confederates, were overpowered by the
Earl being taken Prisoner, and there the Earl being beheaded at Pontefract; yet was this judgment against the Earl, and those of his Party, after-
wards revered in Parliament, in 1500. Edward III. and their Heirs restores in Blood, as also to the Lands of their Fathers; as besides the Act, it ill is to be seen upon the Rolls, appears more plainly by a Writ of this King's reciting; That whereas at a Parliament at Westminster, among other Things, it was agreed by the King, the Prelates, Earls, Barons, and Commons of the Kingdom, that all those who were in the Quarrel with Thomas Earl of Lancaster, against the Spencer, should have their Lands and Goods restored, because the said Quarrel was found, and adjudged by the King, and the whole Parliament, to be good and just; and that the Judgments given against them were null and void, and therefore commands Restitution of the Lands and Tenements now in the Crown, to the Executors of the said Earl. And the like Writs are found for the other Lords and Gentlemen that had been of his Party.

And further, that not only this Restitution made by this Earl, and the rest of his Followers, but also that which this King himself made together with Queen Isabe, his Mother, against the Misgovernment of the King his Father, through the Evil Counsel of the Two Spencers, appears by the Act of Indemnity passed in the First Year of this King, in the Preamble of which there is recited this: History of the wicked Government, and Banishment of the Spencers, Father and Son; and also how Thomas, late Earl of Lancaster, was by their Procurement purfied, taken, executed, disinherit'd, and how the said Spencers, and Robert Bollock, and Edmund, Earl of Arundel, by the Royal Power they had usurped, had caus'd the King that now is, and the Queen his Mother, to be unutterly enfranck'd of the King his Father, and to be Exiled from the Realm of England, and that therefore the King that now is, and the Queen his Mother, being in so great Jeopardy in a strange Country, and seeing the Deprivation, and Disinheritance, which were notoriously done in England, upon Holy Church, the Prelates, Earls, Barons, and the Commonalty of the same, by the said Spencers, Robert Bollock, and Edmund Earl of Arundel, by the Encroachment of Royal Power to themselves; And seeing they might not remedy the same, unless they came into England with an Army of Men of War, and have by the Grace of God with such Puffissance, and the help of the great Men and Commons of the Realm vanquished and de-royed the said Spencers, &c. Therefore our Sovereign Lord the King, by the Common Council of the Prelates, Earls, Barons, and other great Men, and of the Commons of the Realm, have provided, and ordained, &c. as followeth. That no great Man, nor other of what Estate, Dignity or Condition soever he be, that came in with the said King that now is, and with the Queen in Aid of them, to pursuie their said Enemies, and in which Pursuit the King his Father was taken and put in Ward, &c. shall be impeached, molested or grieved in Perfon, or in Goods, in any of the King's Courts, &c. for the Pursuit, and taking in Hold the Body of the said King Edward, nor for the Pursuit of any other Perfon, nor taking their Goods, nor for the Death of any Man, nor any other Things perpe-trated, or committed in the said Pursuit, from the Day of the King and Queen's Arrival, until the Day of the Coronation of the said King.

The Act of Indemnity is to fail a justification of the Necessity and Lawfulness of the Restitution that was then made against King Edward II. and his wicked Counsellors the Spencers, that it needs no Comment. And thro' King Edward III. took Warning by the Example of his Father, and was too wise then to follow the like Arbitrary Courses; yet Richard II. his Grandson, being a weakly young Prince, fell into all the Errors of his great Grandfather, and found the like, if no greater Restitution, from his Nobility and People: For when he had highly mis-governed the Realm by the Advice of his Favourites, Alexander Archbishop of York, the Duke of Ireland, and others; a Parliament being called in the 10th Year of his Reign, the Government of the Kingdom was taken out of their Hands, and committed to the Bishops of Canterbury and Ely, with Thomas Duke of Gloucester, the King's Uncle, Richard Earl of Arundel, and Thomas Earl of Warwick, and Nine or Ten other Lords and Bishops; but notwithstanding this, the King being newly of Age, refused to be governed by the said Duke, and Earls, but was carried about the Kingdom by the said Duke of Ireland, and others, to try what Forces they could raise, and also to hinder the said Duke and Earls from having any Access to him. But see what followed these violent and arbitrary Courses, as it is related by Henry de Kingham, who lived and wrote in that very Time, and is more exact in this King's Reign than any other Historian, he there tells us, that when Thomas Duke...
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"Duke of Gloucester, and the other Bishops and Earls now mentioned, found they could not proceed in the Government of the King and Kingdom, according to the Ordinance of the preceding Parliament, through the Hindrance of Michael de la Poole, Robert de Vere, Duke of Ireland, Nicholas Drembar, and Robert Treffilian Chief Justice, and others, who had seduced the King, and made him alienate himself from the Council of the said Lords, to the great Damage of the Kingdom." Whereupon the said Duke of Gloucester, and the Lords aforesaid, with a great Guard of Knights, Esquires, and Archers, came up towards London, and quartered in the Villages adjacent: And then the Archbishops of Canterbury, the Lord Lovet, the Lord Cobham, the Lord Evers, with others, went to the King in the Name of the Duke and Earls, and demanded all the Persons above-mentioned to be banished as Seducers and Traitors to the King: And all the Lords then swore upon the Crofs of the said Archbishops, not to defeat till they had obtained what they came for. The Conciusion of this Meeting was, That the King not being able to withstand them, was forced immediately to call that remarkable Parliament of the 11th Year of his Reign, in which Michael de la Poole and the Duke of Ireland were attainted, and Treffilian, and divers other Judges, sentenced to be hanged at Tyburn, upon the Impeachment of the said Duke of Gloucester, and the Earl of Arundel, for delivering their Opinions contrary to Law, and the Articles the King had not long before proposed to them at Nottingham.

I shall omit the Refiance, which Henry Duke of Lancaster made after his Arrival, by the Affiance of the Nobility and People of the North of England, against the Arbitrary Government of this King, being then in Ireland; not only because it is notoriously known, but because it was carried on farther than perhaps it needed to have been, and ended in the Deposition of this King. Only in the first Year of Henry the IVth, there was the same Act of Indemnity almost word for word, paffed for all those that had come over with that King, and had affirmed him against Richard the Second, and his evil Counsellors, as was paffed before in primo of Edward the Third. I shall not also infift upon the Refinance of Richard Duke of York, in the Reign of King Henry the VIth, who took up Arms against the Evil Government of the Queen, and her Minion the Duke of Suffolk; because you may say, that this was justifiable by the Duke of York, as Right Heir of the Crown: Nor will I infance in the Refinance made by the Two Houfes of Parliament, during the late Civil Wars, in the Time of King Charles the First, since it is disputed to this Day, who was in the Fault, and began this Civil War, whether the King or the Parliament: Only thus much I cannot omit to take notice of, That the King in none of his Declarations ever denied but that the People had a Right to refift him, in cafe he made War upon them, or had introduced Arbitrary Government; and expressly owns in his Answer to one of the Parliament's Meffages, that they had a sufficient Power to restrain Tyranny, but denied himfelf to be guilty of it: And still afferted, That he took up Arms in Defence of his just Right and Prerogative, to the Command of the Militia of the Kingdom, which they went about to take from him by Force.

[1] I have with the greater Patience hearkened to your History of Refinance in all the Kings Reigns you have mentioned, because I cannot defire any better Argument to prove the Unlawfulness of such Refinance, than those Acts of Pardon and Indemnity which you must own have flill followed. It even when the Barons proved moft fortunate; as in that of Henry the Third, to the Earl of Gloucester, and thofe of his Party; and that of Edward the First, to the Contable and Mafterchall, and their Followers: Nay, after the former Kings had been unjustly depofited, we filly find the Authors and Cumplices of fuch wicked Affairs, did not think themfelves safe till they had an Act of Indemnity paffed to them, of all the Robberies and Murders they had committed in the War, as your felf have re- cited in the Two Acts of Parliament, in the Reigns of Edward the Third, and Henry the Fourth. Now if thee Refiances had not been done to prevent Rebellions in the Eye of the Law, to what Purpofe were these Acts of Indemnity paffed, fince no Man needs a Pardon, but rather merits a Reward for defending the Government ftableflied according to Law?

[2] In Anfwer to this Objection (for which I am already prepared, fince I forefaw you might make it) pray give me leave to ask you, Whether you can find
and the Words Treason, Rebellion, Robbery, or Murder, in any of those Acts of Pardon? And if you cannot, Whether you think Treason or Murder, could be pardoned by general Words or not? And the Reason why I ask this Question, is, because if they could not, then the Consequence will be, That none of those Par-

liamentarians thought that the Refusal that had been made, or all the other Acts performed in Pursuance of such Refusal, were looked upon by those that had done them, no not by the Parliament itself, to be Treason, Rebellion, or Murder, since certainly those that were Acts in such Refusals, and taking up of Arms, having the Power in their Hands, would not have feird to have had those Words inferred into those Acts of Indemnity, if they had suppos’d themselves guilty of those Crimes.

M. I cannot say that the Words Treason, and Rebellion, or Murder, are expressly mentioned in those Statutes, since even the Authors in them did not think it for their Credit, to own themselves to have been guilty of any such Crimes; yet all the particular Words and Expressions in these Acts amount to the very same Thing, for the taking up Arms with one that is not King, against him that is, and the actually feiring upon his Person, and keeping him in hold, was Treason at Common Law, before the Statute of the 24th of Edward the Third: And is not taking Men’s Goods by Force, and destroying their Persons in Time of Peace, Rebellion and Murder at Common Law? So that if those they had been guilty of, and if those Acts were Treason, Rebellion, Robbery, and Murder; then certainly all Treasons, Rebellions, Robberies, and Murders, are likewise pardoned by those Statutes. And though ’tis true, the Law is now, That no Pardon of Treason or Murder shall be good, unless those Offences are particularly named: Yet this was so ordered by the Statute of the 13th of Richard the Second, by which it is particularly provided, That no Pardon shall be allowed before any Justice for the Death of a Man, &c. Treason, &c. unless the same Murder, Treason, &c. be specified in the said Charter; before which Statute Sir Edward Coke, in his Second Injuria, tells us, That by the Pardon of all Felonies, Treason was pardoned, and so was Murder also.

P. I cannot deny but that their Fetics you mention were Treason, in Strict-
ness of Law, before the making that Statute; yet does it not follow, that even those may be in some Cases justifiable (as well as binding a King, when he is out of his Wits) if the publick Peace of the Kingdom, and Preservation of the Gover-

nment, according to the Fundamental Laws of the Kingdom, require it. Thus for Example, Suppose King John, after he had made actual War upon his Barons and People, had happened to have his Forces routed in the Field, can any one believe that he had been unlawful for them to have secured his Person to prevent his raising a new War upon them? And yet this by the Letter of the Law had been Treason. Now there are many Affairs, which in Strictness of Law are Treason, yet being for the publick Defence and Security of the Nation, deserve a Pardon of Course. Thus, if Foreign Enemies should Land in England, and a Neighbouring Nobleman or Gentleman, who has no Command over the Militia of the Country, should raise on the sudden, such a Force of his Tenants and Neighbours, as were sufficient to make a Head against them, till the Militia of the Country could come in to their Assistance; though this taking up of Arms, without an Express Command for it, be a high Misdemeanor (as Treason, accord-
ing to your Principles) yet I suppose you will not deny, but that the Person engaged in it, do not only deserve Pardon, but Thanks for their Courage, and so speedy a Defence of the Nation. And I remember I have read a famous Infract of this Kind, that when the Tyrants conversed in the Powder Plot found themselves diff-
covered, they fled into Warrington, and thence into Warthallshore, and were pursu-
ded and taken by the High-Steward of that Country in Staffordshire, which though a great Misdemeanor, since no Sheriff can justify carrying the Powis Commission out of the Country, yet this was so well taken, that King James the First rewarded him, and (as I take it) Knighted him for his pains.

But to apply this to the Matter in Dispute, though it is true, taking and imprisoning the King’s Person is Treason in the Eye of the Law, yet (as in the Case of Edward the Second) if the Government could not be restored to its pristine State without that Extremity, it must, and will ever deserve a Pardon: And therefore you see the Parliament in the Reign of Edward the Third, not only pardoning
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But you have done very warily to pass by, without any Jutification, the De- position of King Edward the 11d. as also that of the Rebellance (as you call it) of Henry Duke of Lancaster against King Richard the 11d. as also his Deposition, tho' done in Parliament; since all the Proceedings against this King were repeal'd in Parliament, in the 11th of Edward the 11th, as appears by the Parliament Rolls of that King's Reign, wherein the taking up Arms against King Richard by Henry Duke of Derby, is laid to be done contrary to his Faith and Allegiance; and his taking the Crown, called usurpation; and the killing of King Richard his Sove- reign Lord, termed (as it justly deserved) Murder and Tyranny, which does (tho' not directly, yet) by Conquence condemn his Deposition too, since he is after that
that here called King. And you do as warmly pass by the late Rebellious War of the Long Parliament against King Charles the 1st. as also his horrid Murder before his own Gates; because you know very well, that this Doctrine of Resistance felled roots with a bare Reformation of what is amiss; but commonly ends with the Murder or Deposition of the King, or else driving him from his Throne; as we now find it by woful Experience in the Perfon of our Unfortunate King, who was so lately forced to quit this Kingdom for the Security of his Perfon: And therefore, to put an end to this Part of the Dispute, the Parliament of the 13th of King Charles the 1st. were so sensible of the great Mischiefs that attended this Rebellious Doctrine, as having been the Deftitution of one of the best Princes that ever reigned, and the Occasion of the Loss of so many brave Men, besides the Ruin of so many great and Noble Families, that they were resolved to do their utmost to prevent it for the future, and therefore the King and Parliament, in the 13th and 14th of King Charles the 1st. passed those remarkable Acts concerning the Settlement of the Militia in the King and his Successors, to take away all Dispute about it, though they declare it to have been his Ancient Right: And therefore, to take away all Pretence for taking Arms either by the Two Houses of Parliament, or any other Perfon whatsoever; they, in Preamble to both thefe, that thefe Acts thus expressly declare, Forasmuch as within all his Majesty's Realms and Dominions, the sole Supreme Government, Command and Disposition of the Militia, and of all Forces by Sea and Land, and of all Ports and Places of Secrecy is, and by the Law of England ever was, the undoubted Right of his Majesty's and his Royal Predecessors, Kings and Queens of England; and that both, or either House of Parliament cannot, nor ought to pretend to the fame, nor can lawfully raise or levy War, Offensive or Defensive, against his Majesty, his Heirs or lawful Successors: And yet the contrary hereof hath of late been practised almost to the Ruin and Deftitution of this Kingdom; and during the late Usurped Governments, many Evil and Rebellious Principles have been instilled into the Minds of the People of this Kingdom, which, unless prevented, may break forth to the Disturbance of the Peace and Quiet of the same.

And in purfuance of this Statute, it was likewise ordained by the Authority aforesaid, in the 2d Statute for the Militia of the 14th Year of the fame King, where not only the fame Preamble is recited verbatim, as before in the former Statute, but it is also Enacted, That no Perfon, (no not a Peer of the Realm) shall be capable of acting as Lieutenants, Deputy-Lieutenants, Officer or Soldier, by virtue of this Act, unless after the Oaths of Allegiance and Supremacy they take this Oath following: viz. I A. B. do declare and believe, That it is not lawful, upon any Pretence whatsoever, to take Arms against the King; and that I do abhor that traitorous Position, that Arms may be taken by his Authority against his Perfon, or against those that are Commissed by him in pursuance of such Military Commissions. And it is also to be noted, that all Mayors of Cities, or other Corporations, were obliged, by a former Statute of the 13th of this King, to take the same Oath. From both which Statutes and Declaration, we may draw these Conclivons. First, That the Militia (i.e. the Command of all Military Forces and Warlike Affairs) are declared to be wholly in the King. Secondly, That either, or both Houses of Parliament, cannot make any War, Offensive or Defensive, against him, &c. Pray mark that. Thirdly, That the contrary Practice hath tended almost to the Deftitution of this Kingdom, and that many Evil and Rebellious Principles (whereof this without doubt is intended for the chief) have been infilled into the Minds of the People, &c. And lastly, That in pursuance thereof, all Persons above-mentioned were not only obliged to renounce taking up Arms against the King, upon any Pretence whatsoever, but also against any that shall be authorized by the King's Military Commissions, without any Exceptions. And it is farther Enacted, That all Clergymen should be obliged to take this Oath, as well as the Laity; and it is likewise ordained, That all Clergymen who were to enjoy any Livings or Preferments in the Church, were likewise, for the Space of Twenty Years next ensuing, obliged to subscribe this Declaration. So that it is no wonder, if the Royal Clergy of
of the Church of England, think themselves not only tied by the express Rules of Scripture, but also by the Laws of the Land, strictly to observe this great Law of Passive Obedience, and Non Resilience. Now pray see here the Doctrine of Non Resilience, in its full Amplitude, yea, this very Doctrine, as in this Domain, has been declared to be the Law of this Kingdom, and that by two expressActs of Parliament. And can you think the Two Houses were not in earnest, when they made this Declaration? Surely had they not been so, they had been very ridiculous to jest with all our Laws and Liberties; had they not been, I say, verily perfumed of the Truth of this Doctrine by Law, as well as by Scripture. So that I hope you must now be forced to confess, that even our own Representative have solemnly renounced, for themselves and the whole Nation, all Right of Resilience, so much as defensive, against those commissioned by the King, upon any Pretense or Occasion; whatever; and we have left us nothing whereby to defend our selves against our Kings, or those commissioned by them, (no, not if they never so much abuse their Power) but the old Primitive Artillery of Freces and Lachryme.

F. As for what you have more than once said, that this Doctrine of Resilience, if carried home, always ends in the Deposition and Murder of the King; tho' it hath I grant sometimes happened, yet that has not been always so, but most often to the contrary; as appears by those Resilences that were made in the Reigns of King Richard II. Henry III. Edward I. and divers Times in Edward and Richard III's Reigns, before Things were driven to that Extremity, as they afterwards were. And as I will not justify the Deposition of those Princes, tho' done by Parliament, yet will I not absolutely condemn them; since no Act of Parliament hath, as I know, ever done it: And tho' it is true, all the Proceedings in Parliament against Edward II. are taken off the Rolls, yet was it not done by Order of Parliament, but by Richard II. alone, when he by his exorbitant Courtesies feared to be served after the same Manner. But that there was in those Times some Ancient Law extant, which was also destroyed by that King, appears by that remarkable Declaration of the Lords and Commons in Parliament, sent by way of Message to the King (then wilfully absenting himself from the Parliament) by the Duke of Gloucester his Uncle, and the Bishop of Ely, who were too great to tell so notorious a Lyce. The Speech you will find at large in Keighton, beginning thus, Domine Rex; and after many Petitions, and good Advices, at last thus concludes, which I shall give you in Latin, — Sed & unam aliam de animo nostro super-esset nobis ex parte Populi vobis vobis intimare, habent enim ex antiquo Statuto, & de facto non longe retroductis temporibus experienter quod damnum effi batito, si Rex maligno Conflito quocunque, vel inepta contumacia aut contemptu, seu protector voluntate singulare, aut quosvis modo irregulari, sit alienaverit ap Pulpos suo, nec voluerit per iuris Regni, & Statuta, & Nudabilem Ordinationem cum salubri Conflito Dominorum, & Procurem Regni, gubernari, & regulari, sed capiase in suis infansis Conflito proprium voluntatem suam singularem protector exercire, tunc licet effi is cum communi afferret Populi Regni, ipsum Regem de Regali folia absurgare & propinquantem aliquem de furte regis loco ejus in Regni folio sublimare.

From whence you may observe, that the Lords here relate to an Ancient Statute or Law then in being, tho' the Execution of it on the Person of his great Grandfather Edward II. was but of Times not long palled; and that King Richard might as well destroy the Record of that Law, being not then commonly known, or in private Men's Hands, as well as he did divers other Records; as appears in the 24th Article against this King, wherein it is set forth, That the said King had cau'ed the Rolls of the Records touching the State and Government of this Kingdom to be defaced and razed, to the great Prejudice of his People, and the Disinherition of the said Realm, &c. So that nothing is more certain, than that the Two Hous of Parliament, at that Time, did look upon it as their undoubted Right to depose the King in case he violated the fundamental Laws and Constitutions of the Kingdom. Th'o' how this could conrfit with that Power which the King then exercised, of calling and dissolving Parliaments at his Pleasure, I do not understand, since it can never be supposed, that a King, whilist in full Power, would permit a Parliament, called in his Name, to sit, to depose himself for evil Government. As for the War made by the Two Hous of Parliament against King Charles I. I shall not undertake to justify it, for the Reasons already given; as also because...
it was not a War undertaken by the general Consent of the whole Kingdom, but carried on chiefly by the Puritan or Presbyterian Party: For tho' the City of London, and many other great Towns were for the Parliament; yet it is also certain, that the major Part of the Nobility and Gentry of England fought for the King, and were so considerable a Number, as to make an Anti-Parliament at Oxford: so that this War could never have happened, had not the King parted with the Power of dissolving of the Parliament out of his Hands. Much less will I justify the Murder of this King, or of any others above-mentioned, as being no necessary Consequences of that Rebellion I only allow for Lawful cite. That of the whole or major Part of the Nation. Nor were Edward II. or Richard II. put to Death by any Act or Order of Parliament, but were murthered in Prison, and the Murderers of Edward II. were afterwards attained by Act of Parliament and executed as they deserved. But as for the Murder of King Charles I. it is not to be taken into this Account, it being not done by the Authority of the Lords and Commons in Parliament, but by a False Rump or Fag-End of the Houfe of Commons, who hate by the Power of the Army; after far the major Part of the Members who were for the King were shut out of Doors, and the Lords voted useless and dangerous.

I. I confess you have made as good an Apology for these Actions as the Matter will bear; but that neither of the Two Houfe can at this Day have any coercive Power over the King, or to call him to an Account for any thing he has done, appears by the express Declaration of both Houfes in the Statute of the 12th of Charles II. as also in those but now cited, in which they utterly disclaim all making War, whether offensive or defensive, against his Majesty; much less can he be subject to any other Coercive or Vindictive Power, unless by the Laws of the Land, to be revided by private Persons. Therefore supposing I should grant (as I do not) that the Parliaments had formerly a Power of depoping of their Kings, and that the Clergy, Nobility and People had also a Right of taking up Arms against the King in Cafe of notorious Tyranny, and Misgovernment; yet is all such Rebellion expetely renounced, and declared unlawful by the Oath and Declarations now cited. So that tho' in the dark Times of Popery, such Rebellion might be counted lawful, not only by the Lacty, but also by the Bishops and Clergy, who ought to have taught the People better Doctrine; yet I think it had been much better for the Nation to have endured the woorf that could have happened from the Tyranny of Kings, than to have transgres'd the Rules of the Gospel, and the confant Doctrine of the Primitive Church by Rebellion and Resistance against the Supreme Power of the Nation.

F. I shall not now maintain that the Two Houfes of Parliament have any Authority at this Day to depose the King, or levy a War against him, upon any Account; yet that they have still a Power to judge of the King's Actions, whether conformat to Law or not, and whether he has not broke the Fundamental Constitutions of the Kingdom, is no where given up, as I know of: But that Rebellion in some Cases is not contrary to the Doctrine of the Gospel, I have already proved, and that it was not di rectly contrary to the Laws of the Land before these Statutes, you do partly grant. But since the main Strength of your Cause, lies in this Oath appointed by these Acts of Parliament, therefore if I can give a SatisfaAory Account of the true Meaning and Sense of these Acts, to be otherwise than you suppose, I hope you will grant that Rebellion may still be lawfully made by the whole Body of the People in the Cafes I have now put, against any Persons, who under Colour and Pretence of the King's Commission should violently assaiff their Persons in the free Exercise of their Religion, as it is by Law established, or should go about to invade their just Liberties and Properties, which the Fundamental Laws of England have conferred upon every Free-born Subject of it.

And in order to the clearer Proof of this, I shall make use of this Method; I shall first explain the Terms of this Declaration, and then I shall proceed to show you that even in a legal Sense all defensive Arms, or Rebellion of the King's Person in some Cases, or of those commissioned by him, is not forbidden, not inteneded to be forbidden by these Statutes and Declarations; first that, by taking Arms against the King, is certainly meant no more than, making War against the King, according to the Statute of the Twenty fifth of Edward III. which declares
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clare making War against the King to be Treason; and this is unlawful upon any Pretence whatsoever. Secondly, The Clause, *by his Authority against his Person*, is only to be understood of the King's Legal Authority; and by his Person, is meant his Natural and Politick Person, when acting together for the same Ends, as I shall shew you by and by. So that both these Statutes are but Declaration of the Ancient Common-Law of England against taking up Arms, and making War against the King, and do not (in my Opinion) introduce any new Law concerning this Matter: So that whatever was Treason by the Statute of the 25th of Edward the Third is Treason by these Statutes, and no more; viz. all taking up Arms, or actual making War against the King in order to kill, depose, or imprison him, &c. as Sir Edward Coke shews us in his Third Inquiries. In his Notes upon this Statute, yet notwithstanding, after this Statute of the 25th of Edward the Third, the Clergy, Nobility, and People of England assembled in Parliament, did suppose it still lawful to take up Arms against those illegitimately commissioned by the King, in case of vigorous Misgovernment and Breach of the Fundamental Laws of the Nation; as appears by that general Refusance made by Reafon of the evil Government of the Duke of Ireland, and those concerned with him, in the 11th of Richard the Second; which, as I have already proved, was allowed for lawful by Act of Parliament, and consequently by the King's own Consent, without which it could not have been declared. The like I may say for that Refusance which was made in King Henry the Sixth's Reign, by Richard Duke of York, and the Earl of Northumberland, and Barons of his Part, against the Evil Government of the Queen, and the Duke of Somerset, who governed all Affairs in an Arbitrary and yet unsuccessful Manner, by Reafon of the Easines of Weakness of King Henry. But though this Refusance was also approved of in the next Parliament of the 33d Year of this King, yet I shall not so much insist upon it, because I know you will allege, that this was made by the Lawful Heir of the Crown against an Ularper, since the Crown was not long after adjudged to be his Right, though King Henry was allowed to wear it during his Life: Yet however, it shews the Opinion of the Clergy, Nobility, and People of England at that Time, concerning the Lawfulness of such Refusance, before this Declaration of the Easates of the Kingdom, concerning the Legality of the Duke of York's Title, was made in the Parliament above-mentioned.

Thirdly, That the Parliament by these Statute of the 13th of Charles the Second for the Militia, never intended thereby to enable, or leave it in the Power of that King, or his Successors, to make this Kingdom an absolute Dopolick Monarchy instead of a limited one; as they must have done, had they declared that the King, and those Commissioned by him, might do what they pleased with the Religion, Lives, Liberties, and Easates of the People of this Nation, and that it was Treason to resist in any Case whatsoever. Sure they could not but remember that apparent Commission of Sir Phelip Onslow's, in the Year 1641, whereby he pretended to be impowered to drive the Englishe Protestants out of Ireland, and to set up the Popish Religion in that Kingdom, and restore the Bishops to their Easates, and fire divers of them could not be unmindful that this was to give away all Right of Self-Defence, in case any future King should by his own innate Tyrannical Temper, or the evil Council of wicked Men, be persuaded to use Force upon the Persons of the Lords and Commons, either whilst they were actually sitting, or in their Passage to the Two Houses, since by this Act of Oath, if understood in your Sense, they must have barred themselves, and the whole Nation, of all Right of Self-Defence, in any Case whatsoever, though of the greatest Extremity; and therefore I doubt not, but the Intent of this Parliament was to leave Things as they found them. And as it was absolutely unlawful for the People of this Nation to take up Arms against the King, so it is also as unlawful in him, or those Commissioned by him, to make War upon the People, or to diffuse them by Force of their Religion, just Rights, Liberties, or Easates: And if the King hath a Right to defend himself, and his Crown and Dignity, against Rebellion, so must the People of this Nation have a Right likewise to defend themselves against Arbitrary Power, in case of an Invasion of any of the Fundamental Rights above-mentioned; or else all Bounds between a Limited and Dopolick Power will be quite taken away, and the King may make himself as absolute as the King of France or Great Turk whenever he pleases.

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M. I will not dispute with you about the Matter of Fact, or that a prevailing Faction might not in turbulent Times, and during the Reigns of weak and ill-advised Princes, take upon them by Force of Arms, to remove Evil Councillors, and to put the Government of the Kingdom in what Hands they pleased, and then publish Acts of Parliament to indemnify themselves for so doing; yet I cannot allow that even such Acts could make it lawful to take up Arms against the King, or those Commissioned by him, upon any Pretence whatsoever. So that though I grant that the Intent of this Parliament of King Charles the Second, was not to make any new Law against Replication, or taking up Arms against the King, yet was it their Design so to explain the Ancient Statute of the 25th of Edward the Third, that none should for the Future doubt in the least, that all taking up Arms, or Replication of the King, or those Commissioned by him, upon any Pretence whatsoever, was unlawful and treasonable: And for this we need go no farther than the very Words of those Declarations, which the Parliament of the 12th and 13th of Charles the Second have made concerning this Matter: As First, in the Statute of the 12th of Car. 2. Cap. 50, for attainting the Regicides, the Two Houses of Parliament expressly declare: "That by the Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together in Parliament, nor the People collectively, or representatively, nor any other Persons whatsoever, ever had, hath, or ought to have any Coercive Power over the Persons of the Kings of this Realm;" Whereby not only all the Traiterous Examples of the Depositions, and Imprisonments of King Edward, and Richard the Second, are expressly condemned, but also all taking Arms to force the King to redress our Grievances, whether he will or no. And farther, That all Arms, whether Offensive or Defensive, are expressly forbid, pray mind that Claude in the Preamble to these Acts of the Milites I now mentioned, wherein that Parliament expressly renounces "all taking up Arms, as well Defensive as Offensive against the King: And the Words of the Oath it itself are yet more strict, "That it is not lawful, upon any Pretence whatsoever, to take up Arms against the King." Now can any Thing be plainer, than that all defensive Arms, tho' for our Religion, Lives, and Liberties, or whatsoever else you please, are expressly declared to be against the Fundamental Laws of this Kingdom.

But as for the dreadful Consequences of this Law, if never so strictly taken, they are not so bad as you are pleaze to fancy: For as to your Intimation of Sir Phelime O'neal's pretended Commission from King Charles the First, you may be very well satisfied, that it was a notorious Piece of Forgery; since before that good King's Confluent Denial of any such Commission granted by him, Sir Phelime, when he came to suffer in Ireland, for raising that horrid Rebellion, did volunterly at the Gallows acknowledge, that he had forged it himself, by putting the Seal of an old Patent, which he had by him, to that pretended Commission you now mention: Nor indeed can it ever enter into my Head, that any King should grant a Commission to destroy or make War upon his People as long as they continue in their Duty to him, though of a different Religion from himself; tho' perhaps he may think fit for some Reasons, to disfigure them, or deny them the publick Exercise of their Religion, or render them incapable of bearing any Offices of publick Trust in the Kingdom. But if these should be lawful Causes of Replication, why the Papists should not be allowed it as well as the Protestants, I can see no Reason to the contrary. As for your other Intimation, that the Parliament by renouncing all defensive Arms, must be suppos'd likewise to give up all Right of Self-defence, in Cafe the King, or any Commissioned by him, should use any Violence to the Persons of the Lords and Commons assemled in Parliament, or in going thither: This is so unlikely, and remote a Cafe, that it hardly comes under the Consideration of a bare Possibility. But, however, let the worst that can happen, I am very well satisfied, that the Parliament was then so thoroughly convinced of the Mitchief's had befallen this Nation by this Republican Doctrine of Replication, having been the Cause of the Destruction of the best constituted Church and Government in the World, as also of the Murder of some of the best Princes that ever Reigned, that they were resolved rather to trust to the Coronation Oaths, and innate Goodness of our present and future Kings, than to suppose any War could be lawfully made against them, upon any Account whatsoever, which would have been expressly contrary not only to the Doctrine of the Church of England, but the known Laws of the Land.

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F. I do not deny, but the Perfons of the Kings and Queens of this Realm are, and ought to be Sacred and Inviolable; and yet no Man will therefore say, that they are irrepealable in all Cases whatsoever. As if the King (for Example) should attempt to ravish Women, or rob, or murder Men, upon the Highway, or in the Streets, as the Ancient Historians relate of Nero and Commodus the Emperors; and as is reported of the last King of Portugal, and which was one of the Reasons of the Estates of the Kingdom removing him from the Government. And as our Henry the VIIIh. is related by our Historians to have robbed Men upon the Highway before he was King: So if he had gone about to continue the same Frolick after he came to the Crown, I do believe his Perfon, and all those that robbed by his Commination, had not been irrepealable: nor would it have been Treason within the Statute of the 25th of Edward the IIIId. though he was then actually King, any more than it would have been Treason had the like happened when he was Prince, tho' he was expressly within that Statute. And yet this would not have contradicted the Parliament's Declaration in the 12th of Car. the IId. That neither the Parliament nor the People have Coercive Power over the Perfons of the Kings of this Realm; since by Coercive Power must be here understood, his being subject to the Penalties of the Law, or being called to an Account by any Jurisdiction. But there is a vast Difference between that, and Relibitude for Self-Defence, since I may with this respect the Violent of my Father in the State of Nature, as I have already proved, tho' I cannot justify the Punishment of my Father, or calling him to an Account as his Superior: Therefore 'tis only in the King's Politick Capacity, that he can be said to do no Wrong; since you see he may personally commit the greatest Crimes imagiable, tho' his Perfon is unpunishable for want of a Superior Power to call him to an Account: Yet 'tis not so with those who act by his illegal Commotions or Commands; since, having delegated the Executive Part of his Regal Power to his subordinate Ministers and Officers, 'tis they that are accountable and punishable too by the Law of the Land, in case they any ways transgress or violate it by his illegal Commands or Commands, as I shall prove more at large by and by. And as no War, properly so called, can be made against a single Person, but against a Man, as he is aided or assiested by many others; so this War against the King can be only interpreted of such Wars or Rebellions as are made against him in his politick Capacity, as he is King and Supreme Governor of the Realm, and the Commander of all the Militia thereof to legal Intents, and for the Defence thereof against Foreign or Domestick Enemies; nor was there any great Feat, according to the Ancient Legal Constitution of this Kingdom, that this could often fall out, or indeed be put in practice to any other Purpose by the Kings of this Realm, if we consider the Ancient Form of ordering the Forces or Militia of this Kingdom.

For, in the first place, I defire you to observe, That by the Common Law of England, before these Acts of the Militia, the King himself could not, but in Case of Invasion or Inspiracy, levy or keep on foot any standing Forces in England, unlees for Foreign Succours, which was usuallly by Contract with some great Lord or other Person, or by Tenure, against the Scotch and Welsh; and as for the Militia, it was never reduced into standing Troops, Companies, or Regiments, till the Spanish Invasion, as will appear by all Acts of Parliament in the Statutes at large, where Acts for the Affize of Arms were made only for Men to provide and have in Readines such Horse and Arms, to them before the King's Commissioners when they should be required to take View of them; a Regimented Militia, being of no older Date than Queen Elizabeth. But King James the IId. did, by Act of Parliament in the first Year of his Reign, repeal all former Acts for Affize of Arms, and never established any thing in lieu thereof: So it stood till King Charles the IId.'s Time, that these new Acts for the Militia were made. And (to confirm this Point beyond all Dispute) in all the Quarrels between the King and the Barons, and York and Lancaster, the Parliament often refused to meet until the Forces were disbanded that were raised upon those Occasions. Nor had any King standing Forces or Guards, till Henry the VIIth. when that of the Yeomen of the Guard was settled by a special Act of Parliament: And what is most remarkable, the Commons in the Long Parliament of Charles the IId. did, by their Votes entered upon their Journals, declare and affirm, That by Law no Armed Forces could be kept up in Time of Peace, except the Militia; and as for Foreign Succours, they were obliged to be carried immediately to the
Port of their Discharge, and were not to exceed one Month at farthest from the Time of their first Muster. As for Castles and Forts within the Realm, they were almost all supplied and defended by Tenures; but for the Militia of Old Time, it was in the Sheriffs of the Counties to make use thereof for the Execution of the Laws, and Defence of the Kingdom, except in the Cities aforesaid; and it was Treson for any Subject to levy Soldiers, except by the King's Commission, and in the Cities aforesaid; or so much as to ride or go armed, as may appear by the Statue of Northampton, in the 2d of Edward the 11d. much less was it lawful for them to take up Arms, unless in their own Defence against illegal Violence, and in such manner as the Law directs: And it was one of the Articles that was adjudged to be Treason in Parliament against Martimer, That he rode armed to Parliament, and threatened the Prelates and Peers that did any thing against his Will, and who advised the King to levy War upon his Subjects. See also Coke's 4th Institutes, Title Council-board, where the 4th Article against the Speaker is: 'That they shall not be at any time called to the King to raise Horse and Arms in Distraction of the good People, against the Form of Magna Charta; and so by their evil Counsel would have moved War within the Realm, to the Distraction of Holy Church and of the People, for their proper Quarrel: So that taking Arms by the King against his Subjects, and the Subjects against the King, was both alike against Law.

2dly, That taking Arms against the King, in Con traction of Law, is Levying War: But this can be by no means extend to Defensive Arms in Maintenance of the Law, which is allowed and enjoined; and that nothing else was here meant, is plain, since the Subsequent Words in this Oath, it is restrained to the taking Arms by his Authority against his Perfon, or those Commissione'd by him: Which shows, that nothing here is intended to be forbidden, but taking up Offensive Arms upon popular Pretences, without and against the Authority of the Law, which is further explained in another Teft by the Authority of both Houses of Parliament.

Thirdly, This observable, this is but a Teft upon some that were to come into Offices, and can by no means make any Change in the Ancient Law, which cannot be changed by Implication. Nor does this amount to so much; the first Part of this Oath requiring only that the Party admitted into Office, shall so declare and believe; and the second Clause calls it a Traitorous Position, yet it is restrained only to these Two Particulars, 'That Arms may 'not be taken up by the King's Authority against his Perfon, or those 'Commissione'd by him: Which can have reference to nothing but that Distinction taken up in the late Times of Civil War, when the Parliament pretended to take Arms, and grant Commissions in the Name of King and Parliament, by virtue of that Authority which they supposed he left with them at Wellesme. So that this Clause can by no means exclude any Arms made use of for legal Defence according to Law.

Fourthly and Lastly, Tho' the Words, against those Commissione'd by him, may seem to extend the Matter further, and is mistaken by some, as if it required at least Passive Obedience to all Commissions of the King, tho' never so illegal; yet there is not the least Colour for it, since nothing is a Commission but the King's legal Command or Authority pursuant to some Law, and for putting the same in Execution, which is the legal Definition of a Commission. And when this Teft was first brought in to the Second Parliament of King Charles the 11th, and the Word Legal was omitted to be added to the Bill, upon a long Debate it was only left out, because it was declared by all the Lawyers in the House, (even by Sir Henage Finch, then the King's Solicitor,) and agreed to by the whole House, That it was clearly implied, and could bear no other Construction, but that all Illegal Commissions were null and void, and in no legal Sense could be called Commissions: So that taking up Arms in the Defence of the Law, and pursuant thereunto, cannot in any wife be called a taking Arms against the King's Person, or those Commissione'd by him. And further, that by the Words, in pursuance of such Military Commissions, are meant such as are warranted by that Act, and such as the King may issue by his Royal Authority, which is bounded by Law, and consequently cannot grant any Commissions, but what are according to Law. So that if those Commissions are granted to Persons utterly disabled by Law to take them, as all are that do not take the Teft appointed by the Act of the
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the 25th of King Charles II. Entreated, An All to prevent the Dangers that may arise from Popish Recusants: As also all Commissions to do any Illegal, Violent Action, are absolutely void, and consequently may be reffed; or else our Magna Charta, with all the other Laws that establish Liberty and Property, as also every Religion, is itself Established by Law, may be either undermined by the King's new dispensing Power, or else subverted by open Force; and every Commission-Officer in a Red Coat, will be as Sacred and Irreifiable as the King himself.

But to conclude: That the Incidents I have given, that the King's Commission may be abuted to the Destruction of the Nation; not, of the whole Parliament, are not so unlikely and remote as you imagine, Pray let me put you in Mind, that as for that pretended Commission to Sir Phelim O'Neal, tho' it is true, it proved at last to be forged, yet was it not known to be so till long after, and therefore having all the Signs of a true Commission under the King's Great Seal, the poor Protestants in Ireland were to have had their Throats cut according to this Oath, before ever they could be satisfied whether it was true or not. But that a Popish King persecuting and destroying his Protestant Subjects only for Matters of Religion, is no so improbable a Thing as you would have it; the French King's late Daugooing, Imprisoning, and sending to the Gallies all that refused to renounce Here, (as they call it,) and subsisting to the Articles of the Romish Religion, has given us but too fast and recent an Example: And how you can believe the King, being under such very Principals, and being governed by Jesuit Confessors, will never do the same Things, I should be glad to receive, some better Satisfaction than his bare Word to the contrary.

Nor yet is my other Instance of its being left according to your Doctrine in the King's Power, to make a violent Assault upon the Persons both of the Lords and Commons assembled in Parliament, whenever he pleased, without any Restraint whatsoever, so remote and improbable as you are pleased to make it; since you may find it fill upon Record among the Articles exhibited in Parliament against Robert de Vere, Duke of Ireland, Robert Treffion, Chief Justice, and Sir Nicholas Brewhur, in the Parliament of the 11th of Richard II. (which I have already mentioned) the 15th Article of which was, 'That they by their said Council had caused the King to command the said Nicholas'; being then Mayor of Lond., suddenly to rise with a great Power to kill, and put to death the said Lords; (viz. Thomas Duke of Gloucester, and the other Lords there named) and the Commons (viz. of the Parliament of the 10th of this King) who were not of their Party and Conspiracy, for the doing of which Wickedness, the said grand Traytors aforesaid, were Parties and Prefets to the Destruction of the King and his Realm. So that if this Treaty has not been discover'd, and that no private Persons might then refit those Commissioned by the King, it would have been Treason, according to your Principles, for the said Lords and Commons to have refitted those that were thus sent to assault them, and take away their Lives; and what hath since happened, 'tis not impossible but it may happen again. Therefore this is a Thing to be considered as a necessary Consequence of your Sense of this Oath. So that upon the whole Manner, and considering the late of Scene of Affairs, I durst leave it to the Judgment of any indifferen't Foreigner, tho' a Papit, which was most likely, before the unexpected Coming of the Prince of Orange into this Kingdom, that the People should rise up in Arms, and expel the King from his Throne, or that he should by Virtue of the pretended Sense of this Oath, back'd by your Doctrine of Paffive Obedience, have enslaved this Nation, and set up what Government and Religion he pleased.

All I must confes you have given a very cunning and specious Gloss upon the Words of this Oath, and Declaration of the Parliament of King Charles II. but whether it is legal or not, I very much doubt, since I never heard of it before; and I could have wish'd, that if they design'd not to have been upon Men's Consciences in this great Point, that they would have been more clear in expressing all those Cases wherein it might be lawful for us to refit the King, or those Commissioned by him; as also who should judge, when the King's Commissions are so illegal and violent as to require Restraint; for if every private Subject may judge of the Legality, or Illegality of the King's Military Commissions, and can raise a Party strong enough to make Opposition against those that are Commisioned

fioned by them in the Execution of the King's Orders, a discomfited Faction may soon find a Pretence to raise another Rebellion, and Civil War, as dreadful as the former; and notwithstanding your great Care and Concern for the King's Person, which you grant to be sacred and inviolable, could it long continue so? For if the King himself appeared at the Head of his Men, to command and encourage them in their Duty, it would be much worse, as long as the Matter they took up Arms for, should be by them accounted a Violation of the Laws. Thus we may remember, that though the Parliament of Forty One did pretend to take up Arms for Defence of the King's Person, and only to take away Evil Councillors; yet did they for all that, order their Generals and Officers to fight as much when the King was personally present, as at any other Place or Time; so that his Majesty's Person (had not God thought fit to order it otherwise) might have been as well destroyed in the Battles of Edgehill, or Naseby, as his great Grandfather King James III. of Scotland, was in that Battle against his Rebellious Subjects, headed by his own Son. So that according to your Interpretation, instead of mending the Matter, this Parliament of King Charles II. had only left it far worse than they found it. For whereas the Long Parliament made themselves the sole Judges, and Redefaters of the King's Violations of the Peoples Rights; now according to your Interpretation of this Oath, and Declaration of the Parliament of King Charles the Second, every private Man may not only judge of the King's Violation of the Law by his Military Commissions; but also make Restitute against them, whenever they think themselves able so to do. And then notwithstanding that Parliament's utter renouncing all Arms, whether offensive or defensive, to be raised by themselves against the King, they would have still left a Power in any Part of the People strong enough to make this Restitution which they had renounced for themselves, who are their Lawful Representatives. Thus for Example; supposing the last Civil War had begun upon the Account of raising of Ship-Money, which whether it was lawful, I will not now dispute; it was sufficient that all the Judges except Two, gave their Opinions for it; and if any County in England strong enough to make an Insurrection, had raise in Arms upon the Levying of this Tax (as it has several times happened even about Taxes granted in Parliament) this (though small) yet being look'd upon against Law, must have engaged the whole Nation in a Civil War, and also endangered His Majesty's Person, in case he had appeared in the Field with those Men he had raised to subdue that Tax; so that I am still satisfied that it is far better, to suffer a Mischief than an Inconvenience; that is, it is better to trust to the King's Confidence and Diferetion, what Commissions to grant, though sometimes perhaps they may chance to be illegal, than to leave it in the Power of the People to rise in Rebellion, whenever they think such Commissions to violate their supposed, or pretended Liberties and Properties.

F. I see you will not argue against the Restitution of the King's Person, in case he should go about to Ravish, Rob, or Murder his People. But now you raise another Difficulty who shall judge, and consequently make this Restitution against the King's Commissions, when executed by illegal Persons, or to illegal and violent Ends. For if the People may judge for themselves of the illegality of such Commissions, a Rebellion may be raised, and His Majesty's Person endangered, notwithstanding all the Provision the Parliament have made against it. But before I answer this Argument of yours, pray give me leave to ask you One or Two Questions: Do you think the King's late Declaration for the Difposing Power, and the Commissions granted thereupon, to be according to Law or not?

M. I must confess I think they are unlawful, yet it does not follow that they may be therefore refisted.

F. I do not ask you that now; but only tell me whether you think the Bishops are obliged in Conscience to difperse that Declaration, or the Clergy to read it in their Churches? And whether those have done well who have refused to read it?

M. I must tell you, I am so good a Protestant, and so true an Englishman, that I cannot allow the King that Power; and therefore I must grant that the Bishops did bravely, and like true Christian Bishops, to refuse to difperse it; and where it was difpersed, the Inferior Clergy have done very well not to read it.

F. Well
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F. Well then, notwithstanding all the dreadful Mischiefs proceeding from private Subjects judging of the Legality, or Illegality of the King's Declarations, and Commissions, or Commands; yet they may, it seems, not only judge whether they are lawful or not; but a Disobedience to them may not only be lawfully exercised, but is very commendable. Now what is this Disobedience to these Commands, but a Moral, or Civil Restraint of the King's Power in this Matter? And why may not such a Judgment be made by the People in as plain a Case, and a Restraint also follow thereupon against such violent illegal Commissions (suppose to raise Money without Act of Parliament, or to Dragoon Men to go to Mats) since the Violence is more evident and apparent in this Case upon Men's Perfections, than in the other upon the bare Confiances of the Bishops and Clergy? For the Force being more immediate and pressing upon their Perfections and Estates, there is no other Means left but to reftit it if they are able.

M. I can give you very good Reasons to satisfy you, why, tho' I grant private Subjects may judge of the Legality or Illegality of the King's Commissions, and also refuse to obey his Illegal Commands, and also that all publick Officers ought to take Care at their Peril how they act by, or execute such illegal Commissions; yet that it does not therefore follow that such illegal Commissions or Orders though executed upon the whole Body of the People, may be reftit by them; for all Limitation of the Royal Power being only voluntary, and proceeding from the meer Grace and Favour of our Kings, they are not compellable by Force, or reftituable if they impose their own Proclamations or Editts upon us instead of Laws. For tho' I grant that the King hath no juf, or legal Authority to act against Law, and that if he knowingly put any Subject to Death contrary to Law he is a Murderer, and no Prince can have any such Prejorative, as to commit open downright Murders either in his own Perfon or by those who act by Commission from him; but what follows from hence? That they may reftit or oppose them if they do: This I absolutely deny, because God and the Law have commanded us not to reftit; and I see no Incongruity between those Two Propositions; That a King hath no Authority to act against Law, and yet that neither he, nor those commissioned by him though acting against Law, may be reftituted. Both the Laws of God, and the Laws of our Country, suppose these Two to be very confident.

For notwithstanding the Possibility that Princes may thus abuse their Power, and trespass the Laws whereby they ought to govern, yet they also command Subjects in no Case to reftit; and it is not sufficient to justify Restraint if Princes do what they have no juf Authority to do, unless we have also a juf Authority to reftit. He who exceeds the juf Bounds of his Authority is liable to be called to an Account for it; but he is accountable only to those who have a Superior Authority to call him to an Account. No Power whatsoever is accountable to an Inferior; for this is a Contradiction to the very Notion of Power, and distinctive of all Order and Civil Government. Inferior Magistrates are on all Hands acknowledged to be liable to give an Account of the Abuse of their Power, but to whom must they give an Account? Not to their In inferiors, nor to the People whom they are to govern; but to Superior Magistrates, or to the Sovereign Prince who governs all. Thus the Sovereign Prince may exceed his Authority, and is accountable for it to a Superior Power; but because he hath no Superior Power on Earth, he cannot be reftituted by his own Subjects, but must be referred to the Judgment of God who alone is the King of Kings.

F. In the first Place I deny (and I have sufficiently proved the contrary) that all Limitation of Royal Power proceeded at first from the meer Grace and Favour of our Kings; since the Crown of England has been from its first Institution limited by Laws, and the People have likewise always enjoyed a Right and Property in their Lives, Liberties, and Estates by the same Laws: But tho' you and I are thus far agreed, that the King hath no juf and Legal Authority to act against Law, and that if he put any Man to Death, or take away his Estate contrary to it, it is Murder and Robbery; and likewise that the Subjects may be capable of judging concerning such Illegal Commands: But you will not allow, that if such a limited Monarch should send his Mercenary Forces to take away our Lives or Estates, or to Dragoon us till we will
will own ourselves of his Religion, that those Instruments of his Tyranny may be repented; or that I have brought any Reason for it. Whereas if you had but attended better to my Discourse at our Third and Fourth Meetings, you might have remembered that I plainly enough proved to you, that God hath not given Princes, nor those commissioned by them, any Authority to Murder or enslave their Subjects, and your self then granted, That every Man hath Power to defend his Life against him who hath no Authority to take it away, which holds more strongly in our Constitution, where if the King give a Man a Commission to act contrary to the Law of the Land, it is altogether void, and the People may as well justify their Resistance of those Officers or Soldiers who should come to dragon or persecute them, for professing the Religion establisht by Law, as if he had sent them downright to cut their Throats. And this being their Right by the Laws of God and Nature, whether God hath taken away this Right by an express Precept in the holy Scripture, I also examined at those Meetings. But whether any Municipal Law of the Land hath restrained us from it, I have also now considered and proved it contrary to the true Intent and Meaning of these Acts concerning the Militia. And therefore to say, that it is not sufficient to justify Resistance, if Princes do, or command what they have no legal Authority for, unless we can also shew an Authority to resist, is a Mistake; if by Authority you mean an express Civil Law for it, because such Resistance in absolute Monarchies is justifiable by that which is Prior to all Civil Laws, the Right of Self-Defence, or Preservation: And so likewise in limited Kingdoms, there is the fame Necessity of defensive Arms upon a general Breach, or Violation of any fundamental Constitution of the Government, since it cannot be kept or maintained without such Resistance be allowed.

So that if the King hath no Authority to act contrary to Law, he cannot sure delegate that to others, which he had not in himself; and consequently such Commissions to perfricate, or murder Men contrary to Law, being in themselves void, the Perfons that execute them being no Officers, may be justly retaliated, and the Resistance of such an illegal Act done not at all derogate from his Sovereignty as King, since (as I told you before) that is limited only to the Performance of Legal Acts, and extends not to Illegal Orders or Commands. And as for the rest of the Reasons you give against this Resistance, viz. because he who exceeds the just Bounds of his Authority, is liable to be called to an Account for it, only by those who have a Superior Authority to do it; whereas no Power whatsoever is accountable to an Inferior: You do but impose upon me and your self the same Falacy which you have so often made use of, in making being accountable all one with irrefrangible, which are vastly different; and therefore your Conclusion is as false, that because the Sovereign Prince may exceed his Authority, and is only accountable for it to God, that therefore he cannot be retaliated by his own Subjects, for he may be retaliated, and yet be still unaccountable; those Two differing as much as Self-Defence does from Punishment, as I have more than once told you.

A. I cannot rest satisfied with this Reply; for though I do far agree with you, that an Act without a Legal Authority carries no Obligation at all along with it, and therefore cannot oblige the Subject to Obedience. Now this is true, if by Obedience you mean an active Obedience; for I am not bound to do an ill Thing, or an illegal Action, because my Prince commands me. But if you mean Passive Obedience, it is as manifestly false; for I am bound to obey, that is, not to resist my Prince when he offers me the most unjust or illegal Violence. Nay it is very false and absurd to say, that every illegal is an Authoritative Act, which carries no Obligation with it. This is contrary to the Practice of all Human Judicatures, and the daily Experience of Men, who suffer in their Lives, Bodies or Estates, by an unjust or illegal Sentence. Every Judgment contrary to the true Meaning of the Law is in that Sense illegal; and yet such illegal Judgments have their Authority and Obligation, till they are restricted by some higher Authority. This is the true Reason of Appeals from Inferior to Superior Courts, to rectify Illegal Proceedings, and reverse Illegal Judgments, which supposes that such illegal Acts have Authority till they are made null and void by a higher Power; and if the higher Powers, from whence lies no Appeal, confirm and ratify an unjust and illegal Sentence, it carries so much Authority and Obligation.
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Eation with it, that the Injured Person hath no Redress, but must patiently submit; and this it must necessarily be, or there can be no End of Disputes, nor any Order or Government observed in Human Societies.

And this is a plain Demonstration, that though the Law be the Rule according to which Princes ought to exercise their Authority and Power; yet the Authority is not in the Laws, but in the Persons that Execute them: For otherwise, why is not a Sentence pronounced according to Law by a private Person, of as much Authority as a Sentence pronounced by a Judge? Or how doth an Illegal Sentence pronounced by a Judge come to have any Authority? For a Sentence contrary to Law cannot have the Authority of the Law. And why is a Legal, or Illegal Sentence reverisible, and alterable, when pronounced by one Judge, and irreverisible and unalterable, when pronounced by another: For the Law is the same, and the Sentence is the same, either according to Law, or against it, whoever the Judge be: But indeed the Authority of the Person is not the same, and that makes the Difference. So that there is an Authority in Persons, in some Sense distinct from the Authority of Laws, say Superior to it; for there is such an Authority, as though it cannot make an Illegal Act Legal, yet it can, and often doth make an Illegal Act binding and obligatory to the Subjects, when pronounced by a competent Judge.

F. I think, notwithstanding all you have now said, your Diffinition of a Supreme Authority in Persons, above and distinct from the Authority of Laws, will prove a meet Notion; for you grant that the King hath no Just or Legal Authority to act against Law, and that if he put any Man to Death contrary to it, it is downright Murder; but you will not allow, that if the King should thus murder so many Thousands, either he, or those Instruments of Tyranny may be refuted; and therefore you would fain top upon me your old Diffinition of an Active and Passive Obedience: The former of which I very well understand, but as for the latter, I have long since proved, that it is so far from being any Obedience, that it is indeed downright Disobedience, or a Refusal to do that which the Prince commands; so that truly your self have taught me to distinguish between the King's Personal Authority, and his Legal; for otherwise, why are you not as much obliged to yield an Active Obedience to the King's Personal Illegal Commissions or Commands, as to his Legal Ones, if there were no Difference between them? So then, all the Difference between us lies in the Measur of the Disobedience, you maintaining, that it is sufficient not to yield Obedience to such Illegal Commissions and Commands; and I, that befits this Denial of Obedience, (if it be in a fundamental Point, and that which generally concerns the whole Body of the Kingdom) that they may not only be disobeyed but refuted too, if forced upon us with Violence; and therefore all that you have said to prove that the Authority to which we are bound to submit, conflicts not in the Laws, but in the Persons, tho' acting contrary to Law, is even according to your own way of Reasoning altogether unconvincing.

And farther, when you say, that it is false and absurd to affirm, that every Illegal is an Authoritative Act which carries no Obligation with it; I shall prove, that this Absurdity lies wholly on your Side. For 1. Legal and Authoritative are all one in our Law; for that which is not Legal carries no Authority along with it; so that Illegal Authority is in plain English, unlawful lawful Power. Nor had K. Charles I. any such extravagant Notion of his Royal Authority, (who certainly understood his own Power better than you or I,) when he owns in his Declaration to the Long Parliament, Dated from Newmarket, 1641, That the Law is the Measure of his Power; which is as full a Concession of the Thing I affirm as Words can express; for if the Law be the Measur of it, then his Royal Power, or Authority (which is all one) is Limited by it. For the Measur of any Thing is the Limits or Bounds of the Thing Limited; and when it exceeds those Bounds it is an Illegal, and consequentlly an Unauthoritative Act, which carries no Obligation either Active or Passive along with it. So likewise in the said King's Answer to both Houfes concerning the Militia, speaking of the Men by them named to him to be Commissioners for it; He thus replied, if more Power shall be thought fit to be granted to them than by Law is in the Crown itself, his Majestly holds it reasonable, that the same be by some Law first vested in him, with Power to transfer it to those Persons, &c. In which Passage it is granted, that
all the Power or Authority of the Crown concerning the Militia is by or from the Law, and that the King hath no more Authority than what is vested in him by the Law of the Land.

2. Your Argument from the Practice of Human Judicatures is also very fallacious, for you argue from the bare Abuse of a Truth, or Commision, with the Execution of which all Judges and Officers must be intrusted, to that which is quite of another Nature, (viz.) When the Person intrusted acts directly contrary to his Commision, or without any Commision at all; And therefore you are quite out in your Law, when you tell me, that an Absolute Illegal Judgment is Valid till it be reversed; for if it be apparently contrary to the known Forms of Law, and Practice of the Kingdom, it is so far from being Valid, that though it be put in Execution, it would be look'd upon as Null, and done without any Authority at all: As suppose the King in Person, or any Inferior Judge, should condemn a Man to die, either contrary to the Verdict of his Jury, or without any Jury at all; this is so far from being Authoritative, or Valid, that such a Judgment is Void in itself, and those are guilty of Murder, who execute it, and it will need no Writ of Error to reverse it. But I suppose by Illegal Judgments, you mean such Judgments which have some Error in them, either in Matter of Law, or Form, for which they may be reversed. I grant, if these should not be look'd upon as Valid, and hold good till they are reversed in a higher Court, there could not be any Judgment given at all, since all Human Judicatures whatsoever are Subject to Errors and Mistakes; and there is sure a great deal of Difference between such Actions as are done by that Authority which the Law entrusts them with, though not duly exercised, and those violent and illegal Acts, which a Prince, when he perfecures, and enslaves his Subjects, performs by his wicked Instruments, contrary to all Divine and Human Laws: So that the Validity of such an Erroneous Judgment, is not from the Judge's Personal Authority, above the Law, nor from his Mistake or Ignorance of the Law, but from that high Credit and Authority which the Law hath given to all Courts and Judicial Proceedings; which if they are done in due Form, are to be taken for Law, however unjust, and must be presumed to be free from Error till they are reversed in some higher Court.

M. But if you please better to confider of it, you will find a Necessity of owning a Supreme Power in the King beyond all Appeal, or Refitince, and that there must be a Personal Authority in him, Antecedent and Superior to all Civil Laws; for there can be no Laws without a Law-maker; and there can be no Law-maker unless there be one or more Persons investèd with the Power of Government; of which, making Laws is one principal Branch; for a Law is nothing else but the publick and declared Will and Command of the Law-makers, whether they be a Sovereign Prince, or the People.

And hence it necessarily follows, that a Sovereign Prince does not receive his Authority from the Laws, but Laws receive their Authority from him: And I must be fill of the same Opinion, notwithstanding Bradon's Words, which you before quoted, Lex facta Regem, the Law makes the King; by which I cannot believe that that great Lawyer meant that the King received the Sovereign Power from the Law; for the Law hath no Authority, nor can give any, but what it receives from the King; and then it is a wonderful Riddle, how the King should receive his Authority from the Law. And therefore I must stick to my former Interpretation, that when he lays the Law makes the King, that is, it distinguisheth him from a Tyrant; as appears from the Reason he gives for it; i.e. Non est enim Rex ubi dominatus voluntar, & non Lex, lie is no King that governs by his Arbitrary Will, and not by Law; not that he is no Sovereign Prince, but he is a Tyrant and not a King.

And hence it as evidently follows, that the Being of Sovereign Power is independent on Laws; that is, as a Sovereign Prince doth not receive his Sovereign Power from the Law, so should he violate the Laws by which he is bound to govern, yet he is not to be refitised, much lesd he forfeit his Power. Tis true he breaks his Faith to God and his Country, but he is a Sovereign Prince fill. And therefore it plainly appears that every Illegal Act the King doth, or Illegal Commision that he grants, is not an Inautho-
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inauthoritative Act, or Commissiion, but lays on the Subject an Obligation to yield, if not Active, yet a Passive Obedience. And in the King's most illegal Acts, tho' they have not the Authority of Laws, yet they have the Authority of Sovereign Power, which is irrepealable, and unaccountable. In a word, it doth not become any Man, who can think three Consequences off, to talk of the Authority of Laws in Derogation to the Authority of Sovereign Power. The Sovereign Power made the Laws, and can repeal them, and dispense with them, and make new Laws. The only Power and Authority of the Laws is in the Power that can make and execute Laws; Sovereign Power is inpearable from the Person of a Sovereign Prince, tho' the Exercise of it may be regulated by Laws; and tho' the Prince doth very ill who having consented to such a Regulation, breaks the Laws, yet when he acts contrary to Law, such Acts carry a Sovereign and irrepealable Authority with them, while he continues a Sovereign Prince.

F. I am very well satisfy'd, notwithstanding all you have hitherto said, that the Government of England owns no such thing as this Arbitrary Power, with which you would inveigle the King, since I have already proved at our Fifth Meeting, that the King is not the sole Legislator, and consequently not the sole or Supreme Sovereign Power. So likewise our Law doth as little understand any such thing as a Personal Authority in the King, antecedent and superior to all Laws. For since God hath now left off making Kings by his own special Appointment, as he did among the Jews, every King must either be so by the Law or Cultum of that Country, or else a bare Polleffion of the Throne is sufficient to make him so; and then every Uturper hath as much Right to a Crown as the most lawful Prince; and Oliver Cromwell was as rightful a Prince as King Charles II. It is true, the first King of any Race could not be inveigled with the Crown by the same Law as his Successors are, that is, by an Hereditary Proximity of Blood; yet such a King, whenever he began to be so, could have no Legal Right, without the Election, Recognition, or Consent of the People. And as for an Hereditary Right, that is but a Right by the Law of the Land, or general Consent of the People, (settify'd by an uninterrupted Cultum) to entail the Crown on such a Family; so that in either Case they are Kings by Law. And therefore I conceive it can be only in this Sense, that Braden lays, Lex facit Regem, i.e. The Law of the Kingdom makes the King; which more plainly appears, by what immediately follows, attribuit igitur Rex Legi, quod Lex attribuit ei, viz. Dominationem, & Potestatem; in which Words nothing seems more plain, than that the King ought to yield the like Dominion and Power to the Law, as the Law had given him before; or else how could Braden call the Law (in the Place I have already cited,) the King's Superior? And if the King's Title to the Crown were not by Law, how came it to pass that the Brucer, for Example, had a better Title to the Crown of Scotland than the Boleh? But only that the Laws of Scotland, that is, the Consent of the States of that Kingdom, made them so; for otherwise any Man that looks upon the Pedigree of both those Families, will see, that Boleh, according to our Rules of Deficient, was the nearer of Blood to the last King David than Brucer, and was so adjudged, upon a solemn Hearing, by our King Edward I. in Parliament. And as for William, whom you call the Conqueror, under whom all our present Kings do claim at this Day, he could have no just Right or Title to the Crown of England by Conquest, but by the Election, or Subscription of the People, declared by them at his Coronation. And therefore that Law by which he was made King must be precedent, or at least concurrent with his being so; and upon whatever Terms or Conditions he then accepted it, his Successors are bound both by the Laws of God and Man to observe them. And therefore whatever you have built upon, or would infer from these Principles, is of no Force. And if the King be the sole Sovereign Power, that makes the Laws, repeals them, and dispenses with them when he pleases, I would be glad to know upon what Grounds so many of the Bishops and Clergy refused to read the King's Declaration of Indulgence, since certainly if he alone made the Laws, he also could dispense with them. But I shall say no more of these Points now, because they are not directly to the Matter in hand.
BIBLIOTHECA POLITICA.

M. As for what you say concerning the King's not being the sole Supreme Legislative Power, I confess you and I have disconcerted long upon that Point, and if I were thoroughly satisfy'd of it, I could much easier assent to what you have said; as also if you could prove to me, that the King received his Power from the People, and not from God, the Matter would be yet plainer; for then it would evidently appear, that the People might have referred to themselves such a Right of Refinance as you now maintain; but that they never could have such a Power in England, from the Confinishment of this Monarchy, I need go no farther than your own Influx of William the Conqueror, who owed all his Right to this Kingdom to the Power of the Sword, and not to any Hereditary Right, much less Election, or Confirmation of the People, as I think Dr. Brady hath proved beyond dispute; in his Learned Answer to Argumentum Antinormanicum. So that since we owe all the Rights and Liberties we enjoy to the gracious Concessions of our Kings of this Norman Race, we ought not in Reason or Gratitude to refit them, if they should sometimes encroach upon what we take to be part of those Liberties so granted; no, not if the King (who derives an Indefeasible Right to the Crown from the Title of the first Conqueror) should go about to take away all those Liberties, nay, our very Religion and Property too from us.

But I have not Time to pursue this Argument further now, and therefore shall leave it to another Opportunity.

F. As for what you have now said concerning William the First's having no Right to the Crown of this Kingdom, but what he owed to his Sword, it falls in Matter of Fact; it being more than that Prince himself ever affected or pretended to. And in the next place, As for your Doctor's proving him an Absolute Conqueror over the English Nation; supposing he had done it, (which yet I positively deny) yet will not this serve to do the Butines for which the Doctor urges it, viz. to set up an Arbitrary, Irresistible Power in that King, and all his Successors; but may be urged against him to a quite contrary Purport, as I shall shew you more at large, whenever you please to discourse further upon that Subject. And as for all those things we call Legal, our Rights and Privileges, which you say were wholly granted us by the Charters of his Successors, I have already proved that to be false in Matter of Fact at our Fifth Meeting, where I shewed you that the English Nation had the same Liberties, (as to their Persons and Properties in their Inmates, before your pretended Conquest) as they enjoyed afterwards; and that Magna Carta was but the Recital and Confirmation of our Ancient English Laws, as Mat. Paris affirms in the Place I here formerly cited. But admitting those Liberties and Privileges you mention had been owing to the Favour and Bounty of former Kings, yet can I see no Rebellion or Ingratitude the People of this Nation are guilty of, if they keep and defend them now they have them; but would rather betray a favell, base Spirit, if we part with them: For since it is a Maxim in Law concerning all Grants, as well from the Crown, as private Persons, that they ought to be erased ut Res magis veludet, quam persat, i.e. that the Parties to whom the Grant is made, may not lose the Benefit of it, whenever the Grantor pleases; therefore it is also a Rule in such Grants, that they are still to be interpreted in favour of the Grantee against the Grantor; and also, that the Grantee shall not be left without some Means or Remedy of keeping and defending his Right against the Grantor whenever he goes about to take it away. Nor do I know any Exception there is for the King's Grants, more than those of private Subjects; since both

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M. I confess, this Dispute concerning the Resistence of those commissioned by the King, and the King's being the sole Legislator and Original of all the Civil Liberties and Privileges we now enjoy, hath carried us from the main Points in this Question: Pray therefore, satisfy me (if you can) those great Objections I have made: First, how this Resistence can conflict with that Sacredness and Inviolableness which you your self suppose to be due to the King's Person: For either this Resistence, in case of an Invasion of our Civil Rights, must be made even when the King's Person is actually present, to back those illegal Commissions; or it must be forborne, out of that due Reverence and Care of his Royal Person which the Law enjoins. If the former, the King's Person is in Danger to be destroyed, whenever a Factious Party is strong enough to rise in Arms, and oppose the King's Commissions, upon pretence of their being against Law: But if, on the other side, this Resistence is not allowable when the King's Person is present, then all such Resistence will signify nothing; since as soon as ever the King in Person shall appear in the Field to back his Commissions, all your Defensive Arms (as you call them) must be immediately laid down, unless they mean to destroy the Sacred Person of the King: So that take it either way, all Resistence is either illegal, or else impracticable. Secondly, I can as little understand (as I told you before) how the Two Houfes of Parliament should renounce all taking up Arms, as well Offensive as Defensive, against the King for themselves, and yet should leave a Power in the diffusive Body of the Nation, nay, in any Part thereof, strong enough to make a Rebellion, which they thought unlawful to exercise themselves. Lastly, By what Legal Authority the People, or any Part of it, can justify the taking up even Defensive Arms; since your self acknowledge, that no Arms can be taken up regularly, but by the King's Authority: And you have also disclaimed all taking up of Arms by his Authority against his Person, or against those Commissioned by virtue of such Authority, tho I confess, you except the Cases of Self-defence, and in Maintenance of the Law; yet I cannot find those Exceptions allowed of in any of our Law-Books, either Ancient or Modern.

F. I hope to give you such Satisfaction to every one of these Objections you have made, as may serve any indifferent Person. Therefore, as to the first, concerning the Sacredness of the King's Person, which I allow of as well as you, we must, in the first place, distinguish between such Commissions as the King gives by Colour of Law, when the Judges, for Example, had given their Opinions in the Cafe of Ship-Money: For they being the sole Interpreters of the Law in the Intervals of Parliament, I do acknowledge that their Determinations are not to be opposed by Force, but legally revered when the next Parliament meets; and they are then to answer in Parliament for their false Interpretations and Opinions, as Treasons and his Companions did in the 11th of Richard the 1Id. and as the Ten Judges did upon the Two Houfes Declaration against Ship-Money, add their Impeachment thereupon. Thus, though Mr. Hampden refused to pay Ship-Money when demanded of him, and rather chose to lie in Prison than pay it; yet it had been downright Rebellion, in case any Resistence had been made by him against the levying of it: But had this Tax been laid by the King's sole Power without such Colour of Law, I doubt not but Resistence might have been made even against those that were Commissioned by him to levy it; and if any one Town or Hundred were not strong enough to seize such Officers as premised thus to levy it against Law, the Sheriffs of every County in England might have raised the Polie Comitatus, and seized all such Offenders, and carried them to Goal; since the King's Commissions never did, nor can indemnify the Persons so Commissioned, in case the Thing they were about to execute was contrary to Law. And for this, I need go no farther than the Old Mirror of Justices, which is owned for good Law at this Day, which, speaking of Robbery, and the several Kinds thereof, has this Passage, which I shall here render out of the old French Law: Into this Offence (viz. Robbery) all those fall, that take other Men's Goods by Commandment of the King, or any great Lord, without the Owner's Consent. Where you see there is no Difference at all made between those that took away other Men's Goods by the Command of the King, or any other; but it was Robbery in all of them alike, and consequently those might be alike seized and punished as Robbers. The same is also allowed by the Statute of the 20th of Henry the VIIIth, whereby the King's Purveyors are forbid to take any thing to the Value of 40s. or under, without
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without ready Payment in hand, of any Person; and that it then should be lawful for every one of the King's Liege-People to retain their Goods and Chattels, and to refit such Purveyors and Buyers. So likewise the last Clause in this Oath you so much insist upon, viz. in pursuance of such Military Commissions, seems to restrain to such Commissions as were granted by the King's Authority; that is, according to Law, and no other.

So that you see, by the Old Law of England, the King's Commission did not render any Man irreparable, unless he executed it according to Law: Since the Confiable of each Town might raise the Inhabitants thereof, to seize such Wrongdoers; and if they were not strong enough, the High-Confiable of the Hundred might raise the whole Hundred; and in case they were not sufficient, the High-Confiable might crave Aid of the Sheriff, and assemble all the several Hundreds of the County till the Malefactors were seized. So that as long as there were no standing Forces kept up in the Nation, (as I have shewn you there was not till the Reign of King Charles the IId.) there could never be any Clashing between the King's Civil and Military Commissions. And this is one great Reason why no King of England, since the Act de Taliagno non credenda, was so hardly as to issue any Commissions to levy Money without Colour of Law, because they knew they were void in themselves, and consequently would be refitted by the whole Nation. So that this would not have been taking up Arms by the King's Authority against those Commissioned by him, but only in order to bring those to Justice who had not any Commissions at all to do what they did; the Law taking no Cognizance at all of the King's Personal Commissions, when absolutely against Law.

Now, if the King had joined his own Prefence to such illegal Commissions, it would have mended the Matter, or rendered those Robber of other Men's Goods any more irreparable, than they were before; since the King can give no Man Authority to do that, which he has not Power to do himself: And therefore since his single Person may be refitted, in case he go about to Ravish, Rob, or Murder People; then sure his joining himself with such Men, tho' never so numerous, can never make him more irreparable than he was; unless you will suppose, that the King may not rob or commit Murder with a few without Refitance, but may justify the doing of it with an Army: And if so, pray tell me, what Number they must be to render the King, and all those with him, thus irreparable? And therefore it is no wonder, if our Law has made no express Provision for refitting the King's Person, since it had so high a Regard for his Honour, as not to supposè he could be guilty of making War upon his People: But if the King shall be among such wrong Doers, either by Force or Fraud, the Cafe will be otherwise. Thus, when King Edward and Richard the IId. joined their own Prefence to the illegal Actions of the Two Spencers, and Robert de Vere, Duke of Ireland; yet the Nobility and People took no notice of that, but professed them, notwithstanding the King's personal joining himself with them: And Thomas Earl of Lancaster, tho' he had the worst of it in such a War, and was taken and executed, yet was his Attainder reversed in Parliament, as I have already said, and his Quarrel with the Spencers declared to be good and just. As the like Refitance was also declared to have been for the Safety of the King and Safeguard of the Realm, in the Parliament of the IId. of Richard the IId. wherein the Duke of Ireland, and the rest of his Faction, were condemned, as I have already shewn you: And tho' I grant, that in such a Division between the King and his People, his Person may run a great Hazard; yet it is his own Fault, and not theirs, if it do fall out, and they are not to lose their Lives, Liberties, and Properties; in case the King will freely join himself with Murderers or Robbers, since this is not to refit Royal Authority, but illegal Force, without any Authority at all; and if he will thus enforce himself to the Mercy of blind Bullets, Charge is to be given to all not to kill him wilfully or unwittingly, since we are never to despair of his Repentance, till he absolutely renounces all Reconciliation with his People: And thus, even in the midst of such a Refitance, the King's Person may be as safe as he can be in such Circumstances, though not so safe as if he were in his own Palace. But if an Army of wicked and lawless Men must not be refitted, because they have joined the King's Person (a thing since, when Prince Edward [thereafter King Edward the IId.] could not have justified his fighting with Simon Montford, and those of his Faction, who had, 'as you yourself acknowledged, got
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got the Person of King Henry III. into their Power, and asked all things in his Name, and by his Seeming Authority; as the Historians of those Times expressly tell us; and the King being in Manfort's Army at the Battle of Evesham, was in great Danger, being then wounded in the Neck with an Arrow: So that if this Oath had been then to be taken in this Senfe, this recouling of the King by his own Son out of the Hands of these wicked Counsellors, had been taking up Arms by his Authority against his Person.

M. Pray give me Leave to answier this Influence you have now brought, because I think it does rather make against, than for your Opinion. I grant Prince Edward might well justify his fighting with Simon Manfort, tho' he had the King's Person then in his Power, because the Prince very well knew that his Father was carried about with them as a Prisoner against his Will; and therefore ought to release him, tho' with some Hazard to his Person, since it could not be otherwise brought about. But sure there is a great deal of Difference between fighting to release my Prince, when made a Prisoner against his Will, and fighting against him to take him away from Evil Counsellors, whether he will or not; as the Long Parliament did against King Charles I. tho' they knew he was in the Head of his Army with his own Content; and this was sure taking up Arms by the King's Authority against his Person, and is that which is to be expressly disclaim'd by this Oath, and will be ablo treasonable, if done in any Cafe whatsoever, where the King shall think fit to be at the Head of his Forces, whether the Thing be lawful or unlawful for which they are raised.

With this, it seems the Fear of endangering the King's Person is nothing, if the End for which it be done be lawful. And why it may not hold in other cafes as well as this, I can see no Reason. I grant, that what the Parliament did was unlawful, because the Occasion of the War began on their Side, as it was then said, but supposing the King made War upon the People, I doubt not but the Cafe had been otherwise. And for Proof of this, pray give me Leave to put you a Cafe which may well happen, now we have a Standing Army distinct from the Militia: Suppoze that in a Suit with a great Favourite of the King's, a Man recovers a House and Lands against him by a Judgment at Law, and he also by Course of Law put into Possession thereof by the Sheriff; afterwards the King's Commission is obtained by the Interest of this Favourite, to command an Officer and some Companies of Soldiers of the Standing Army, to take Possession of this House, and deliver it back to the Person who first had it. The Man in Possession being a stout and powerful Person in his Country, hearing of it, resolves to maintain the Possession of his House according to Law, and therefore gets in good Store of his Tenants and Neighbours to defend it. The Officer comes with his Soldiers and summons the House: They within refuse to yield up the Possession, whereupon an Affray ensues, in which a great many are killed. The Man in Possession is by the King's Command indicted for Treason or Murder, for fighting against those commission'd by the King. Now, pray tell me, Whether the Judges ought, according to their Oaths, to direct the Jury to find this Man, and those of his Party, guilty of the Crimes above-mention'd, or not; and whether the Officer and his Soldiers are not rather to answier for this Offence.

M. Truly, I cannot deny but this Military Commission to put a Man out of his Freehold is illegal, and consequently void, and so may be refil'd; since I know the Law says, That a Man's House is his Castle, and he may justify the Defence of it against all Subjects whatsoever: But what is this to refilting the King's Person, who was not there, for if he had, I doubt not but this Person ought to deliver it up to the King, rather than endanger his Majesty's Sacred Person: Nor is this Refinance considerable, it being only in a particular Cafe, which can no way by a general Rebellion alter this Government over the whole Nation.

F. You speak agreeable to your own Principles. Well, but suppoze the King should be perfidiously by some very ill Men about him to play this or the like Trick, whenever he had a Mind to favour one Party more than another, and so should hinder the Execution of the Law whenever he pleased; Can you think the Nation would long endure this, without any Refinance? Or suppoze, to make the Cafe more general, the King should undertake to lay a Tax upon the whole Nation, without Consent of Parliament, and fearing it should not be levied, should resolve to do it by his Officers and Soldiers of his Standing Army; and left
left they should be resisted, should march with them in Person from one County throughout to another to see the Money raised: Do you think the whole Nation, out of pure Deference to the King’s Person, were bound to permit him to do whatever he pleased, and let the Soldiers take this Tax, which they were certainly not obliged to pay, had he not been personally there?

M. Yes, I am of that Opinion that they ought; for it were better to pay it, than that a Civil War should happen about it, in which the King’s Person, as well as the Government, may be destroy’d.

F. I see you are of this Opinion, because you fancy that the whole Government consists in the King’s Person alone, which it does not; but in the Legislative Power, which is not in the King alone, but in the King together with the Lords and Commons assembled in Parliament; Therefore you are mistaken in supposing that this Resistance must needs alter the Frame of the Government, since it is undertaken to maintain the fundamental Constitution of it. For if the King may take what Money he pleases from the People, and make what Laws he will without the Parliament, and without supposing it lawful to resist him if he does, the Fundamental Constitution of this Kingdom will be but a Jefl, considering how light some Princes make of their most Solemn Declarations to their People; nay, their very Coronation-Oaths now-adays. And it is a strange Paradox, that one Man may defend his Life and Property against the King’s single Person, in case he go about to rob or murder him; and yet that a whole Nation should not have the like Right; and that a Prince may not rob or murder Men by himself, yet may do it without any Resistance, in case he can raise an Army to back him.

M. Let what will happen, I am for understanding this Oath and Declaration in the strict literal Sense; which you, by your false Glosses, go about to destroy; therefore to tell you plainly my Mind, I think, neither one single Person, nor yet the whole Nation, can justify Resistance of the King’s Person; no, tho’ he should go about to rob or murder me, it were better I were killed, or loft all I had, than that the sacred Blood of my Prince should be shed by my Hands. Since the whole Parliament have on behalf of the People actually renounced all defensive Arms against the King, (by which I suppose they mean all defensive Arms against his Person) Nor have you as yet answered my two last Objections, concerning that Renunciation of the Two Hoots, and the want of a competent Authority to raise the Arms of the whole Nation, in case of that which you call a General Invasion of Men’s Religion, Liberties, and Properties, if ever any such thing should happen, as it is not likely it ever will.

F. Your Principles and mine are so diametrically opposite, that it’s no wonder we may draw quite contrary Conclusions; for whereas you suppose that Nations were made for Princes to govern and dispense at their Pleasure, without any Resistance on the Peoples side, let them do what they will; I suppose that Princes are made for the common Good of their People, and where their Happiness and Preservation do not interfere, ought involuntarily to be preserved; but when through the Folly, Negligence, or Tyranny of Princes, which was ordained for their Protection, proves their Ruin and Destruction; I think the Preservation of the Prince’s Person ought to give place to the Publick Good; and better that he, than that the whole Nation should perish. Which tho’ it was the Opinion of Caesar, in relation to our Saviour, yet it is so well approved of, that it is said by the Evangelist St. John, that he spake not that of himself, but being High-Priest that Year, he prophesied. For there may be a Civil Government without a King, but there can be no King without a People. Of this Opinion our English Ancestors always were; who, though they often resisted, and sometimes depoited their Kings, they still maintained Kingly Government, tho’ with the Change of the Person. And if it fail’d in the last Civil War, it was because it was at last managed by a Faction of Men of quite different Principles both in Religion and Politics, and not by the Nobility and Gentry of the Nation, whose Interest it was, and ever will be, to maintain the ancient Government of a limited Monarchy, without falling into a Commonwealth, or giving up their just Rights and Liberties to an Arbitrary Power.
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But to answer the rest of your objections, which, if what I have already laid down be Law and Reason too, may be easily done. As to the first objection, the two Houées might very well renounce the Power of making any War offensive or defensive against the King, and yet leave the Right of Resilience for Self-Defence and Preservation to the whole Nation in general, since the former was necessary, unless they would have affected a Right in themselves of sitting whether the King would or not, and waging a War against him whenever they pleased, after he had actually diffluted them; which would be to set up two equal absolute Powers at once in the Kingdom. But that they did not renounce it for the whole Kingdom, is plain; for though by the Statute of the 12th of Charles II. they disclaim all coercive Power over the King's Person for themselves and the People, either collectively or representatively, yet do they neither then nor in any of those Acts for the Militia, renounce all defensive Arms for the Defence of their Religion, Liberties, and Properties; there being a great deal of Difference between such a Right, and a coercive Power over the King, as I have already sufficiently proved; nor indeed was it in Power of the Parliament to have done if this would, since they are but Trustees for the People to preserve their just Rights, and had no Power wholly to give up their Religion, Lives, and Properties to the King's Mercy. So that this Renunciation of all defensive Arms on the Behalf of the whole People, had been absolutely void in it self: And since it would have rendered the Legal Constitution of the Government of this Kingdom absolutely precarious, if notwithstanding the illegality of the King's Commissions, and their being void if granted to illegal Purposes, the King's Persons shall render it downright Treason to retrench them. And if this be so, the last Difficulty shall be easily resolved, viz. by what Authority or Commission the People may make this general Resilience? To this I say, that in the first Place all Commissions granted to Persons incapable by Law to take them, or for illegal Purposes, are to be supposed to be illusory contrary to the King's Will and Knowledge, and therefore are to be looked upon as void in Law; and consequently the Persons not to be commissioned at all, and so may be retrenched by the King's legal Officers all over England, as I have already proved: But if once the King should correspondence and act such Robbers by his own personal Precedence, this Resilience may then be made; and justified by the whole Nation, not by the King's Authority against his Persons, but by another higher and precedent Right, viz. the Right of Self-Defence, and the Common-Safety of the whole Nation, which the People must have referred to themselves at the first Institution of the Government, or else all Monarchies would be alike, and their would be no difference at all between absolute and limited Kingdoms.

M. I shall not trouble my self about other Kingdoms, but this much I firmly believe, that our Kings are Absolute Monarchs, notwithstanding they have limited themselves by Law to the Manner of their Administration of the grand Essentials of Government, the making of Laws, and raising of Money: So that since the Supremacy of the Government is still in themselves as God's Vicegerents here on Earth, and not as the People's Deputies, I cannot but still understand this Oath in the strict litteral Sense in which I am confident this Parliament meant it; and therefore since they have expressly declared the Law to be so, I will not be wiser than the Law; especially since it is most agreeable to the Scriptures, and the known Doctrines of the Church of England, that the King's Person is not only unaccountable but irreprehensible too upon any Pretence, whatever, and I think I may fairly say to you, that it is much better for this Nation, or any other of a like Constitution, to suffer the worst that may happen from the ill Government, than Tyranny of our Kings, than to involve themselves in Blood and Confusion by Rebellion and Civil Wars, as often as the People shall judge, though never so fallly, that their fundamental Rights and Privileges are forcibly invaded by the King.

P. I think I have very expressly proved at our 5th Meeting, and that from undoubted Testimonies from our ancient Historians, and Writers of the Laws of England, as also from the whole constant Tenor of the Statute Law of this Nation; that the Kings of England are not limited by their own Concessions, in the Manner of the Administration of their Sovereign Power, but from
from the first Constitution of the Government: And if the King be not the sole Supreme Legislative Power, I care not what some Divines have writ to the contrary; and since it is a Law-Question, the supreme Authority alone ought to decide it. And therefore it is no Matter in this Case, what the Scriptures lay, nor yet the Church of England; the former hath not, and the latter cannot determine what is the legal Constitution of the Government in this Nation, and where the supreme Power resides. And therefore suppose it to have been the Intent of this Parliament, never so much to bar all Refinacion of the King's Person in any Case whatsoever, yet I am sure it was not in their Power to do Things absolutely inconsistent and contradictory in themselves, as they must have done had they made the Persons of all Officers, however commissioned by the King, absolutely irresistible; and much more if they had induced the King's Presence with an absolute Power; in Order to counteract their Commission, the most violent and illegal Affliction and Grafting they had thereby aliened nothing in the Constitution of the Government, though they had rendered it instead of a limited, an absolute despotic Monarchy, which as I am not yet convinced it was in their Will, so neither was it in their Power to grant if they would: And therefore as I do not define to be wiser than the Law, so I cannot allow this to be any Law at all in the Senec you would put upon it. So that make the most of it: this was but the unwary Declaration of a Parliament of very young or bluffed Men, not long after the King's coming in, who through the great Abhorrence they had of the late Civil War raised by the Parliament, under Colour of the King's Authority, were drawn in before they were aware, to be a little too free in their Expressions, not considering the Consequences that might follow: But when this fond Fit was over, and that a standing Army had been raised in England under pretence of the Dutch War, and that the King had by his Declaration of Indulgence made some Approaches to an Arbitrary Power, and in order thereunto, would in that very Parliament in 1675, have imposed this very Oath or Trett, not only upon those who were to take it before: but upon all Peers and Parliament Men before ever they sat in the Two Houses, as also upon all Officers in Church and State, to the very Justices of Peace, so that the Difficulties being now seen through, it made divers of the Peers, even those of greatest Loyalty and Wisdom, fitly to oppose the laying this Trett upon all the Clergy, Nobility and Gentry of the whole Nation, as it was then the Design of the Court-Party to have done: Which vigorous Opposition, tho' in the smaller Number, yet met with such good Success, that the Bishops and Lords of the contrary Opinion, could not then carry it; and the Eyes of the whole Nation were afterwards so much opened, that the King durft never offer this Trett any more to either of the Two Houses. So that if you will but consider this Matter of Fact, how this Trett was first obtained; and how afterwards, when it was thought to be intended to set up Arbitrary Power, was also as vigorously opposed by them; and their being sensible that the Parliament had gone too far already in doing what they had done: I think none can take this Oath in your Senec, except those Clergymen, who will allow none to be of their Church, but those who are for this Passive Obedience; according to their prejudicive Notions of Loyalty, or else some few mercenary Lawyers, who, in Hopes of Preferment, (which they can never otherwise obtain) would interpret this Oath in such a Senec as would make us all Papists and Slaves too, whenever the King has a Mind to it. Now which of these Extremes are worth, that the People should judge for themselves (the' perhaps erroneously) when the King, or those sitting by his illegal Commissions, shall violently assult them in their Religion, Lives, Liberties and Estates, and thereupon they make Refinance with one Consent, when they find themselves brought to this Extremity, or else that the King should be thus invested with an irresistible Power of doing whatever he pleased with us; I durft leave to any indifferent Person to judge.

M. I confess you have told me more concerning the History of this Oath, than ever I knew before; but let the legal Senec of it be what it will, and setting aside all the Precepts in Scripture for absolute Submission without any Refinance, I think I am able to prove from your own grand Topick of the common Good and Preservation of Mankind, that it is much better to submit to the worst, and greatest Tyrant that ever was, than to resist him, if he be our lawful Prince,
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for if you consider what is the Subject of all Human Happiness and Contentment, it is certainly Life; now what Tyrant ever in his whole Reign destroyed so many Men's Lives by Force, or unjust Prosecutions, as a Civil War, if carried on with Violence and AnimiQty does in a Year's Time? So vast a Difference there is between the Evils of Tyranny and Rebellion, and so much is the Remedy worse than the Disease; the Cruelty of a Tyrant (says one) is like a Clap of Thunder, it strikes with great Terror; but Civil War is like an Inundation, it sweeps away all before it, without Noise: Thus one Man brought to the Scaffold by the ArbiItrary Command of a Tyrant, makes more Noise than Ten Thou'sand killed in the Field in a Civil War; but that does not make it the lefts, but the greater Evil, while we are made willing to destroy our selves, and do it more efficianly in one Day than the bloodiest Tyrant could find in his Heart to do in his whole Reign: All the Men put to Death by the ArbiItrary Commands of Tyrants since the beginning of the World, in all the Kingdoms of it, will not amount to half the Number of those who have perilled in the Roman, or English Civil Wars. So much safer are we in God's Hands than in our own, and in theirs under whom God hath placed us. And though he often makes them like the Sun and Sea, (the highly useful in themselves) Scourges for our Sins, yet he has promised to keep their Hearts in his Hand, and to turn them as seemeth best unto him; we have more Promises of Safety there, than when we are delivered over to the Beasts of the People, whose Madness leads to the Ragging of the Sea.

In short, The strictest Refrains of the People to Government, is their truest Liberty and Freedom; since if they were at Liberty from Government, they would be exposed to Combat one another; which would be worse than the greatest Slavery in the World: The great Miflake is in the foolish Notion we have of Liberty, which generally is thought to consist in being free from the Lash of Government, as School-boys from their Master, and proves in the Consequence only a Liberty to destroy each other; and yet it is for such a Liberty as this, that Men most commonly begin Civil Wars, and fall a cutting of each others Throats. Therefore, though I grant it were much better for all Princes to let their Subjects live happily, and enjoy a competent Share of Eafe and Plenty; yet on the other Side, if they will not permit them so to do, but will tyrannically oppress them, it was much better for them to fit down contented with Poverty, nay, Slavery it self, rather than to destroy so great Part of a Nation, as may be lost in a Civil War, whenever it begins. Thus even the Poet Lucan, though of Cato's Party, reckoning up the Miseries of the Civil Wars of Rome, which were all for Liberty, as if envying the happy Condition of those who lived under absolute Tyrants, cries out,

Feliciæ Aræbas, Medioq; Aegae Telus,
Quos sub perpetuis tenentur Festiva Tyrannis.

I could give you Inflances of the Truth of this in most Nations, enough to make a History: And if such a History were written, of the Mifchiefs of this false and pretended Liberty, and Good of the People, I durst undertake the Compositions have happened upon the Whole. The Mifchiefs come upon the People as the Destruction of the Publick Good, and greater Loss of Liberty and Property by this one Method, than by all the Tyranny and Violence of Mankind put together; and consequently, that there is no Comparison 'twixt the Evils of Tyranny, and of a Civil War for Publick Good, and that the Mifchiefs on this Pretence of Publick Good, are infinitely less tolerable, and a more Universal Ruin to the People, than any Tyranny of lawful Governors, that ever was in the World; whereas this is by many Degrees the greatest, and most lawful Tyranny, and always brings greater Mischief along with it; such as Confusion, Rapine, Violence, Contempt of all Laws and Legal Establishments, with more intolerable Evils of all Sorts, than those it pretends to remedy.

But all of these for Rebellion, Religion is the most ridiculous; since a Man's Religion can never be taken from him, or a false one imposed upon him, whether he will or not; and also because a Civil War introduces greater Immorality, and more looëns the Reins of Discipline, and is more contrary to the Spirit of true Religion, than any other Thing in the World: True Religion is

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not propagated by the Sword, it is a small full Voice that cannot be heard in War; War confounds it, and dethatches it. The most profligate, and licentious Court, bears no Proportion in Wickedness to the Lewdness, Blasphemy, and Contemn of all that is Sacred, which reigns and overflows in Camps. It was an old and true Saying, Nolla fides, Pietas, viris, qui Caesar sequuntur.

F. I see when neither the Scripture nor the Law can justify your absurd Doctrine of Passive Obedience; then you fly back to your old Topick the Law of Nature, and common Good of Mankind: I allow your Principles, but not the Deductions you draw from thence, which are indeed but Paralogisms, as I will show you by and by; but I see there is nothing so false and absurd, which Prejudice and Education will not make Men swallow: I confess, you have made a long and ingenious Harangue in Commendation of the Benefits of Tyranny and Slavery, which had you done only for an Exercise of your Wit, I should have ranked it with Cæsar's Panegyrick of Nero, and in Praie of the Gour; but if you vent such Notions in good earnest, I cannot forbear shewing you the Absurdity of them.

First, therefore, admitting what you say for Truth, that a Civil War does destroy more Men in one Battel, than the greatest Tyrant hath ever done in his whole Reign; Is this an Argument that no Man may defend either his Life or Liberty against Arbitrary Power? If this were true Reason, it was the greatest Folly in the World for the Fools, or any other Nation that are at War with the Tyrants, ever to refil them; for their Emptiess might thus make use of your Argument to make them submit to them: Life is the only State of Happiness in this World, and without which nothing can be enjoyed: It is therefore better for you to be made Slaves than to venture a Battel; for in the Fight God knows how many of you may be destroyed; whereas, if you quietly submit, we promise to hurt none of you, we will only carry you away, and sell you for Slaves, and sure Slavery is better than Death; for even Slaves enjoy a great many Comforts of Life, though with some Hardship; and you may be redeemed again, or make your Escape; but Life once lost cannot be recovered. The same Argument a Tyrant may use for the Exercise of his Arbitrary Power over Men's Lives, that he will not (say) destroy the whole Nation, but only use them as Butchers do their Sheep call out the fastest, and let the poor Ones live, thrive and grow fat, till they are likewise ready for the Knife. This perhaps may be a proper Life for those Beasts that cannot live without Man's Protection; but what Man of any Courage or Sense, would be willing to live under a Government where his Poverty was to be his only Protection? Who would not venture his Life in one brisk Battel, rather than live in such a vile and flabby Condition? And who would not rather argue that: It is great odds, if among so many Thoulards, I am the Perfon ordained for Death; or if I am, I may perhaps purchase Victory for my Countrymen, and Liberty for my Posterity; but let the worst happen, I venture my Life for the Publick Good; and it is better once to die, than always to live in fear.

But if the Calculation of the Number of Men's Lives that may be lost in the Recovery, or maintaining any Right whatever, should be the only Rule to render War either reasonable, or lawful; I doubt whether most of the Wars Princes make for small Territories, or Punishment of Honour; (as lowering the Flag, for Example) say, even for the Recovery of their Crowns, when unjustly deprived, or taken from them, can upon your Principle ever justify either Princes in Confidence to make such Wars, or oblige Subjects in Prudence, (according to your Rule of the Publick Good) to fight in such Quarrels; since none of them but often cost more Lives to defend, or regain them, if lost, than the Things are worth that the Princes of the World usually make War about, against each other.

But if you tell me, that Men are bound by the Law of God, and of their Country to subtil their Prince in any Wars he shall Command them, without enquiring into the Contingencies of it; and let what will happen as to the loss of Men's Lives, Estates or Liberties, that we are likewise to obey and submit to lawful Princes, because, let them tyrannize, enslave or destroy us never so much, yet God has put us into their Hands; and we are safe in God's Hands whilst we are in theirs: This is a mere Fallacy, for what is this to your main Argument from the Deftitution of Mankind? For, if so many Men are to lose their Lives in
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in the War, what Difference is it as to them, whether the War be made by a lawful or unlawful Power? Is it still upon this Principle unlawful to be made, and consequently unlawful to be fought for. And if you once grant that Princes may tyrannize without Rebellions, kill or enslave any of the Subjects; Why, what Difference is it, as to the People that are to suffer it, whether he be a lawful Prince, or a Tyrant or Usurper that does it? For as for being delivered by God into the Hands of a lawful Prince to be dealt withal as he shall think good, it is all, more Jargon: Pray prove to me (if you can) that whilst a Prince thus tyrannizes, oppresses, and enslaves his People, that God ever thus deliver'd the People into his Hand for that Design; or that whilst he does so, he acts as God's Minister. This I have urged you to prove at our Fourth Meeting; but since you could not do it, I take the Care for desperate.

But to answer your Comparisons of the Sun and Sea, to which you compare lawful Princes that turn Tyrants; they are as easily retorted upon you: If the Rays of the Sun are too hot, we may reftit or avoid them, and put on thicker Cloaths; or set up Shelters to defend our selves from them: The like we may say of his malignant Influences or Effects upon Men's Bodies, could there be any Means found out as easily to avoid them. So likewise for the Sea, suppoze the breaking in of it upon any Country to be sent by God for their Sins, you will not say it is unlawful for the People to make Banks or Dikes, or use any other natural Means to keep it out, or to drain it away. And the Case is the same as to Tyranny; for if Rebellions be as natural a Means against it, as these I have mentioned are against the too violent Heat of the Sun, or breaking in of the Sea, I cannot see why we may not as lawfully exercise it. But since we are talking of Waters, this puts me in mind of the Place you have now cited out of Proverbs, That the Heart of the King is in the Hand of the Lord; which without doubt is a great Truth; but then you should have added what immediately follows; as the Rivers of Waters he turneth it whither forever he will. Now, How does God turn Rivers of Waters? It is not by any supernatural Means, but either by a strong Wind, or else by the Hands of Men. Therefore Solomon's Comparison of God's turning the Hearts of Kings like Waters, is but an Allusion to the Custom of those Eastern Countries, that as a Gardiner draws the Streams of Water through the Trenches he cuts, into what Part of the Garden he thinks good; so doth God turn the Hearts of Princes to as, or do quite contrary to their first Intentions; nay, to what they have actually done before. But, How is this performed? It is only as he makes use of the Gardiner to turn the Streams of Water: It is wholly by human Means, such as Advice of good and' wise Counsellors, and a prudent Consideration upon it; to which also may be added, the Rebellions of their Subjects, when after all Remonstrances and Intreaties to the contrary, Princes still go on outrageously to oppress them; when they see they will no longer bear it, and find themselves engaged in a troublesome War with them, then they see their Error, and fend to their Subjects and offer them Terms of Peace. Thus divers of our King's Hearts were turned, when they saw the Nation would all, as one Man, reftit their tyrannical Arbitrary Proceedings, they came to Terms with them, and granted them Magna Carta, and other good Laws, for the Security of their just Rights and Liberties. But as for what you say of our being safe in the Hands of Tyrants, as being in God's Hands; I grant we are still in God's Hands even when we fall under the Power of Thieves and Robbers. But is our Safety then so great, as when we are out of their Hands? Or, may we not get from them by Force, if we are able? Especially if what Bradford tells us be true, in the Words in his Third Book, Exercere igitur debet Rex posteaatem juric sicut Dei minister, & Vicarius in Terris, guia illa potestat solus Dei est, po- testas autem inquit Diabolus contra Dei, & cujus horum operum facit Rex, ejus minister eris cupis horum operum facit, igitur dum facit justissimus vicarius est Regis aeterni, minifler autem Diabolus cum declinet ad injuriam. Now, pray tell me, if the King can thus cease to be God's Lieutenent, and become the Devil's Officer, whether we can properly be said to be under the Power ordained by God, or that we can be very safe in such Hands, I cannot very well see.

As for unnecessary Wars, undertaken without any such Cause, for mere Pre- 1ces of Liberty and the publick Good; and which may have sometimes caused many more Mischiefs and Inconveniences than those they pretended to cure; does it therefore follow, that no Wars, tho' against Insubstantial Tyranny, and for Self- defence, have never been, nor may be; undertaken by any Nation in the World, and
and that the State they are in, after such a War, is always much worse than it was before? Which is notoriously false, as you may see by so many instances I have given you from our own Histories; as I could also shew you from other Countries, such as the Swiss and Dutch, who have by defending their Liberties when unjustly opprest, brought themselves into a State of Plenty, Liberty, and Safety. And therefore, notwithstanding your making so light of Men's just Rights, Liberties, and Properties, there are certainly such Things that distinguish a Free People from Slaves, as any, who will but travel into France, Turkey, or any other Arbitrary Government, may easily satisfy themselves. And if these Things ought to be really esteemed as the Causes of all the Earthly Happiness we enjoy, then certainly they may be defended, and fought for; and if in the Purchase of them many Men's Lives happen to be lost, this is no necessary Consequence; since such Reforms are often brought about with very little Bloodshed: As appears by many Instances I have now given of such Reformation, and may more evidently appear by this late great and wonderful Revolution. But admitting it should happen as you say, and that a great Part of a Nation should be destroy'd in a Civil War, for their just Rights and Liberties; yet it is still upon your own Topick, better for Mankind that it should be so, if true Liberty (I do not mean from lawful Authority) may be but obtain'd at last thereby; since Life is not to be esteemed only for mere living, but living happily, non est vivere, sed valere Vita; and Life is enjoyed by Slaves in Galleries, as much as by the greatest Prince, yet no rational Man but will allow that Men may venture their Lives, rather than suffer themselves and their Posterity to fall into that miserable Condition, the like he may, if they were only to be reduced to the Condition of the Peasants in France, or ordinary Christians in Turkey, and if so, I think I may then safely affirm, that it is better that half the People of any Country should be destroy'd by a Civil War, if their just Rights and Liberties may be preferred to them and their Children at the last, than that Slavery, with all its Consequences, such as Ignorance, Balancess of Mind, Cowardice, Beggary, &c. should ever be entailed upon a Nation: For as for the Laws of Men, it may be made up again in some Generations; but when Men's Civil Liberties and Properties are once lost, they cannot, without some rare and unexpected Revolution, be ever regained; as we see in the Subjects of all Sorts in France, Turkey, and Muscovy, &c. at this Day. And therefore, if you please better to consider, the real Liberties of a People (such as we contend for) are not that of School-Boys, to be free from the Lash of their Masters: However, that if such a Discipline were to be exerciz'd upon Men all their Life-times, I think no Man but would fay it was worth venturing his Life, rather than to fall into so miserable a State. So that what you cite from the Poet Lucan, is only to be taken as a Poetical Exclamation against the Miseries that Civil Wars often bring upon a Nation: But to fay that it was Lucan's Opinion, that Subjection under the severest Tyrants, was better than the Liberty the People of Rome enjoyed, is to suppos'd that either you or I have never read that Author; since nothing is more plain, than that the main Design of that Poem is to magnify Caio and Pompey, who fought for the Liberty of their Country, above Ceasar, and those that joined with him to destroy it. As for all the rest that you have fald, that you could make a History of greater Miseries, as Laws of Liberty, &c. that have come upon whole Nations by fighting for their just Rights and Liberties against Tyrants, than by all the Tyranny and Violence of Mankind; I think you would have a hard Task to make it good, since I suppos'd under Absolute Monarchies it is lawful for the People to take up Arms, till they are either like to be enslav'd or destroy'd by the Tyranny of their Prince, or else so intolerably oppress'd by his Soldiers, that they can scarce even in a State of War live in a much worse Condition; and if they are ever subdued and reduced to their former Condition, they cannot be worse than what they were under before. The like I may say as to Limited Monarchies or Commonwealths, that degenerate into Tyrannies; the People may perhaps better their Condition by Resistance, and recover their Liberties, but cannot be in a worse, if they are overcome: For I do not allow such Resistance lawful till the very Fundamental Institutions of their Government, whereby it is distinguish'd from an Arbitrary Deportick Power, be actually invaded, or taken from them: So that let the worst that can happen, they can scarce fall into worse Condition than they were before. And as for England, we may speak it experimentally, That of all the Restorations that have been made by the Major Part of the Nation, or greater Part of it in Defiance of their
their just Rights and Liberties, every one of them have happened for the best, and been a Means of reforming this Kingdom to its former Estate, except the last, in which I grant we lost it by that War; yet that was not from the Doctrine of the State, but because the War was begun and carried on by a violent Faction, upon unjust Grounds; and, which was worse, the Government and Discipline of the Church, as establisht by Law, was altered without any Legal Power; all which could never have happened, had not that War been not only begun, but continued to the very last by a Standing Army, which could give what Laws they pleased, even to those that pretended to command them. So that why the Ambit of this Right once in a Thousand Years, should be made any just Argument against the ever acting it at all, I can see no Reason in the World for it.

As to the rest of your Discourse against making any War about Religion, that is also as fallacious: For though I grant, that true Religion is not to be propagated, yet I think it may lawfully be defended by the Sword, especially where it is the received Etablislh'd Religion of a Nation; or else the Defence of Religion against Infidels, would be no Argument at all to fight against a Turkish or Popish Prince that unjustly invaded us. For tho' it is true, that Religion cannot be taken away from any Man without his Consent, yet a Man may be taken from his Religion; and when the Professors are destroyed, either by Martyrdom, or violent Persecution, as bad, or worse than Death, what will become of the Church, and Religion, Etablislhed by Law, when all the People that continue that Church are driven away, destroyed, or made to renounce it? And for this we need go no farther than over the Water to our next Neighbour. It is likewise as fallacious what you urge of the great Corruption of Manners by Civil Wars; which if it be any Argument at all, is to against all Standing Armies whatever, whether raised by lawful or unlawful Powers. And I think there was much more Dekathery in the King's late Camp at Hounslow-Heath, as also in all Places where they quarrel'd, than was lately at York or Nottingham, among those that took up Arms in Defence of their Religion or Civil Liberties unjustly invaded by the King and his Ministers. Nor does it always happen, that Armies raised for Defence of Religion and Civil Liberty, must prove debouch'd; since we may remember, that the Parliament Army (to its Praise be it spoken) was infinitely more sober, and outwardly Religions, than the King's. But if you will say that this proceeded from their Principles, as well as good Discipline, I know no Reason why Men who fight in Defence of their Religion and Civil Liberties, may not upon Church-of-England Principles, as to Church-Government, and Common-Prayer, may also by a strict Discipline be as little debouch'd as any Standing Armies the most lawful Monarch can maintain; who if they lie idle, as ours have done all this King's Reign till now of late, are more likely to fall into all the Wickedness that attend a loose Discipline, and want of Employment, and consequently may also corrupt the Places where they Quarter by their ill Example.

M. I shall not longer argue this Point, since I see it is to no Purpose. But you have not yet told me what these fundamental Rights and Liberties are, that you suppose the People may take up Arms to defend; nor yet what Number of the Nation may thus judge for themselves, and take up Arms when they please; nor how to prevent that the whole Nation might not be divided as to their Opinions concerning these Things. And the South Part of England, (for Example) may think their Religion and Liberties in great Danger, and that it is very necessary to take up Arms for it, when the North Parts are not under those Apprehensions, but lye still, as was lately seen in the Rifles for the Prince of Orange.

P. As to the first of these Queries, I think I can easily give you Satisfaction, and such as you can have nothing material to reply to. And as for the other, though I do not say I can give you such an Answer as will bear no Exception or Reply, yet I doubt not but it will be that which may very well be defended, and may form the most different and unprejudiced Per sons; and which, if not allowed, will draw much worse Consequences along with it. And therefore as for the just Rights and Liberties we contend for, they are only such as are contained in Magna Charta, and the Petition of Right, and are no more than the Immemorial Rights and Liberties of this Kingdom; and that first, In respect of the Safety of Mens Lives, and the Liberties of their Persons. Secondly, The Security of the Estates and Civil Properties. And Thirdly, The Enjoyment of their Religion, as it is establisht by the common Consent of the whole Nation. All which I will reduce to these plain Propositions.

1. That
1. That no Freeman of England ought to be Imprisoned or Arraigned contrary to Law, without specifying the Cause of his Commitment in the Warrant, or Miftimus, whereby he is sent to Prison. And he ought not to be sent out of the Body of the Country, or Jurisdiction where the Crime was supposed to be committed, unless he be removed by due Course of Law. Neither ought he by the Law of England, to be detained in Prison without Trial only for a Punishment, but ought to be tried for and punished for his Misdeemeanor, afforded Men for all manner of Crimes, in a just, or in an unjust manner, and for an Affirmation, or in an unjust manner: Much less can the King, or any Court below the whole Parliament, banish any Man the Kingdom in any Cafe, unless by some known Law already made, whereby he is bound to abide by it, and the Laws of the people.

2. Nor can the King, nor any Courts of Justice, condemn a Man to loss of Life, or Members, without due Trial by his Peers, and Legal Judgment given thereon.

And for Proof of this, I need go no farther than Magna Charta, and the Petition of Right, which are both but declaratory of the Common Law of England. See therefore Magna Charta, Cap. 29, whereby it is Declared and Enacted, That no Freeman may be Imprisoned, or be deprived of his Freedom, or Liberties, or his free Customs, or be outlawed, or Exiled, or in any manner destroyed, but by the lawful Judgment of his Peers, or by the Law of the Land, which is also farther confirmed and explained by these Statutes, viz. the 37th, 38th, and 41st of Edward III. and 17th of Richard II. all which are summoned up, and more particularly declared against, contrary to the fundamental Laws of the Land, in the Petition of Right exhibited to King Charles I. in Parliament, in the Thirtieth of his Reign, wherein the late Imprisonment of the King's Subjects without any Caule thereto, and the Denial of Habeas Corpus are expressly referred to, as also perusing Soldiers and Mariners to Death by Martial Law in the Time of Peace. And the King's Answer to this Petition is remarkable, The King willeth that Right be done, according to the Statutes and Customs of the Realm, &c. Which not satisfying as too doubtful and general, the King at last gave this full and clear Answer in legal Form, Socii Dribi facit commt eß defert.

The Second Point in relation to our Civil Properties is this, That no Tax, Tail,

The Third Point declared against in this Petition of Right, is against Quar ters of Soldiers (though they pay for their Quarters) contrary to the Will of the Owners and Inhabitants, much more when they did take free Quarter in Time of Peace, as hath been so much praished of late. So that by the Common Law of England, not only Private-Houfes, but Inns and Ale-Houses, are not compellable to Quarter Soldiers unless they will. So much was this Nation aniently a Stranger to Standing Armies, and Quartering of Soldiers in Time of Peace, that there was no Provision made for it, either at Common-Law, or by any Statute that I know of.

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481. That no new Law can be made without an express Act of Parliament, or the joint Consent of the King, Lords and Commons: And therefore this Parliament ought to be duly summoned and held for the Good and Safety of the Kingdom, by Common as well as Statute Law, once in every three Years at least, or whenever there is a just and necessary Occasion for it. And for Proof of this, I need go no further than the Old English Saxon Law, which ordained, That the great Council, or Meesel Synod, should be held twice in the Year, as the Ancient Norrer of Jutlasses required, as the constant Custom long after the Conquest, in which there never pulled a Year without a General Council of the whole Kingdom. And when this came by degrees to be discontinued, then were those Statutes of Edward the Third, and Richard the Second, made; whereby it is evident, That a Parliament should be held every Year, and oftener if there were Occasion.

5thly. Since the Legislative Power of Parliaments is the very Soul and Efcence of the Government, the Election of Knights, Citizens and Burgesses to sit in Parliament, ought to be free; and all the Members of Parliament, who have Places there either by Patents or Writs of Summons, as the Lords, or by Election or Writs, as the Bishops, ought to be present, and there to have Freedom of Speech and Votes, without any Guards to over-awe or terrify them; and none to be forced, threatened, bribed or tamper'd with to give their Votes contrary to their Consciences, either by the King or any of his Ministers. This is ordained by the Statute of Wefan. 1. Chap. 5. whereby it is expressly provided, That all Elections ought to be free, Which Sir Edward Coke, in his Notes upon this Statute, extends to Elections of Knights of Shires, as well as other Elections since. I have sufficiently proved, that the Commons elected Members to Parliament when this Statute was made; and that this was the Ancient Law of England, you may see in the Rolls of Parliament. 1. Hen. 4. where it is alleged by the Parliament as one of the Articles against Richard the III. in the 26. M. 56. Words: Item ictus de fluctu d' conjuratione Regis fuit in Convocatione convilli, &c. lex et statuta Regni debet esse liber ad eleccionem, & deputandum Militis pro buiasi modo Consistorius ad inter effusionem Partis, &c. ad incrementum corum gravamina, & ad prosequendum pro remedii, &c. superinde prudenter exspectare.

6thly. That the Law is the Preservation of the People, consigns to them the Right of resorting to the Laws for their redress. The People of England have a right to have the Laws administered to them, according to their own Understanding, and not according to the will of any arbitrary Power. This is a fundamental Principle of all Free Governments. And therefore, if any attempts are made to subvert the Constitution of England, by the introduction of arbitrary Power, or the establishment of a new Constitution, it is the Business of all good and free Men to resist such attempts, and to maintain the Constitution of England, as it is established by the Laws of England.

7thly. It is proper to observe, that the Constitution of England is founded on the principles of Liberty and Property, and that the Rights of the People are secured by the Laws of the Land. These rights are derived from the consent of the People, and are the foundation of all civil Government. And therefore, if any attempt is made to subvert these Rights, or to establish a new Constitution, it is the Business of all good and free Men to resist such attempts, and to maintain the Constitution of England, as it is established by the Laws of England.
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1st, which is a Maxim that ought to be imprinted upon the Hearts of all true

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they must certainly make use of defensive Arms when Necessity requires it, or else become Slaves whenever he pleases to make them so, if the People have no Right to judge of his Violence and Oppressions?

But as for the Number that are to make this Judgment and Resistance thereupon, I grant in most Cases this is not to be done, as long as the Oppression is begun by Colour of Law, without actual Violence. Secondly, when it concerns only some particular Bodies of Men; thus, if Free Quarter should be taken in one or two Towns or Counties, I do not allow it to be a sufficient Cause for all the Neighbouring Towns, much less the whole Country, or the Neighbouring Shires, to take an Alarm, and rise in Arms upon it; since, perhaps, the King may know nothing of it, and if he were once informed of it, would redress it: But can you affirm the Case would be the same, if this Grievance should become general all over the Nation? And that the King should be so far from redressing it, that he should put out a Declaration, setting forth that it was his Prerogative so to do, would not the whole Nation then take it for granted, that the King’s Design was to govern by a standing Army, who should live upon the People, and devour them to the very Bones? And might not they make Resistance against these Robberies and Oppressions? The same I say for all other Breaches made in any other of our Fundamental Rights. I do not allow any Resistance to be made, till it become a general Opposition upon the whole or major Part of the Nation, and without all Hopes of being otherwise remedied. And this must be also to evident, that there can be no Doubt or Denial of the Matter of Fact, for so long as the Case is disputable, or the Grievance is not of a general Concern, I grant the People ought never to stif: But of this they alone must judge, since our Constitution has left us no other Judges of these Breaches, but the diffusive Body of the whole People in the Intervals of Parliament.

But for your last Question, as to the Number that may thus rise to make this Resistance, I answer thus: That when once the Mischiefs becomes general, and without all other Remedy, any Part of the People who think themselves strong enough to defend themselves against such Violence, may begin to rise, if they can, till the rest of the Kingdom can come into their Assistance; as I told you the Town of Briel did against the Tyranny of the Duke D’Artois, in the beginning of the Beigick Wars, and it was soon after seconded by the Revolt of divers other Cities and Towns in those Provinces, till the Spaniards were quite driven out.

M. I do not deny but you speak more moderately on this Subject than most of your Opinion, who think every private Man has Right to take up Arms and raise a Rebellion, whenever he judges his Person or Estate is invaded, or injured by the Government. And indeed this Remedy of Resistance seems at first sight pretty tolerable, if it were not that we very well know that this many-headed Beast, the Multitude, is very apt to be deluded by the cunning Speeches, and fly Inimications of fickle and ambitious Men, whose Interest it will always be to fill in troubled Waters, and raise Disturbances to make themselves the Head of a Party. Thus in the Year 142, what Lies and Stories were there raised to incense the People against that good King, to make them take up Arms against him, as an Invader of their Liberties, and one that was about to make War upon them: And who that is not over-partial to his own Opinion, does not see, that the Nation has been blown up into a Flame by the lying Reports of a French League, and a supposititious Prince of Wales; neither of which, I durst pawn my Life, have the least Tittle of Truth in them. So that this Doctrine can scarce fail, almost everywhere it is put in Practice, to bring all Government to Anarchy and Confusion.

But I have already in my former Answered this Objection at our Third Meeting; but since you will urge it over again, I shall in the first Place admit the Matter of Fact to be as you say, that the People may, by some turbulent Demagogues, be sometimes so far incensed as to take up Arms when there is no just Occasion; yet let me tell you, I doubt that neither of these Injunctins you have given, will make good your Affection. For in the first Place, as to King Charles the First, it is said by all Writers on the Parliament’s Side, that the King by leaving his
Parliament, and going to York, and there taking a Guard when no Enemy was near, and when the Parliament had as yet rais'd no Forces at all, as also by his going to Hull to remove the Magazine of Arms that lay there, in order to put them into the Hands of an Army to make War upon the Parliament who then demanded the Settlement of the Militia to be in Committtures of their Nomination, that he thereby broke his Coronation Oath, whereby he was sworn to govern according to Law, and not by Force. But as for what you say in respect of the present juncture of Affairs, I never can define a more plain Proof of the People's Necessity of taking upon defensive Arms; since admitting that neither of the Reports concerning the French League, and the false Birth of this supposed Prince be true; yet, I think, the Nation has had sufficient Provocations to rise as one Man, and join with the Prince of Orange for the obtaining of a free Parliament to fix all Things right, which the King's violent, illegal Administration has so much discomposed. But admitting the utmost you can suppose, that forcedly the People may judge amiss, as well as the King, and through that Misinformation may take up Arms against their Prince, when there is no real Occasion, shall this Abuse of a Right be a sufficient Caution against their ever exercising of it at all. I am sure this is no good Argument against the natural Right of Self-Defence between private Persons in the State of Nature, that some Men do often abuse it, nor can I see how, upon those Grounds, even Sovereign Princes may be allowed to make so much as defensive Wars, (as I said but now) since they may pretend that themselves are wronged, and invaded, or at least are like to be so, when no such Thing was really done, or intended, and so by their Misjudgment or false Pretences, many Millions of Lives may be lost: What then? Must no Prince ever make War at all, till all the World be satisfied of the Jujtice of his Quarrel? If so, I doubt the last War King Charles the Second made against the Dutch, and this late War the King of Princes has now made upon the Empire, should never have been by your Principles so much as begun, much less carried on with so great an Infusion of Blood, and the Destitution of so many Cities and Towns: And whether this, as well as Tyranny at home, is not more often put in Practice by Princes, than any Refinance of this Nation, or all the Subjects of the World have made against such Tyranny and Arbitrary Power, I leave it to your self, or any indifferent Person to judge.

All I doubt not but I may very well join Issue with you upon this Point; for I think that upon those very Conditions and Grounds you have now laid down, the Claryymes, Lords, Gentlemens, and Commons of this Kingdom, who have either come over with the Prince of Orange, or have taken up Arms in Defence of his late Declaration, cannot justify themselves by any of the Influences you have given for joining themselves with him in Arms. For tho' I grant His Majesty, by hardening too much to Fopish Counsels, may have done many Things which in Strictness of Law cannot be justified; yet since they do not strike at that which you call the Fundamental Constitution of the Government, and have been all so done without any Force on the People of this Nation, but have been either transfixed by Judgment of Law, or the Colour of it at least, viz. by the Opinions of all or the Major Part of the Judges; all the Parties above-mentioned ought (according to your own Principles) to have waited for the Meeting of the next Parliament, to whose Determination they ought, by Law of the Land, to have referred all such Grievances and Violations of Laws which they had to complain of; and if then the King had refused to have remedied them, they might have had some Colour (I do not say Right) for taking up Arms, and doing what they have done; whereas I cannot see how you can, even upon your Principles, defend the late Risers from wilful Rebellion against the King.

And for Proof of this, I need go no further than the Prince of Orange's late Declaration, which being drawn by the best Advice of the Malecontents then in Holland, would not fail to mention all the Violations of Law, which they thought his Majesty's Government had been guilty of, ever since his coming to the Crown: And therefore, not to irrigate upon the Want of Right which I conceive the Prince had to concern himself with the Affairs of another Prince's Realm, I shall,
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I shall, however, mention every Article in which his Highness conceives the Religion, Laws, and Civil Liberties of this Nation to be endangered. In the first place, as to the dispensing Power, which the King has lately assumed to himself in Matters of Religion, and thereby putting into Offices and Commands Persons incapable by Law of bearing them, without taking the Teft, as I shall not now dispute the Legality or Illegality of the King's Declaration concerning it, so as to that Part of it which concerns Liberty of Conscience, or dispensing with the Papists and Dissenters to meet in Assemblies for their Religious Worship, notwithstanding all the Acts made against Maifs and Conventicles, it was no more than what King Charles I. had done before with the Advice of his Privy-Council, in which, if it had been Rebellion to have opposed him, sure it is the same Crime in the Reign of his Brother.

2. As for the Commission for Causes Ecclesiastical.

F. Since I foretell your Discourse upon this Subject is like to be long, and to confit of many more Heads than I doubt my Memory will serve to bear away, pray give me Leave to answer all your Inferences one after another, as you propose them. First, then, as to the late Declaration concerning the Dispensing Power, it was so far from being done by Law, or so much as the Colour of it, that besides its being against divers express Acts of Parliament, which tie up the King's Hands from dispensing with the Acts against publick Maifs and Conventicles, as also, that disfavour all Persons whatsoever to sit in any publick Employments, till they have taken the Teft appointed by the said Acts, (in which all Non-objeclantes are expressly barred): But this Declaration was never so much as shewn to the Privy-Council, till it was ready to be published; and then, indeed, the King caused it to be read in Council, declaring that he would have it issuing forth, tho' without ever putting it to the Vote, or so much as asking the Convents of the Privy-Councillors there present; tho' I grant the Title of it lets forth, that it was done by his Majesty in Council, to impose upon the Nation that false Clear, whereby this King (as well as the Left) would have us believe, that their Declarations had been issued by the Consent of the Council, when, God knows, there was no such thing.

And as for any Judgment, or Opinion of the Judges to support it, and make it pass by Colour of Law, it was never, as I can hear of, so much as proposed to them in their judicial Capacities, though perhaps it might be proposed to the Lord Chancellor, and some of the Judges who were of the Calh, which is nothing to the purpose, all that I ever heard to have been brought judicially before them, was, the Cafe of Sir Edward Hayes taking a Commission for a Colonel of a Regiment, after he had openly declared himself a Papist; in which great Point, though I grant the Major Part of the Judges gave their Opinion for the Dispensing Power, yet it was only in the Cafe of Military Commissions; as several of them afterwards declared, and not of all sorts of Employments, as well Civil as Military; much less for Popish Heads of Colleges, Parfons and Bilhops; to hold their Livings, Headships, and Bishoprics, if they pleaded to turn to the Romish Religion; or that the King should pleafe to beftow them upon Popish Priests, it would have been as legal in the one Cafe, as in the other; first as for Popish Heads of Colleges, and Parfons, we have had too many Instances of it; and if we had none for Bilhops, we must thank the Conftancy of moft of them, if they have not openly declared for the Romish Religion, since they might have kept their Bishoprics notwithstanding. But I do not at all doubt but that such a general Dispensation for professed Papists to take and hold all sorts of Offices and Places of Trust, not only Military, but Ecclesiastical and Civil, would have in a little time brought all Offices and Employments into their Hands.

Nor is this Dispensating Power in Matters of Religion, the sole thing aimed at by this Declaration, as appears by the very Words and whole Purport of it; which is not confined to Matters of Religion only, but claims an unlimited Power of dispensing with all sorts of Statutes in all Cases whatever, none excepted; and if so, pray tell me what Magna Charta, or the Statute de Talagio non concedendo, or any other Law will signify, whenever the King pleases to dispence with them, either as to raising Money, or taking away Mens Lives, or Liberties, or Estates, contrary
contrary to Law? Nay, the Papists already give out (and that in Print) that all Laws for taking away Religious Orders, and Suppressefes of Monasteries, are against Magna Charta, by which Holy Church (that is, the Popish Religion then in being) is to enjoy all her ancient Rights and Liberties; and the Abbots and Priors do thereby, as well as the Bishops and Lay-Lords, refer to themselves all their ancient Rights and free Customs. Now whether this unbounded Prerogative would not quickly have destroyed not only the Ecclesiastical, but Civil Constitution of this Kingdom, as they now stand established by Law, and would have soon introduced both Popery and Arbitrary Government on this Nation, I leave it to your self, or any indifferent Person to consider.

And though I do not say, that the bare giving of Papists or Protestant Diversers a Liberty of Religious Meetings, or Assemblies for Mafs, or Preaching, is an Infringement of the free Exercise of our Religion established by Law; yet pray take one thing along with you, which is a Matter of great Moment to the Diversers, as well as to us of the Church of England: For if the King can thus, by his Prerogative, give them a Liberty to meet publickly, contrary to Law, let the latter look to it; for he may by the same Prerogative (whenever he pleases) dispense only with the Papists, and keep the Laws still on foot against Diversers; nay, he may by the same unbounded Prerogative dispense with all the Laws for the publick Exercise of our Religion; and under pretence of dispensing with them only in some particular Cafes, shut up our Church-Doors one after another, beginning with the Cathedrals, and so proceeding by degrees to Parish-Churches. And tho' I grant King Charles II. did assume a Power of dispensing with all Statutes concerning Religious Meetings, contrary to Law, yet the Nation had not then any sufficient Reason to rile in Arms against this Declaration; since it did not extend the King's Prerogative beyond those Acts concerning Religious Worship. And farther, the Nation was not out of all Hopes of having it redressed by the next Parliament, and so was not in that desperate Condition in which it was lately, before the Prince of Orange's coming over. And you may remember, that the late King, upon the joint Address of the Lords and Commons against that Declaration, was forced to call it in, and cancel it; which certainly ought to have been better considered by his Majesty, and those of the Papists Junto that advised him to intrench out the late Declaration, to expressly contrary to Law, and the Sense of both Houses of Parliament, and which gave the Archbishop of Canterbury, and the rest of his Brethren, a sufficient Ground of petitioning against it; and this was so evident, that a Jury, in which the greatest Part were high Prerogative-Men, could not upon a fair Trial but acquit them.

M. I shall not further dispute this Point, since you have dwelt so long upon it, though I must still tell you, I do not look upon this as a sufficient Caufe for the Nation's taking up Arms, for another Reason I shall shew you by and by. And therefore I shall now proceed to the next Head complain'd of in the Prince's late Declaration, (viz.) the late Commission for erecting a new Court for Causes Ecclesiasticall, but as I will not enter upon the Question of the Legality of it, so on the other side it was also done by Colour of Law; and the King, as Supreme Head of the Church, was told by his Ministers, that he had Power to erect what new Court Ecclesiastical he pleased, provided it was not of the same kind with the High Commission-Court, which had been abrogated by the Stat. of the 17th of King Charles I. as likewise particularly excepted in the Provifio, in the Stat. of the 12th of King Charles II. for restoring Ecclesiastical Jurisdiction to the Bishops Courts: So that admitting that Court was not legal, yet the Papists who advised the King to erect it, and the Commissioners who sat in it, were only answerable for it in the next Parliament; and though the Bishop of London was dispers'd, and the President, and Fellows of Magdalen College were unjuftly expell'd by this Court, yet there none of these Misdemeanours could give the Subjects of this Kingdom any just Pretences to take up Arms to redress them, being done (as I said before) by Colour of Law, without any Force or Violence, and was also submitted to by the Parties against which these Decrees were given, and was at the most but a Matter of particular Concern, and reach'd no farther than the said Bishop and College, and did not touch the Religion and Civil Liberties.
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Liberties of the whole Kingdom; and consequently was not of that general importance, as to be any just Cause of the whole Kingdom's taking Arms, much less for the King's Officers and Soldiers to run over to the Prince of Orange, as they lately have done.

F. To answer what you have now said concerning the Ecclesiastical Commissions, that I must also tell you, was issued forth without so much as any Colour of Law for it; and though the late Chancellor, and some of the wealthiest and most Mercenary Judges countenanced it by appearing for, and sitting in it, yet it is very well known it was never proposed to all the Judges to be argued in the Exchequer Chamber, as it ought to have been, before a Thing of that great Importance to the whole Nation had pass'd the Seals. As to what you say, that the King's Ministers told him it was according to Law, and that they alone ought to answer for it in the next Parliament, and that no publick Disturbance ought to have been made about it, because the Things that that pretended Court did were but of a particular Concern, and only reached the Bishop of London, and one single College; that is but a Fallacy which you put upon your feet. But if you had better considered of it, you would find that what these Commissioners have already done, is of a little more publick Concernment than you are aware of for pray tell me, why by the same Law, by which the Bishop of London was suspended for his Refusal to relieve Dr. Sharp, all the Bishops in England might not have been suspended one after another by that pretended Court, if they had refused to obey or execute any Letters or Orders from the King, tho' never so illegal or unreasonable? Since what Command could be more illegal, than the King's positive Order to the Bishop to send a Clergyman from his Diocese, without first hearing him, or giving him leave to answer for himself? So likewise for the Cafe of Magdalen College; by the same Law by which these Ecclesiastical Commissioners took upon them to turn out the President and Fellows, for disobeying the King's Mandamus, by the same Law, the King might put upon any other College in either University, Popish Heads, and Popish Fellows; till indeed of Nurseries for the Education of our Youth in the Protestant Religion, they may become as absolute Popish Seminaries, as the Colleges of Divinity, or St. Omer. And though I grant that the Perfections concern'd in these unjust Decrees, might have patienty submitted to them without any Protestation against the Jurisdiction of that pretended Court, since they might for some prudential Reasons have thought fit to submit, without making any such Protestation, and yet for all that not allow their Authority; yet indeed the Matter of Fact was far otherwise, for when a Part of these Commissioners sat at Magdalen College, to expel the said President and Fellows from their Places, contrary to Law, and the express Statutes of the College, several of them protested against their whole Proceedings, and appeared to the King's Courts at Westminster. And it is a plain Proof how willingly Dr. Howg the President of this College, submitted to this Sentence, by his locking the Doors of his Lodgings, and leaving the Commissioners to break them open before they could get in, and put in his pretended Successor by force. But as to what you say, that the King was told, he might at Supreme Head of the Church, for up what new Court he pleased for the Execution of this Ecclesiastical Jurisdiction, it is certainly a great Mistake. For I utterly deny, that the King has Power to erect any new Courts either Ecclesiastical or Civil, unless by Authority of Parliament, the King's Power to make a Vice-Governor being only continued by the Statute of King Henry the Eighth, as was also the Authority of the High Commission, by the Statute of the first of Queen Elizabeth. And if either of those high-spirited Princes had believed themselves to have been invested with such an unbounded Prerogative, they would certainly have exercised it without being beholden to the Parliament. But indeed it is but a Subterfuge, to allege that this Court was not of the same Nature with that of the High Commission, because it did not take upon it to Fine, or commit Men to Prison, nor to administer the Oath ex Officio, to those that were convinced before them; since it is not the different Name, or some small difference in the Manner of the Judicial Proceedings, but the Causes or Matters that a Court pretends to take Cognizance of, that can make it a Court of a quite different Nature.
Nature. Now it is notoriously known, that this late Ecclesiastical Court took upon it to judge of Matrimonial Causes about Alimony, and concerning Simoniacal Consecrations, and all other Misdemeanors both of Clergy and Laity, against Religion and good Manners, which were the same Things the late High Commission Court took upon them to determine.

M. I shall make no further Reply at present to what you now say, till I come to answer once for all: Therefore I shall go on to the next Thing excepted against in the Prince’s Declaration, viz. the Erecting of Publick Chapels for Mafs, the protecting of Priests, and the making a Jefuit a Privy-Councillor; all which, tho’ I confess they are against the express Letter of divers Statutes, yet since all these Things depend upon the King’s dispensing Power, set forth in his late publick Declaration, which as I will not affirm, so I will not positively deny, since the said Declaration of Indulgence, and all Proceedings thereupon were illus out and executed under Colour of Law, viz. of the King’s Ecclesiastical Jurisdiction, without any Force or Violence upon the Conscience, Religion, or Properties of the King’s Protestant Subjects, nor by whom the King in his said Declaration did make any promises to protect in the free Poelfection, and Enjoyment of their Religion estab-lish’d by Law. And I cannot see how a Liberty granted to Popish Priests to say Mafs, or the putting in a Jefuit into the Privy Council, or making Popish Judges, or putting a Papist into the Ecclesiastical Commission, can be looked upon as any Invasion of the Protestant Religion, the free and publick Poelfection of which we have (God be thanked) as quietly enjoyed as we did in the Reign of this King, or in that of his Brother.

F. Since you cannot directly justify the King’s setting up Publick Mafs-Houses in London, and in most other Parts of the Kingdom, and his in publick protecting and countenancing Papists and Jefuits, even to the making a Jefuit a Privy-Councillor, tho’ they are all in Judgment of Law alike publick Enemies and Traytors to the King and Kingdom; and that all these (as you cannot deny) are contrary to the express Words and Intent of all Statutes against Priests and Papist Assemblies, if you endeavour to palliate it under the King’s dispensing Power, which you suppose to have had a Colour of Law (at least) to support it. But tho’ the giving Liberty to Popish Assemblies, and the Conventicles of the Differents, was no direct hinderance of the free Exercise of the Protestant Religion establish’d by Law, yet I must utterly deny that the King has any such Prerogative, as to dispence with those Laws, and by his sole Authority to declare those that the Law calls Enemies and Tray tors, to be good Subjects. And you may as well tell me, that the King has not only a Prerogative Power to pardon Highway-men, but may also protect them, and put them into his Guards, with a Commission to rob whom they please, as to give Papists Power to bear Arms, or to protect and employ declared Tray tors, (as Popish Priests and Jefuits are by Law) as the King had done. The like I may say, for putting in Popish Judges and Juflices of Peace, (viz. that it was all done by Force of the King’s Personal Orders, without his Legal Author ity, which is that alone we can take cognizance of, or judge any Obedience to. And though ‘tis true, I do not deny the King a Power of making whom he pleases Judges; yet this Prerogative is still to be exercised according to Law. And therefore if the King should make an illiterate Man a Judge, who could neither Write nor Read, the Write or Parent would be void in law. The same I may say of a Popish Judge, the Law making no Difference (as I know of) between a natural and a legal Disability. But however the turning out honest and able Judges, becase they would not give up our Religion and Liberties to the King’s Prerogative, is certainly a much greater Breach of his high Nature, committed to him by his Coronation Oath, wherein he swore he would maintain the Laws of the Land, and mix Equity with Mercy in all his Judgments: Now where is the Equity, or Juflice of this, that whereas most of the Judges anciently held their Places quam duas, se bene gesserant, they should now (by a notorious Encroach ment of the Prerogative) not only be made durante bene placuerunt, but that the King should stretch this Prerogative so unreasonable, as to examine the Judges beforehand, whether they would agree to the dispensing Power; and to turn out those that refused to comply, merely because they would not serve his Arbitrary Designs, and then to put in some of the meanest and most mercenary Lawyers at
at the Bar, (say some who never come thither at all) into their Places for no other Merit or good Qualities, but because they would serve a Turn, is so notorious a Breach of his Oath, that it could not fail in a little Time to destroy all our Common, as well as our Statute-Laws, since these were all lately lodged in their Breasts, and revoluted into their Arbitrary Determinations, which yet (as all the World knows) were wholly managed by the Influence and Commands of the Court: And this I say again, was as notorious an Abuse of the King's Prerogative, as if he had put in Highway-Men into his Guards, with Commissons in their Pockets, to rob whom they pleased; since these Gentlemen in Scarlet have taken the same Liberty under Colour of Law, to raise Taxes upon the Subjects, against the Express Letter of an Act of Parliament; as may be seen in their late Determination concerning Chimney-Money, making Cottages, built for the Use of the Poor, and Houfes of Perfons exempted from Payment, liable to Chimney-Money, contrary to the express Words of that Statute.

A. I cannot deny but the Things you now mention have been great Abuses of Prerogative, but whether so great as to require Restiſſe I must till disadie with you. Therefore I shall now proceed to the next Particular complain'd of, viz. The examination of the Lords Lieutenants, Deputy-Lieutenants, Sheriffs, and Judges of Peace, to know whether they would concur with the King in the Repeal of the Telf and Penal Laws, and turning all such out of Commision as refuded to comply with the King's Deifies in this Matter. Now, tho' I will not say it was well or prudently done, yet it was no more than (what I think) the King, by his Prerogative, might justify the doing of; since he may, by Law, give a colour of law to what Judges he pleases, and put in or out of any Commissioners, whether Civil or Military, whom he thinks fit: And as for the Perfons so examin'd, they might have chozen whether they would have given any positive Answers to the Questions put to them, by the Lord Chancellor and Lord Lieutenants; and if they had refuded to anwer positively to thofe Questions proposed to them, I know no other Penalty they had been liable to, more than being put out of Commision, which fure is no Punishment, but rather an Eafe. And though I do not defend thofe evil Minifters, that put the King upon this Method of diftracting and difobligeing his beft Subjects, (I mean thofe of the Church of England) by putting them out, and putting in either Papifts or Panaticks in their Steads, yet all that own themselves of that Communion, ought to have been of more loyal Principles, than to have taken up Arms, as some of them have done, upon Pretence of standing by the Prince of Orange's Declaration against thofe Abuses.

F. I see though you cannot directly justify the examination of the Lords Lieutenants, and Deputy-Lieutenants, and Judges of the Peace, about taking away the Penal Laws and Telf, and turning them out of Commision that refuded, yet you strive to mitigate it (as far as you can) by making it Part of the King's Prerogative, to put in and out what Judges, Judges, and other Officers he pleases. Well, granting this to be so, yet sure you cannot deny but that the clofetting of Judges, and all other Officers you have now mention'd, and putting thofe out of Commision, that refuded to comply with the King's Will, (and that for no other Reafon) was fure a strange Anwer of that Prerogative: And the Excefe you make, that the Perfons examin'd had a Liberty to refuse whether they would give any positive Anwer or not, is yet more trivial, since it is very well known, that as well thofe who gave doubtfull Anwers, or refused to make any Anwer at all, were as much turned out, as they who positively denied to comply with the King's Demands: So that no Anwer was looked upon as Satisfactory, but fuch as seemed to give up all Freedom of Elections, and Votes in Parliament; none being to be chozen by the King's Directions, but fuch as would engage before-hand to repeal the Telf and Penal Laws. And I think you will not deny, but that the King by thus examining all thofe Magilifies and Officers you now mention, and by turning thofe out that refused to comply, did all he could to hinder the Free Election of Members to serve in Parliament, and the Freedom of giving their Votes when they came thither: And the King might as well another Time have declar'd, That he would have no Members chozen, but fuch as would agree to take away the Statute de Tallagio non concedendo, or any Branch of Magna Charta, which
whicb he should think fit to have repeal'd. And as this strikes at the very Fundamental Constitution of the Government, (viz.) the Free Eletion of Parliament-Men, so it was inferred among the Articles against Richard the Second, that he had caus'd the Sheriffs to return whom he pleas'd for Knights of Shires, as I have al-ready theved you.

But what say you to the King's late calling in almost all the Charters of Cities, Towns, and Corporations in England; and putting in Popish or Fanatick Officers and Magistrates into the Rooms of those that were turn'd out, only to influence Elections, and to procure what Persons he design'd to be return'd for Parliament-Men? Is not this a grand Breach of the Fundamental Constitution of the Kingdom, thus to take away the Legal Rights and Privileges of these Corporations, for no other Cause than to procure the King such Parliament-Men as he had a mind to? And if a Parliament had been chosen by Men of these Principles, pray consider what small Hopes there would have been, for Men of like Principles with them that chose them, to have redressed the Grievances the Nation then lay under.

I beg your Pardon, I forgot to mention this sooner; and I will not take upon me aboulutely to defend the Legality of it, much lefs the Design for which it was done, since I grant that it was in order to destroy, or at least to humble, the Church of England; yet since it was done by Colour of Law, and Judgment of the Court of King's-Bench, and no more than what has been formerly done in the Reign of King Charles I, I cannot see how the Noblemen and Gentlemen lately in Arms, could defend their Rising upon that Ground, until they would also at the same Time, justify the Lawfulness of the Plot and Rebellion intended in the same Reign, and in which so many of the Whig Nobility and Gentry were deep-ly engaged.

To answer what you have said in Vindication of this great Violation of one of the Fundamental Rights and Liberties of the Kingdom, I must in the first Place tell you, That as I shall not now examine into the Matter of Law, whether a Corporation can forfeit its Charter for Misdemeanors or not; much lefs shall I concern my self whether it were done by or without Colour of Law, or the Judgment of the Court of King's-Bench, since it is notoriously known that none of the Judges were permitted to fit there, nor any new ones put in, but such as would blindly agree to all the Court would have done; and therefore I value not any Thing they did, nor think it one jot the more legal for their Judgments: Nor is it any Excuse, that the same Thing was done in King Charles's Reign, and therefore might as well be done now without any Rising against it. For though I must tell you, I look upon the taking away the Charters from the City of London, and the other Cities and Corporations of the Kingdom, one of the most arbitrary and illegal Acts of that King's Reign, yet there were several Reasons which made it unlawful for the Nation to rise then; yet it might not be so now: As in the first Place, because most of those Charters were either willingly sur-render'd by the Members of those Corporations, or else were declared forfeited by Trial and Judgment of Law. Whereas it was much otherwise in this King's Time, when notwithstanding that all the Cities and Towns Corporations in England, had but a few Years before taken out new Charters to their great Trouble and Ex pense, they were now summon'd anew to surrender these again, for no other Reason, but because it was the King's Pleasure it should be so. For who can imagine, that the Corporations of England could have forborne their Charters in to-morrow a Time as Three or Four Years? And they were plainly told, that the King must and would have them; and that it was to no Purpose to stand out; and therefore it was no Wonder, if all the Cities and Corporations of England were forced to submit patiently to this Violation, since they found by Experience the Judges were ready to give Judgment against them right or wrong.

And besides this, I have already laid it down as a Maxim, That no Reflince whatever is to be made, till Matters become desperate, and all other Means be come absolutely ineffectual, which I think they were not, as long as King Charles lived, who before the Inconstancy of his Humour, which seldom perished long, either in well or evil-doing, (especially if the ill Consequences of it were well laid open to him,) was too timorous then to have put in any Magistrates into Corporations, but such as were for the Prowlent Religion, as it stands by Law Ef-
Dialogue the Ninth.

establish'd, and such, however angry they might be with those they call'd Whigs, in respect of their opposing the Duke's Succession to the Crown, yet I believe most of them would never have given up the Freedom of Elections of Parliament-Men, or have done any thing to bring in Popery among us: So that as long as Things remained in this State, there were some hopes still left of a Redress of our Grievances, whenever a Parliament had met; and that the Nation was grow more cool, and had come to it self again after those Heats which had riven in the late Parliaments about the Succession, and other Things. Whereas now the CASe was far otherwise in this King's Reign; wherein we found not only our Religion, but the fundamental Rights and Privileges of the Nation, struck at by the King's dispensing Power, and the Arbitrary Proceedings of the Judges. And not only the Freedom of Elections of Knights of Shires, but of Citizens and Burgesses, endeavoured to be taken from us; either by threatening the Electors, or else by open Force; as I shall prove by and by, when I shall have Occasion to speak farther upon that Head. So that unless a great Part of the Nation had declared for the Prince of Orange, he had been repuls'd with Shame and Ruin, and our Chains tied faster upon us, than ever they were before.

M. I shall forbear replying farther to what you have now said, till I come to conclude. But in the mean Time I cannot omit another material Grievance set down in the Prince's Declaration, (viz.) the turning out and disarming the English Protestant Magistrates, Officers, and Soldiers in Ireland, and putting of Irish Papists in their Rooms; as also the late Declaration of Indulgence in Scotland; but as I will not defend the Justice or Prudence of those Councils, so I think none of them could give any sufficient Cause for the People of this Kingdom to rise in Arms; for sure it is enough (if not too much) for them to concern themselves with the Grievances and Military affairs of their own Country, without taking upon them to take up Arms to reform those of their Neighbours; since they are not only ignorant of the Laws and Constitutions of those Kingdoms, but may also mistake the true Reasons and Grounds on which those Alterations were made.

F. I see you can as little defend what has been illegally acted in Scotland, as in Ireland; only you would fain put me off, by telling me that the People of this Nation have nothing to do to take Notice of what is done in other Kingdoms; and you may as well tell me, that a Man ought not to take any Warning, as to defend himself against Thieves, though he sees another Man rob'd by them before his Eyes, or that the Protestants of England should not take Warning by the sad Example of those in France, from ever suffering a Popish King from having the same Power here as the French King has in France, for fear of the like fatal Effects; since I never found Papists give Protestant's the least Forbearance, or show them any Mercy, longer than whilst it was not in their Power to hurt them.

But to come to the Matter in Hand; we cannot but concern our selves with what has been so lately done in Scotland and Ireland, for the introducing of Popery and Arbitrary Government in those Kingdoms, since the latter is notoriously known to be governed by the same Laws as England, and it is as much against the Laws of that Kingdom, as it is of ours, for the Irish Papists to be put in Arms, and the Protestant Militia disarmed, and for Popish Judges, and Justices of Peace to be put in Commission, as hath been practis'd under the Government of the Lord Tyrconnel: And if English Protestants in Ireland cannot enjoy their Estates and Liberties, without being turned out of them by the Papists, how could we in England expect better Treatment, whenever they shall think themselves strong enough: And as for Scotland, though it be not wholly governed by the same Laws as England, yet the fundamental Constitution of the Government is the same in both Kingdoms, and the King can no more make, abrogate, or dispense with Laws in Scotland without the Parliament, than he can here; and therefore for the King not only to flite out such a Declaration of Indulgence, and Sufferment of all the Penal Laws in Scotland against Papists, but also to begin to declare that he expected an Obedience to all his Commands, without Reserve (whether legal or not) was so bold a Stroke, that we could not but expect.
BIBLIOTHECA POLITICA.

expect the like in England, though His Majesty thought it not fit so precipit, to discover his Mind so plainly to us.

All I shall not any longer dispute these Points with you, but own that the Abuses you mention, were indeed of great Concern both to the Protestant Religion, and our Civil Liberties; yet however, besides the Laws of the Land, (which I still suppose do expressely forbid all Refusall of the King upon any Account whatsoever) I think there ought to have been no such Thing done by any Subject of this Nation, even upon your own Principles, which seem not to allow of such Refusall, but in case of an actual and violent Affall upon Mens Religion, Lives, and Properties, and that by open Force of Arms. Now I desire you to think of me, whom the King has ever yet dragooned, or perfecuted till they would become of his Religion? Or whose Life his Majesty hath taken away, even of the most notorious Traitors, but by due Tryal, and Course of Law? Nay, he has pardoned divers, several after they were condemn’d, merely because he was inform’d, they were not really guilty of the Crimes whereof they stood condemn’d. And as for Mens Civil Properties, I defy you to think me any Perfons Estate that has been taken from him without due Course of Law, or any Taxes that have been Affessed upon the Nation, but what have been granted by Parliament, or else raised by the Opinion of the Judges, by whom if his Majesty hath been misinform’d, They only ought to answer for it in the next Parliament, who are the only proper Judges of their Miseraiges, without having any Recourse to Force, which the Laws of this Kingdom so much abhor. And therefore make the worst of it you can, all these Grievances already mentioned, were no more than some Breaches upon the outward Splendor of our Church, Religion, or some of our Civil Liberties; whilst the Main and Essential Parts of both continu’d untouched; since, God be thanked, we have hitherto enjoyed the Free and Publick Profefion of our Religion, together with our Lives, Liberties, and Estates, in perfect Peace, and undivert’d by any outward Force or Violence from the King, or any Commission by him: And as for those Grievances you mention, viz. The turning out the President and Fellows of Magdalen College, by the late Eccelifical Commission, as also the turning out of the Deputy Lieutenants, and Justices of the Peace, and all other Magistrates out of Cities and Corporations, the King has sufficiently redres’d them, by restoring the fort to their Places, and by putting all the reft into Commission again, and turning out thofe that came in their Rooms, and all this before the Prince of Orange came over; and I doubt not but his Majesty would have been content to have given the Nation any other reasonable Satisfaction they could have deferrd in the next Parliament: Which ought to have been patiently waited for until his Majesty thought fit to call it, without going about to right our Selves by Force.

F. I confefs you have made not only the most plausible Defence you can of the King’s late Actions, but have also urg’d the ufmiff that can be faid againft those definite Arms that have been lately taken up by those Lords, Gentlemen, and others who have affected themselves to stand by the Prince of Orange, till our Grievances were redres’d by a Free Parliament: But if what you have faid be firfly look’d into, I doubt it will prove but a mere Subterfage to hide the Nakedness of the Cause you have undertaken. In the first Place therefore, let me tell you, that though I confefs the King has not yet Dragooned us to Maff, nor has made an actual War upon the Lives and Properties of the People of his Nation; yet that he has not only invaded our Liberties, but also endanger’d the Protestant Religion of the Church of England established by Law, you yourfelf have not the Confidence to deny, only you will not fuppofe it to have been done by an Armed Force, and therefore ought not to have been redres’d by Force, but to have waited for their Redrefs by Parliament; which is but an Eravc: For in the first Place it is plain, that the Things complain’d againft, in the Prince of Orange’s Declaration, do moft of them strike at the Fundamental Constitution, both of the Church and State, as I have sufficiently prov’d, and shall do it more particularly when there is occasion. All therefore that remains to be prov’d is this, That all these Breaches, and Violations of our Religion and Civil Liberties, though done under Colour of Law, yet were acted and maintained by Force.
Force: And Secondly, That all other Hopes of Remedy or Redress, unless by joining with the Prince of Orange, was wholly taken from us. The first of these I prove thus: It is notoriously known, that for the King to maintain a Standing Army in Time of Peace, has been always declar'd again pt in Parliament, as contrary to Law, and dangerous to the Religion, Civil Rights, and Liberties of this Nation. Now it is also as certain, that the King has, ever since the Duke of Monmouth's coming over, set up and maintain'd a Standing Army in this Kingdom, in which he has also put in as many Popish Officers, and as many Po- pish Soldiers (contrary to the Laws of the Land) as ever they could find; besides the many Irish Papists that have been of late sent over, for no other Purpose than to be lifted here, and whilst Protestant Soldiers were turn'd out of several Regi- ments to make room for them: Not to mention the lifting of vast Numbers of loafe and profligate fellows, and some of them pardon'd Highway-Men, who, provided they had their Pay, would not have fluck to rob or murder any body they had been ordered, as may be sufficiently prov'd, not only by their common taking of free Quarter, but by their frequent taking it in the Houses of Gentlemen, and other private Persons, in divers Places of this Kingdom; and that without any Amendments or Redress as I know of, tho' frequently complain'd of at Court: All which being done by the King's Arbitrary Power, without the least Colour of Law, and in Contempt of the Militia, the only legal Forces of this Kingdom, what was this but plainly to declare, that as the King had thought fit to act to many arbitrary Things, even contrary to Law, so he was likewise resolv'd to maintain 'em by Force, since it is plain, that the King never durst undertake to do all these Illegal and Arbitrary Things we have now mention'd, until such time as his Standing Army was rais'd. And tho' it is true, Men's Lives, Liberties, or Estates cannot be taken away, unless by some Kind of Force, yet as for those Civil Rights and Privileges, which are the main Bulwarks and Defen- ces of the former, they can only be invaded or taken from us by illegal Judgments and Declarations, which if supported by a visible Force beyond what the Nation (in the Circumstances it was in) was able to resist, this is as much a taking them by Force, as if there had been Reliance made about them.

Thus, if Soldiers come into my House, and say that the King hath given them Orders to quarter there upon free Cost, I suppose you will not deny, but this is a forcible taking of my Goods, notwithstanding I dare not (because I cannot) refi't them. The same I may say for a whole Nation, when once oppress'd in their Civil Liberties, and those Oppressions are once back'd and defended by a Standing Army contrary to Law: But that this Army was rais'd chiefly to this Intent, I can give you a remarkable Instance from the Mouth of the late Chief Justice Wright, who sent for Officers and Soldiers to make the Scholars at Oxford keep silence, because they humm'd at what the President and Fellows of Magdalen's had just before said against the Authority of this pretended Court. So that to con- clude, I from that very time that the King began to keep up an Army, and to lift Popish Officers and Soldiers, (tho' utterly disabled by Law to take Commissions, or to bear Arms) by virtue of his Dispening Power, and all this in Order to back and support his Arbitrary Proceedings, I look upon this Nation under such a Force, as that they might lawfully remove it by Force, whenever they could: And that either by joining with some Foreign Prince, or else by their own Dometick Arms.

But to come to the Second Point to be prov'd, viz. That there was no other Means but Force left us to redress those Mischiefs, and to retrieve us out of that fatal Condition in which we lately were, as also to hinder us from falling into worse; I shall only suppose (that which I think you will readily grant) that there could be no other Means to cure these Evils, but either by some sudden Change in the King's Inclinations, or else by a Free Parliament: The former you must acknowledge was not possible, as long as he continued of the Religion he is of; and ful- fi'd himself to be manag'd by the Counsels of the Jesuits, and French King, and as for a Free Parliament, what Hopes could there be of that, as long as the King had done all he could to hinder Free Elections, and due Returns of Parliament-Men, by making either Popish or Fanatical Sheriffs, and putting Mayors and other
other officers of the like principles into most of the cities and corporate towns in England? Nor can I tell but that force would also have been used, if they found they could not have compelled their designs without it, in those places where soldiers were quartered; since I am credibly informed, that at the late intended elections of burgesses for Northampton and Brackley, the officers and soldiers quartered at those places, decreed, that none of the townsfolk should be admitted to give voices at the election, unless they would promise to vote for those that the court would set up. And the like influences I believe I might give you of other places, had I time to enquire into it. And as for the house of peers, pray consider how many of the bishops and temporal lords the king might have gained, either by their vassal, or fair promises, to his party, or at least prevailed upon to bland neutrals, and not to oppose his designs; and if these had failed, it had been but calling up some popish, or high Tory, or fanatical gentleman to the house of lords, and to have sat there as barons, peers, pro tempore, till this job was done; and I doubt not but there would have been enough found out, of each sort, for that purpose. And that I do not speak without power, I have had it from persons of good intelligence, that such a design was lately on foot, and the court party thought they had very good authority for it, since Mr. Prym and Sir William Digby, did pretend to show us several examples of this kind, as low as the reign of K. Henry the 11th. And a great part of the design of your Eh. B.'s late books seems to have been only to prove, that the king might not only have summoned to parliament what of the commons he pleased, but what lords too, and have omitted the rest, as I have already shown you at our two last meetings. And sure, if the king had such a prerogative two or three hundred years ago, these gentlemen would not have denied his present majesty the like power; since they have, in all their writings and addresses, declared him as absolute as any of his predecessors.

But to make an end. As for what you say of the king's redressing the grievances of the nation before the prince of Orange came, it is very true, he did by the advice of some of the bishops, for instance, to put things into such a state that they were in at his first coming to the crown. But I very much mistrust the sincerity of his majesty's intentions, since it is plain he never offered to do it till the prince of Orange was just upon coming, and that his declaration had been spread about the kingdom, and then he did it very unwillingly. And which is also more remarkable, his majesty, in none of his declarations, ever disowned his dispersing power, or so much as put out father peters from the council, or disowned one popish officer or soldier of his army: all which are no great arguments of the sincerity of his intentions. So that I think this was sufficient to convince any reasonable man, that there was no other means left but resistance, and that by force, and a hearty joining with the prince of Orange at his landing.

Now, since this resistance was not made either in opposition to the king or the laws, but for defence of both, against a standing army kept up contrary to law, and headed by officers, the greatest part of which, by not taking the sacrament and teet, according to the act made for that purpose, had rendered themselves wholly incapable of holding those commissiions, and consequently whilist in arms were to be look'd upon as common enemies to the nation. But as for his majesty's gracious and merciful disposition, as I shall not make it my business personally to reflect upon him, so I must needs tell you, the execution of Mr. Cor- nish, Mrs. Life, Mrs. Gaur, for treasons falsely alleged'd, or else such as women could scarce be capable of knowing to be so, were no great evidences of such highly merciful inclinations.

I confess you have taken a great deal of pains not only to fet the late miscarriages of the government, but also to prove that the army which the king raised upon the duke of Monmouth's invation, and which he hath since kept up to prevent either fresh rebellions at home or invasions from abroad, were not merely maintain'd to support all these late breaches upon our laws and civil liberties, which you say were made upon them. Now this is very unchristianly done; for as his majesty was forc'd to raise an army at first, because the late rebellion in the way was too powerful to be quelled by the ordi-
nary Train'd Bands of the Kingdom, whom he had too much Reason to suspect, by the running over of several of them to the Rebels, not to be so Loyal as they ought to have been: And if his Majesty had not had a small Body of an Army on Foot, the last Summer before the Prince of Orange came over, he must, upon his Landing, have yielded to his Terms, had they been never so unreasonable. And through I will not defend the Lifting of Papist or Irish Soldiers, or the Granting Commissions to Papist Commanders, yet it is very hard to prove this to be a making War upon the Nation, unless you can supposo there may be War made without Fighting. And as for those Violations of the Laws, which you supposo were made only upon the Prefumption of this Standing Army, this is likewise very hard to affirm; since how can you tell that the Judges and Ministers would not have given the same Opinions and Advice, concerning the detenent Power, Chimney-Money, and the Ecclesiastical Commiision, had there been no Army at all rais'd; since they might, for ought I know, have presum'd that the People of this Nation had been sufficiently convic'd of the Truth of the Doctrines of Passive Obedience and Non-Resistance, as not to have needed a Standing Army to hack what he had already done, though contrary to Law. But as for the latter Part of your Diffour, I say the People ought to have waited till the King had call'd a Parliament, and then if they had betray'd their Trust, and given up our Religion and Liberties, as you supposo they would have done, it had been then Time enough, and not till then, for the Nation to have call'd in the Prince of Orange and his Dutchmen to their Deliverance. So that till this Parliament had been try'd, you could not say that Matters were altogether desperate.

F. I see you do all you can to prove, that the King's Raising an Army, wherein he had Lifted so many Papist Officers and Soldiers, (and which were like to be daily increas'd upon us) was no making War upon the Nation, because they had not yet actually robb'd or murder'd People; and you may with as much Reason tell me, that a Thief upon the Highway does not use any Violence upon the Party he robs, if he should only clap a cock'd Pistol to his Breast, without asking him to deliver his Money. Now, I supposo, you will not deny, but that the Papists would quickly understand the Meaning of that Sign, and would soon deliver his Purse, for fear of losing his Life. Apply this to the taking of the Customs contrary to Law, and to the Chimney-Money that has been rais'd upon the poorer Part of the Nation, and the taking away the Charters from the Corporations, merely through the Terror of this Standing Army; and see if the Similitude does not exactly fit. And for what you say, concerning the presumption upon the Doctrines of Passive-Obedience, and so might have done the same Arbitrary Things, whether he had rais'd an Army or not, though I am very glad you confess, that those Doctrines encouraged the King's Arbitrary Proceedings, yet I must beg your Pardon, if I cannot believe the rest. Whatever Thoughts the King might have of the Major Part of the Clergy, Nobility, and Gentry, yet certainly he had no such good Opinion of the ordinary People, who compos'd the Militia, (and indeed are the Hands of the Kingdom) since you confess the King did not look upon them as sufficiently Loyal, and therefore was forc'd to maintain a Standing Army for fear of them. So that it seems the Nation was not yet thoroughly pac'd in your Doctrines of Passive-Obedience and Non-Resistance, as you would have had them, but that even this Standing Army, when it was to Fight against the Religion and Liberties of their own Country, was not to be trifled, the King himself was convinc'd of, when he lately left them at Salisbury; and because some of them deserted him, he feared the rest would not Fight, in so unjust a Quarrel.

But as for the rest of your Speech, that the People should have tarried till Matters had become altogether desperate, and that a Parliament had actually given up our Religion, Civil Liberties, and Properties, to the King's Arbitrary Will, that had been indeed, enacting Slavery upon us by a Law, and would have made good the Proverb, of thrusting the Sable Door after the Horse is stolen; and puts me in mind of a Story I have heard of a Gentleman, whose House being break'd by Thieves, who were actually breaking in at a Window,
and that he was about to shoot at them, his over-strupulous Chaplain (who I suppose had nicely studied your Doctrine of Non-Resistance) defined his Patron to forbear, because the Thieves had not as yet sufficiently declared their wicked Intentions by assaulting or robbing any Body in the House: But I suppose the Gentleman was not such a Fool as to take his Chaplain's Advice, and a great Part of the Nation was more formidable of the Dangers they saw hang over their Heads than to follow your Opinion.

M. I see you are very free in your Comparisons, in making the King's late Army little better than Thieves; and then what Opinion you have of the King himself, who headed 'em, I leave it to your self to consider; but, since Similitudes are no Arguments, I shall not trouble my self to argue this Point any longer with you, since I see it is to little purpose. But yet let your Right of Resistance be what it will in desperate Cases, yet I am sure that divers Lords and Gentlemen of your Opinion can no way justify their renouncing all Allegiance to his Majesty, by adhering to a Foreign Prince, and by their late advising the same Prince to call a Convention, without taking any Notice of the King, or making any more Addresses to him about it, than they had never been their anointed Sovereign; and indeed it was a great Shame, as well as a crying Sin, for the Nobility, Gentry, and People in and about this great and populous City to let their King be hurried away Prisoner by a Handful of Dutchmen, tho' his Majesty had had since the good Fortune to escape out of their Hands, when he saw there was no other Means to help him.

F. In answer to what you have now said, I must freely tell you, that if the Resistance that hath been made against the Army commisison'd by the King was lawful, I have all that has been done in Puritane of the Resistance been alike lawful and necessary; and therefore what if I should tell you that the King by breaking the fundamental Constitution of the Kingdom, and by twice going away without ever offering to repair those Breaches, and give the Nation any sufficient Satisfaction for the same, has not only put himself in a State of War against the People, but has also thereby caused to be King; or if you will have it more plainly, has lost and forfeited his Right to the Crown.

M. This is a rare Commonwealth Doctrine, and of the same Batch with that of Bradshaw's and Oak's Speeches against King Charles the First; but I thank God I have learned loyaller Principles, and do firmly believe, that a King of England cannot for any Tyranny or Breach of Laws whatsoever, forfeit his Crown or Royal Dignity, as you suppose. But since this is a new Doctrine, I shall not be unwilling to hear what you have to say upon this Subject another Time, since it is now too late to pursue this Argument any further.

F. Before I make any Reply to what you have now said, I desire not to be misunderstood, as if I call all the King's late Army Thieves, or himself the Captain of them, since in Similitudes it is sufficient if they agree in some common Property, without being the same Things to which they are compar'd; tho' this much I may safely say, that tho' that take Free Quarter without Consent of the Owners in Time of Peace, and those who support 'em in it, are no better than Thieves; but since you desire to hear my Reasons for this Opinion I have now given you, I define that we may have another Meeting to debate this weighty Question: and then I will likewise hear whatever you have to say against it. But I must tell you by the way, that you are very much out in making my Opinion of the same Batch with that of the Regicides; for it appears plainly by the printed Tryal of King Charles the First, that they acknowledged him for King of England at the same Time when they read his Indictment, whereas I affirm the contrary, and say that the present King cannot be judged or deposed by the Parliament or People; yet that he has without any Act of ours absolutely abdicated the Government, and deposed himself; but that I may not seem to speak out of any Prejudice to this King's Person or Government, I desire we may first debate it in general, whether a King of England can ever fall from, or forfeit his Royal Dignity,
Dialogue the Ninth.

let him behave himself never so like a Tyrant: And when that is dispatch'd, it will be then Time to consider, whether the King has so behaved himself or not.

M. I like your Proposal well enough; only let me desire you to come again as soon as you can; for since I hear there is like to be no Term, I intend to visit some Friends in the Country, till I see the Times clear up a little better.

F. I will not fail to wait on you, within a Night or Two; and in the mean Time am your Humble Servant.

M. And I am Yours.
I. Whether a King of England can ever fall from, or forfeit his Royal Dignity for any Breach of an Original Contract, or willful Violation of the Fundamental Laws of the Kingdom?

II. Whether King William (the Norman) did by his Conquest acquire such an absolute unconditional Right to the Crown of this Realm, for Himself and his Heirs, as can never be lawfully resisted or forfeited, for any Male-Administration or Tyranny whatever.

M. H! Are you come at last? I have looked for you these two Nights, and now began to fear you were not well, or else had distrusted your Cause, and declined another Conference.

F. I beg your Pardon for disappointing you; which yet I had not done, had not some Bufinefs hindered me; but however, to let you see I do not decline another Conference with you upon this Subject, pray let us go on where we left off; and tell me freely your Sentiments of my Notion of the King's Forfeiture, or Abdication of the Government by his Violation of the Fundamental Laws of the Kingdom, and Refusal to repair those Breaches, when he might have done it?

M. In answer to your Demand, I will deal freely with you, and must tell you, that I have perused all Writers that have writ any Thing considerable concerning the Laws of Government, or of Nations; and cannot find in any of them anything to counterbalance your Notion of Forfeiture, or Abdication of an Absolute Sovereign Prince, as I must must take ours to be, notwithstanding all you have yet said to the contrary; unless what you have cited at our Third Meeting, out of Bar- clay's Third Book contra Monarchos machos, where he allows the Subjects to refit their Prince, in case he go about to destroy the Body of the People or Common- wealth, whereas he is the Head. To which I may also add another Case which you have omitted, viz. If the Prince make over his Kingdom to another, without the Consent of his People: And I confess, that both Grotius and Puffendorf agree with Barcaly in this Notion: Because they look upon both these Cases, as plain downright Reafonations of their Civil Authority, over those whom they were obliged to Govern. But indeed, the first of these Cases is so improbable, that almost impossible to happen, that were it not for the over-great Nicenefs of these Writers, it need not to have been so much as mentioned; since none but a Madman, can ever go about to destroy his whole People; and therefore such a Prince may be refit as a Man out of his Wits; and locked up, if ever it should so fall out (as you yourself have confessed it hath very rarely) for a Nation to be so unhappy as to have such a Prince; but as for the Second, viz. the making over their Supreme Power to a Foreign Prince; that likewise so very
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rarely happens, that it is fance worth the while to make any Dispute about it: But in all other Cases, they held the Supreme Power of every Nation to be absolutely irreble in any Cafe whatsoever; and if irreble, then certainly incapable of forfeiting their Right to govern, by any pretended, or real Violation of the Liberties and Privileges of the People. And Bodin, in his first Book de Re- Cae. 4. publique, though he grant, that absolute Princes are obliged in Confidence to keep and maintain all such Privileges which have been granted to the People by either themselves or Predecessors, which are for the good of the Commonwealth; yet since the Prince is sole Judge, whether those Privileges are consistent with his Supreme Right to Govern and Protect his People, he may therefore have occasion sometimes, not only to Detract from them, but to prejudice several of them in some Cases: but may wholly break and lay them aside, by turning Tyrant; yet nevertheless in all those Cases People are still bound not to reft them. And that he looked upon the King of England as such an Absolute Monarch, as well as others he there mentions, you may read in the Place I now cited, where after he has allowed Refinance to be lawful against those Princes, who were not properly Monarchs, as enjoying but a Share of the Supreme Power, and among which he reckons the German Emperor, and the Kings of Denmark, Sweden, and Poland: But then, when he comes to speak of Real and Absolute Monarchies, his Sentiment quite different; as you may see by these Words Quod si Monarchia quaedam est, sium seius potestate constet, quae aliquid Francorum, Hifpanorum, Anglorum, Scotorum, ac. (I shall flip all the rest, because not to our Purpofe) ubi Reges fìne controversia jura omnia Majestate habent per se; nec singulari civibus, nec unanime fuit effe jummi Principis vitam, famam, Fortunas in differenft vocere, fcrui, fcrv ilud fudge confituto id fum, etiam omnium ficiere, ac figurari quae in Tyrannia concrecunt, antea dicimus, tartifadine infamis effe. Where you may observe that Force or Refinance, by which a such an absolute Prince's Life or Regal Power (here called Tyrannus) are as much forbid, as calling him in Question by appointing Judges to fit upon him. And he there gives us a very good Reason for it, Because all Subjects of what Degree forever, cannot pretend to any Coercive Power over the Person of a Sovereign Prince.

P. We have discoursed enough concerning the Refinance of Absolute Monarchies, at our Third and Fourth Meeting, and therefore I desire we may not fall again upon that Subject, which can produce nothing but needless Repetitions: and I have already proved, at our Fifth Conversation, that our King is not an Absolute Despotic Monarch, but is limited and tied up by the Fundamental Laws of the Kingdom, from making of Laws, or raising Taxes without the Consent of his People in Parliament; and that our Government is mixed, and made up of Monarchy, with an Alay of Ariftocracy, and Democracy in the Constitution; the former in the Houfe of Lords, the latter in the Houfe of Commons, as K. Charles the First himfalfe confides, in his Answer to the Parliament's 19 Propositions. And I have farther enforced this from diverse Authorities out of our Antient as well as Modern Lawyers; viz. Glanvil, Braden, Fortescue, and Sir Edward Coke. So that since we have such clear Proof for our Constitution from our own Histories and Authors, nay from the King himfelf, besides the whole Purport and Style of the very Laws and Statutes of the Kingdom, I do not value the Authority of Bodin a Foreigner, whose Bufinefs it is to set up the Authority of the French King to the highest Pitch he could: and therefore being fenfible that antiently the Government of France and England were much the fame, he could not with any Face make his own an Absolute Despotic Monarchy, unless he had made ours fo too; but this is not the only Error he has been guilty of in our History and Constitution, as I can shew you when there is occasion. But Arnoldus, who, as well as Bodin, is fo much for Absolute Monarchies, yet does in his Treatise of Government called his confides, that a Tyrant in an Hereditary Monarchy, who violates all the Laws of Justice and Equity, to the endangering the Ruin of the Commonwealth, doth excedere Juris hereditario, fall from, or forfeit his Hereditary Right. But pray make it out by some convincing Proofs, either from History, or Law, that our Kings are such Absolute Monarchs as you would make them, that by the fundamental Constitution of the Government they cannot be deposed: that they cannot fall from their Regal Power, let them carry themselves never fo Tyrannically, for I do not see you have been yet able to do it by any Arguments you have hitherto made use of.
M. I have already at our Fifth, as well as at our last Meeting, given you divers Arguments and Authorities, whereby I proved the Kings of this Realm to be complete and absolute Monarchs; especially that Place from Bradton, where he thus speaks of the King, That every one is under him; and that himself is under none but God; that he has no Peer in his Kingdom, because he would lose his Power, since an Equal has no Command over an Equal; much more has he any Superior, because then he would be inferior to his Subjects; and Inferiors cannot be equal with their Superiors. Which sufficiently destroys that Notion of yours, That Subjects can be in any Case equal with their Princes, so as to judge and reftiff their Actions. Which is also farther enforced by another Passage just aforegoing, de carte vero Regii; & sedito Regum, non debent, nec possunt Judioicarum, nec private perfone disjutare; nec ei iam in illis dubitatione ultra oritur, possunt eam interpretationi, & in dubio, & obscuris, vel si aliqua dlia duos commine intellectus, Domini Regis erit expellanda interpretatio & voluntas, cum ejus sit interpretari cujus ess concedere: From which we may conclude, That the Kings' Actions were above all Confution and Dispute, much more formidable Opposition of his Subjects. And I defy you to shew me any Passage in Bradton, Picts, or even your beloved Author Fos- figue, that in the least counterances your Doctrines of Restitution, much less your Opinion of the King's Forfeiture of his Crown and Royal Dignity for Tyranny, for the highest Violation of Laws; but rather the contrary, in all those Passages that I have either observed, or found quoted out of them by others. For though I grant both Bradton and Picts call the King, if he prove a Tyrant, or one that governs contrary to Law, not God's but the Devil's Minifter; yet for all their, they no where maintain, that then he ought, or may be refiff'd by his Subjects; or that they are discharged of their Allegiance towards him. For Bradton tells us, in the same Place, That if the King do any Man wrong or Injury, Locum erit interpretationis quod salutum suum corrigat; & emendet quod quidem si non fecerit, fatis efficac et ad panem, quod Dominum expellat uitorum; nemo quidem de salutis suis perfumar disjutare, multo fortius contra salutum suum venire. The same he says likewise word for word in another Place, of any other King or Prince, who has no superior Lord, against whom there is no Remedy by Affife (or legal Trial) as against an Equal, but only Place left for the Injured Subject to Petition. And Bradton gives us a very good Reason for it in this Maxim, omnis quidem sibi est, qui se ipsum modi tantium sub Deo. So that though I grant this Moral Obligation, which the King hath to observe the Laws, is farther increased by his Coronation-Oath, as Bradton observes in his Third Book de Actionibus: But then, as in the Oath of Allegiance, the People swear nothing to the King, but what they are bound to observe untouched: So the King in his Coronation-Oath promises nothing to the People, but what in Justice and Equity he is bound to perform, whether he swear or not: For, ad hoc (as the fame Author of the King) eipsum, & creatum ejus de judicium faciat universis, &c. and separare debet Rex, quam si Des victoriam, fac ah Injuriae, &c. But then if the Injured in this great and just Law, by which the King is bound, if he will not act as it becomes God's Vicar, if he will not observe or pervert the Laws, and govern never so Tyrannically; yet still there is left no Remedy to his Subjects by the Law, but Moral Persuasion: For the Laws Imperial of this Realm, have declared him to be a free, unconditional, and independent Sovereign, exempted from all Coercion, and outward Force, much more from any Forfeiture of his Crown or Regal Authority.

F. I hope I shall be able to return you a satisfactory Answer to the Authorities you have now brought for, as for Reasons I see none. In the first Place, as to what you say concerning Barley's, and all other Writers against him, and in these Two Cales you mention, the People may reftiff his Prince, because he does as good as renounce the Government of them, and abdicate the Crown itself: Pray observe, that they also allow the People to judge for themselves, when the King thus goes about to destroy them, to make over his Crown to a Foreign Prince. Now I defer you to shew me, why the People in a limited or mixed Kingdom (as ours is) cannot as well judge, when the King has broke the Fundamental Laws of the Government, whereby it is distinguished from an Abolute Despotism; and hath either actually set up, or is going about to bring in Tyranny or Arbitrary Power; since according to the Rules I have laid down at our last Meeting, the Matters to be judged of may be as plain and evident, not only to a single Person, but to a whole Nation. All that you have 10
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to say against this is, only an Hypothetis you have laid down, without any Juft Grounds. That the King is a Sovereign Prince, who holds his Crown without any Condition with which he, and therefore free from all Forfurance of his Crown, or Regal Authority, which is the Point to be prov'd. Now if I have already made out (as I suppose I have) that the King of England is not such an Absolute Monarch, as not having the two main Parts of it, viz. the Power of raising Money, and making Laws, in his own Dispos'd, without the Content of his People; and these refer'd to them by his own Concessions, or that of his Prdecessors, from the very beginning of Kingly Government in this Island; and if I have also prov'd at our last Meeting, that if we have such Fundamental Rights, we have also some Means left us to keep and preserve them inviolable; and that this Means is only a defensive Refidence, in case they are forcibly invaded by any of the King's Officers or Soldiers, nay, by his own personal Power, if he shall be fo ill advis'd as to join himself with such Instrumenst of Tyranny; it will then also follow, that such a Refidence is really a Sufpension of their Allegiance to the King for the Time it lasts; and till they can see whether there be any Hopes left of a Reconciliation with him, and that he will amend his Errors and Misgovernment. And if he does, so, and that he will give his People any sufficient Testimony of his Amendment and Sincerity, by giving up such evil Ministers to Punishment, then he will readily grant, that the People ought to lay down their Arms, and be again reconciled to their King, and submit themselves to him as before, according to that Clause in King John's Magna Charta I have already cited, wherein there is a Power left for the Barons, in case of any Breach of it, to take Arms, and confirn the King by taking of his Castles, Lands, and Possessions, to amend those Transgressions; and when all was thus amended, the Charter says, Tunc cam fuerit emendatum (then and not before) intendens nobis factur prius securum, they shall be subject to us, as they were before. But what followed upon this? The King not only refused to obverse this Charter, but procured the Pope's Dispensation to be abolved from the Oath he had taken to obverse it, and also raised what Forces he could at home, and sent for Foreigners into this Kingdom to support his Tyranny; whereupon the Barons at last were forced to re-nounce all Allegiance to him, and to declare he had forfeited all Right to the Crown by his Tyranny and Perjury towards his People; as Mat. Paris and other Authors teach us at large. Now what the Barons did in the Cafe of King John, may be also done by the People of this Kingdom in all succeeding Times; or otherwise, the King will be in a better Condition after he has done the worst he can by Force of Arms against the People, than he was before; for if (as I have already prov'd) he may be refitted, till he give the Kingdom Satisfaction that he will forcase from such Tyrannical Courses; and if such Refidence is really a Sufpension of Allegiance for the Time it lasts; it will likewise follow, that if the King will still perfist in these wicked Courses, he must at last forfeit his Crown, and discharge his Subjects of all Allegiance to him; or else he would be in a better Condition, by his wilful perfiling in his Tyranny, than he could by quitting it, and reconciling himself to his People: For whereas by this Method he can as well he can expect is to return to the Exercise of his same Limited Power he before enjoyed; if he push Things to the utmost Extremity, he may, perhaps, get the better of his People, and then will set up for an Absolute King by Conquest; or if he fail in that, and be beaten, or taken Prisoner by them, he can lose nothing; since by your Principles he still continues an Absolute Sovereign Prince, as he was before, and must be immediately put in the same State and Ability of destroying the Government, and enlaving the Nation. But your Civil, as well as our Common Law, has a very good Maxim, Nemo ex proprio Dealdo beneficium captat; no Man may take Advantage of his own Wrong. And therefore such a Prince ought certainly to lose, and not to gain any thing by his own Illegal and Tyrannical Actions; and therefore I grant, that the King is not tied, by his Coronation-Oath, to observe any new things that he was not, before he was Crown'd, bound to do; only there is the higher Obligation of an Oath added thereunto. So if the King be a Limited Prince, whose Authority depends upon the right Exercife of it, and that he can claim no Allegiance of his Subjects but upon that Condition; if such a Prince wilfully breaks all those Conditions, and absolutely refuses to amend, he must at last forfeit his Crown.
Crown, and lose all Allegiance from his Subjects, or else all their Restitution would signify just nothing; and they would after all be in a much worse Condition than they were before.

Now if this be so, all your Quotations out of Braddon and Fleta will signify nothing: For, as Puffendorf very well observeth, a Supreme Power may reside in a Limited King, in respect of all his particular Subjects; yet they may all together have a Right to disobey him in those things to which his Power does not extend: For, says he, it does not follow, that because I am not bound to obey him in all things, therefore I must be his Equal or Superior; or because I cannot in any wise command him, therefore he may enjoin me what he pleases. For Supreme and Absolute are by no means one and the same; for the former denotes the Abolition of a Superior, or an Equal in the same Order, but the latter a Faculty of exercising all the Rights of Government, according to his own Judgment and Will: And therefore this Author in the next Chapter says very rationally concerning refitting of Tyrants in extreme Cases, That their Scruple is nothing, who will not admit any Liberty of refitting the most cruel Tyranny of Rulers, because there cannot be suppressed any lawful Call of Subjects taking Arms against the Supreme Power, since no Jurisdiction can belong to any Subject over such a Power: As if (says he) that Self-defence were an Effect of Jurisdiction, or that there is required any peculiar Call or Precept for Men in case of extreme Necessity to defend themselves, and to repulse any unjust Force from taking away their Lives or Estates; any more than there is for those who are like to Starve, to allay their Hunger by eating, tho' it may be the Meat they eat is not their own, but another Man's. So far he. And if this be lawful even in Absolute Monarchies, in case of Defence of Life, the same, I say, may be also by the Braddon referred exercised in Limited Kingdoms, when the King goes about by Force to take away the Religion, Lives, Estates, or Liberties of the People, contrary to Law; since both are founded upon the same Principle, that a King, by destroying the Fundamental Laws and Conditions by which he is to govern, renounces the Government; and indeed so far disjoins it, that he ceases to be King.

And tho' I grant Braddon and Fleta, and other old Lawyers, have not in express Words taught this Doctrin; yet they do it in effect; since the former tells us, Non est Rex, abd dominat, voluntar, & non Lex, that is, he is not a King, when his own Will, and not the Law governs: And in another place, Rex est dum bene Regit, Tyrannus dum Populum sibi creditum violens opprimit dominationes; and in the very same place, (as you have also observed) he tells us, exercere debet Rex potestatem Juris; ut Vicarius & Minifter Dei, potestas autem injuriae Diabolis eff, non Dei; cum de minimis ad injuriam Rex, Diabolus Minifer eff. Now, if what Braddon says be true, that the King, when he does Injury, is the Devil's Minifter, and not God's, I cannot see how he can then act as God's Lieutenant; or why it is not as lawful to refit the Devil's Minifter, as the Devil himself. And as to what you allude out of the same Author, that there is no Remedy left against the King, in case he does Wrong, or oppresses any Man, but only Petition; and after that, the only Remedy is expetit Deum uterum, in case he refuse to do Right: This is to be only understood of Remedy in ordinary Courts of Justice; and by ordinary Means; for otherwise this Author would contradict himself, whereas he tells us expressly, (as I have already noted out of Braddon and Fleta) in Popolo Regendo Rex habet Superiores, Legem per quas saltus eff Rex, & Juris solum, &c. Comites & Baroniz, that is, the highest Court of Parliament, called by way of Eminency, the Earls and Baroniz, who, be he says, debent eum jurem impotentem, in case he transgress the Law; and therefore if he go on still wilfully to violate all the Fundamental Laws of the Kingdom, by the same Power by which they may put this Bride upon him, by the same Power may they also declare (in case of manifest and downright Tyranny,) that he has forfeited his Crown; and tho' they cannot depose him as his Superiors, yet they may declare that he hath by violating the Original Contract between him and his People, ceased to be King, and that both themselves and all his Subjects are discharged of all Allegiance to him.

And agreeable to this Opinion, the old Mirror of Justices tells us in the Place I have formerly cited at our Third Meeting, That tho' the King have no Peer in the
the Land, notwithstanding, if by his own Wrong, he offends against any of his People, none of those that judge for him, (i.e. none of his Justices) can be both Judge and Party. Therefore it is agreeable to Right, that the King should have Peers or Companions so hear and determine in Parliament, all Writs and Complaints concerning the Wrongs of the King, Queen, and their Children, of which Wrongs they could not otherwise have common Right. Now can any one imagine that any private Person might have Right against the King, or his Queen, and Children; and that there should be no Remedy left for the general Oppression, and Violation of the Laws and Rights of the whole Nation in general, and that whether the King would or not? For if it had lain in his Power to have hindered it by dissolving the Parliament, this Law had been wholly in vain. So that this will serve to answer your other Quotation out of Bradfow, concerning the King's Charters, or Grants, (for to I suppose falsis is to be rendered in this Place) That no private Persons, no, not the King's Justices, could in those Days take upon them to dispute about, or interpret their Meaning; but it was to be left to the King himself. But how? Not to his private Interpretation in his Chamber or Privy-Council, but to his Interpretation in his Great Council in Parliament; which, as I proved in our Fifth Meeting, confided of all the great Officers of the Crown, together with the judges; who, the King being present, were in the Nature of Councillors or Aileddors to him; and there all Matters not determinable in ordina. Cores, were heard and determined; and of this Nature were the King's Charters; tho' now that Power, since the Dissolution of that great Court, is fallen partly to the Chancery, and partly to the King's Bench, who do both of them at this Day judge of the King's Grants, whether they are according to Law, or not; and can declare them to be void, if they are not.

M. This is right Rump-Parliament Doltrine, or rather worse, (if worse can be) for whereas Bradfow, and those Mock-Judges, appointed by that pretended Junto, plainly allowed as Inherent Right in the People of England, and the Parliament, as their Representatives, to call the King to an Account, and to judge and condemn him, as his Superiors; you, to evade that Doltrine, as being expressly condemned both by the First and Second Parliament of King Charles II. in the Statutes I have already cited, do fall into a much more dangerous Error. For whereas those Men supposed it was only in the Parliament (and in themselves, as the Commons of England), to judge and depose the King, and to put him to Death for Tyranny, you take this Power out of their Hands, and place it in every private Person, which you call the effusifme Body of the People; which are not only more fallible, but more dangerous Judges, as being more apt to Errors and Mistakes. But if you would have better confided the Words and Meaning of that Act I have formerly cited of King Charles II. for attaining the Regicides, you would there find these Words in the Preamble to that Act expressly against you: 'Whereby it is by both Houses of Parliament declared, That by the undoubted and Fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together in Parliament, nor the People collectively, or representatively, nor any other Persons whatsoever, ever had, hath, or ought to have any Coercive Power over the Persons of the Kings of this Realm. Whereby you see by this Act, that all Power of judging or deposing the King is expressly renounced, not only for the Two Houses of Parliament, but for the whole People, whether collectively, or representatively, or for any other Persons whatsoever. But as for what you say, that the King in case of a wilful and contemptuous Violation of the Fundamental Laws of the Kingdom, is not then deposed by the People, but deposes himself, and thereby renounces the Government over them; this is a mere Evasion, which you, and those of your Party, have now found out to make the King to have forfeited his Crown, without any Judgment of the Parliament or People; for who can believe a King will ever depose himself, or do any Act, belinging to Express Reformation of the Crown, whereby he can ever be constrained to have parted with it. And therefore your Notion is no better than the Equivocation of the Jesuits, who, if they are ask'd whether it be lawful or not for Subjects to murder their Kings, will tell you by no means; but it is still with that mental Refravation, that Princes excommunicated and deposed by the Pope, do thereby cease to be Kings; and therefore their Subjects being thereby discharged of all their Allegiance to them, they may not only be
refitted, but murdered by them as Tyrants and Usurpers. Put the People here instead of the Pope, and see if the Parallel does not hold exactly.

But as to your Argument, from a Necessity of Refitance, to a Necessity of laying the King aside, because he has forfeited all Rights to the Crown, upon his perilling in the Violation of the Fundamental Laws, and refitting to make the People Satisfaction, and this upon the Account of I know not what Original Contract, for as to the Coronation Oath, I see you dare not insist upon it, so that I do not now wonder that the Gentlemen of your Principles are so violent for this Right of Refitance, since it is only in order to introduce your Darling Doctrin of the Peoples Power of depoing or laying aside their Kings (as you term it) whenever they shall judge they turn Tyrants, and have thereby forfeited their Crowns, which is a most dangerous Doctrine: And if it should take Effect, Princes had need look about them, since the People may make up such a Pretence (for ought I know) even against the very bed of them, that are now Regnant in Europe.

But true absolute Monarchs ought not to be oust of their Crowns by strained Consequences, or forced Interpretations of Laws; therefore pray fiew me this Original Contract you so much insist upon, and tho' Conditions on which you suppose our limited Monarchs hold their Crowns. I confess if you could fiew me any Clause in our Laws, or Ancient Forms of the Coronation of our Kings, as there was at the Coronation of the Kings of Aragon, wherein the Chief Justice on the behalf of the People plainly told him, that they made him King upon this Condition, that they would have more Power than himself; or that in the conferring of the Regal Power, it was expressly referred in what Cases it should be lawful for them to refit the King, or to absolve his Subjects of their Allegiance, as Bodin tells us it was expressly inserted in the Coronation Oath of Henry II. Duke of Anjou (afterwards King of France,) when he was made King of Poland; that if he broke his Oath and violated the Laws and Privileges of the Clergy and Nobility of Poland, then the People of that Kingdom should not be obliged to render him any Obedience: I grant then, that the Liberties of such a People might be preferred. But the King that took upon him the Regal Power upon such Conditions, would not be properly a Monarch, but an Inferior Prince, liable to the Judgment of his People, whenever he really did, or that they imagined he had thus violated their Laws, since the Supreme Authority would still reside in them.

But indeed the Cafe (God be thanked) is much otherwife with our Monarchs who are Kings by Right of Inheritance, whether ever they take any Coronation Oath, or not: As King Edward the Fifth was, whilst he was in the Holy-Land almost Two Years before he could come over to be Crowned, and King Henry the Sixth was not Crowned till the Eighth Year of his Reign, as well as of his Age. But that our Kings are so by Inheritance, and by the Laws of God and Man, previous to any Coronation Oath, or Consent of the People, is expressly declared by the Act of Recognition of King James I. And that Treaon might be committed against him before he was Crowned, Sir Edward Coke tells us in Calvin's Cafe, was the Opinion of all the Judges of England on the Plot for which Waifum and Clerk the Priests were Executed, and Sir Walter Rawleigh Condemned. So that what you have now urged from Reason, or Authority of our Ancient Lawyers, is entirely quite to the Point, or else does not reach the Matter in Hand: That it cannot be made out from Reason, is plain; since your whole Argument is built upon this false Foundation, that it is lawful in some Cases to refit the King, as upon a notorious Breach of the Fundamental Laws, and therefore it is necessary also to declare him to have forfeited his Crown, if he perill in this Violation; whereas I deny your Assumption, for I hold it utterly unlawful to refit on any Pretence, or for any Cause whatsoever: And therefore it is impossible for the King, who (as I said but now) is an absolute unconditioned Monarch, to forfeit his Crown for any such Violation of your Original Contracts, or Fundamental Laws of Government. So that let me tell you, the Citations you have brought out of History, as also Bredon and Vera, do not prove either the one or the other of these. For Fifth, As to the Clause in King John's Charter concerning Refitance, and the Barons having a Power thereby to contrain the King to amend his Violations of it, by making War upon him, and that they should not...
not return to their former Allegiance till all was redressed; make the most of it, it could be no more than a particular Concession for himself alone, and was not intended to reach his Successors, who are not here at all mentioned in this Clause. And that it was never intended to reach them, may further appear, because that this Clause of Restitutio is omitted out of all the subsequent great Charters, that were granted by Henry III. or his Son Edward I. and instead of this, it was thought a sufficient Security upon the last Confirmation of these Charters in the 37th Year of King Henry III. for the Kings, Bishops, Earls, and Barons to agree, that the Archbishop of Canterbury, and all the rest of the Bishops, should declare all those that willfully transgressed or infringed the great Charters in any Point, excommunicated ipso facto, not excepting the King himself, according to the Form which you will find in Mat. Paris, and other Writers of this Transfaction. But for the Places you have cited out of Bradton, there is none of them reach the Point in Question; for as to the first, non est Rex ubi dominatur voluntas & non lex; the Meaning of it is, not that he is no King, but that he does not act as a King, but a Tyrant, when he thus governs by his meer Will, and not by Law. And to the same Effect is the next Quotage, Rex est, dum bene regit; Tyrannis, dum Populum fuit tradidum violenta ab imperio, all which we readily grant: Yet since he is still an absolute Monarch, all Writers hold, that his governing without or against Law, cannot give the Subjects a Power to refit him, much less can it be construed as a Re- nunciation or Forfeiture of his Imperial Power. And therefore 'tis true, that as Bradton and Fleta tell us, whilst he thus acts, he does not act as God's Lieutenant, but the Devil's Minifter; yet does it not follow that we may therefore refit him with carnal Weapons, or Force; since we cannot so refit the Devil himself. And tho' he may in this Matter of Breach of the Law, which he has sworn to observe, act as the Devil's Minifter, yet notwithstanding in all other Points of Government, as in the Punishment of Robbers, and other notorious Offenders, and in the due Administration of Justice between Man and Man, he still acts as God's Lieutenant; and it is much better that we should have some Civil Government, tho' mixt with Tyranny and Oppression, than that we should fall into all the Mitchiefs and Confusions of a Civil War, ray, that Anarchy too which has often been produced by it. And tho' I confes the last Place you have made use of, to wit, Rex habet Superiorum, Legem, & Curiam iusun, viz. Comites & Barones, &c. who ought, if he transgress the Law, to put a Bridle upon him; yet by this (as I have already proved) neither Bradton nor Fleta could mean any co-active Force, but only a Moral Restraint upon the King by Petitions, Remonstrances, or denial of Aids, till he would be reform'd by fair Means; But that it does not go farther, appears by the Parallel Bradton there, makes between our Saviour Christ and the Virgin Mary, who being both free from the Law of Moses, yet voluntarily chose to be obedient to it, which sufficiently proves that those Authors never designed that the Parliament should make the King, by Force, or whether he would or no, to amend his Faults; since that was, as you yourself must acknowledge, against their very Institution; since both their Meeting, and their Dissolution wholly depend upon the King's Will.

F. I confess you have made a long and elaborate Speech in answer to my Opinion, that the King may forfeit his Crown, that is, by his own Act cease to be King; but I shall be able to give you a satisfactory Answer to all this, if you please to take it. In the first Place therefore I cannot but observe, that all your Difficulties depend upon Two Principles, alike false; first, that no absolute Monarch can by his own Act forfeit or lose his Right to the Government, without a formal Resignation of the Crown: Secondly, That the Kings of England have ever been such absolute Monarchs. Which if they are both great Mistakes, all that you have said in this Head falls of it self. Now that a King, tho' an absolute Monarch, may do such an Act as shall make a Forfeiture of his Crown, without any solemn Resignation of it, you yourself are forced to allow, in the Two Cases you have put, viz. that of such a Monarch becoming an open Enemy to his People, and going about to destroy them; and that of his making over his Kingdom to another, without the People's Consent. Now if the defensive Body of the People in an absolute Government, can judge of these Two Cases whenever they happen, without appealing to any general Council, or Assembly of the whole Nation, I desire to know (for you have given me no Answer to this Question)

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Doubt or Denial of it, by any reasonable and indifferent Judges. And the greatest Part of the People are willing to live in Peace, without making any Disturbance or Alteration in the Government, if it may be avoided. Whereas in any great Affair of the State, there are many, and those of the most eloquent and leading Men, who commonly carry the rest which way the plebe, who are governed by Faction, Ambition, or Self-Interest; and upon all, or some of these, &c. may be defenis to raise Civil Wars, or to declare the King to have done Things that require Refiaince, or to have forfeited his Crown, when indeed he has not. And for this the very long Parliament you mention is an evident Example, since you cannot but grant, that if the Differences between the King and that Parliament had been freely left to the Judgment of the whole People, there had never been a Civil War at all, nor had the King ever been beheaded; since it is notoriously known, that before the Parliament fir'd up the People to War, by feizing of the Militia, they were not at all inclined to it; it being a refined, foulous and ambitious Party of Men on both Sides, who brought on the late Civil War. Not but that I defer much to the Judgment of a free and unbytraffed Parliament, who may confirm and declare what the difusive Body of the People have already justly done, to be right and lawful; which may be as great a Satisfaction to private Men's Consciences in Civil Disputes, as a general Council is in Spiritual Controversies about Matters of Religion, wherein, tho' such a Council cannot make new Articles of Faith, yet we Protestants hold that it may declare what were anciently believed. But if the People have a Right of judging during the Intervals of Parliament, when the King has notoriously broken the Fundamental Constitution, and fo may make Refiaince accordingly, (as I have already proved they have) since otherwise the King may absolutely refuse ever to call any Parliament at all, or at least may not let them fit till all Grievances are redressed; so I cannot see why they may not also judge when the King has so wholly broken his Original Contract, and so obstinately perflfed in it, as to create a Forfeiture of his Crown, since the one is not harder to judge of than the other. Nor is your Parallel between our Opinion and that of the Jesuits at all true; unless you could also prove, that I had put the same Authority in the People to depose their Kings by a Right conferred on them by God, as the Jesuits do in the Pope by such a pretended Power, as superior to that of all the Monarchs in the World. But there is nothing like it in my Hypothesis. Since I do neither allow the People to judge or depose the King, much less to put him to Death, tho' a Tyrant; but only to judge, and declare, when he has made such notorious Breaches on the Fundamental Constitution, as do necessarily imply a Forfeiture, or rather an implicit Abdication of his Royal Power, and thereby depose himself.

But to come to the Second Point, to prove, that our Kings were never abdtute Monarchs, or had the sole and absolute Authority over the People of this Kingdom; and if so, that there was somewhat still referred by the People at the first Institution of the Government, and which the King by the Original Contract, when he or his Ancelors took the Crown, must be still fußpoted as bound maintain. Now that there must have been such a Thing as an Original Contract (however light you please to make of it) I thus make out. You may remember that at our Fifth Meeting, I proved, that at the first Institution of Kinly Government in this Nation, it was not by Right of Inheritance, but Election. 2. That this Election was made either by the whole Body of the People in Person, or by their lawful Representatives in the great Councils, or Mycel Synods of the English Saxons. 3. That this great Council did then refer to themselves thee material Parts of Government: First, A Right of meeting or assembling at stated Times of the Year, and that without any previous Summons from the King. Secondly, A Right of proposing, or at least of allenting to all Laws that should be made in all future Times. Thirdly, A Right of granting general Aids or Taxes for the People, and that without their Consent no Taxes could be imposed. Fourthly, and as subsequent to all these, a Right of agreeing to all Wars, and Treaties of Peace, to be made with Foreign Nations. But the first and last of these, tho' I could prove to have been constantly observed, during the Saxon Government, yet since the People have parted with their Right in these Matters, I shall now not insist upon them, only that the People have still a Right to Parliaments, once in Three Years at least, and oftener if Necessity require.

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These
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These then being the Original Constitutions of the Kingdom, the King must have either entered into a Compact with the People, for the maintenance and observation of these fundamental Rights, or else it must have been left to his Discretion, whether he would suffer the People to enjoy them or not. If the latter had been true, then I grant they had made him an Absolute Monarch, and had left it wholly at his Discretion, whether they should enjoy these fundamental Rights and Privileges or not. But it appears plainly to the contrary that they did not, for I can prove (if need be) that the Succession to the Crown was at first Elective, and not Hereditary. Now in all Elective Kingdoms of the Grecian Model, it is very well known that their Kings were so far from being absolute, that the Assembly of Estates, or great Councils of those Kingdoms, referred to themselves a Power of Deposing their Kings for Tyranny and Misgovernment; as I have already proved was frequently done, not only in England, but in all the Neighbouring Kingdoms, without any Imputation of Rebellion. And I have also given you a Quotation out of the ancient Mirror of Justices, which tells us, that upon the Election of the first King of this whole island, "The Princes that chose him then cau'd him to swear, that he would maintain the Holy Christian Faith with all his Power, and should keep his People in all things as well in theory as in practice, according to the Law of God, as also as others, and the Subject. And if this were not an Original Contract, I know not else what to make of it.

And now that upon a Failure to perform these Things, a Forfeiture of the Crown would follow, and that heeupon he would cease to be a King; Pray see those ancient Laws in Lambert's Sexton Laws, and Sir H. Spelman's Councils, which go under the Name of King Edward the Confessor's; (though they were made as Heaven flues us, in the time of King Edgar his Grand father) where among those Laws of King Edward that were confirmed by K. Wiliam I, this is one: Rex non potest eam esse victoriam, quae Regis ad hoc confessionis, ut Regnum teneat, et populum Domini, & super omniam s sanctum veneretur Ecclesiam, & ab injurias defendent, & maleficia ob ea evolut, & penibus dierferat, quod nisi feceret nec non nomen Regis in eo confabuit; that is, not so much as the Title of King shall remain to him. And in the same Sense Bradton is to be understood, in his Second Book: Et enim Corona Regis facere Jusficiam, & Judiciam, & pacem tenere, sine gubis confittere non potest, nec teneori, which may be thus render'd, That it's of the Royal Office or Disability, (for so I confine Corona Regis) to do Justice and Judgment, and to maintain Peace; without the Observation of which, his Crown or Royal Disability cannot hold nor confit. So that this is but an Explanation of my Sense of that other Passlage I have already cited out of this Author, Non est Rex ubi dominator voluntas, & non Lex, &c. He is not a King, (that is, ceases to be a King) when his Will, and not the Law Governs; and he gives the Reason for it in another Place, speaking of the King, who was not then Hereditary, for, ad hoc electus est Rex, & constitutus, ut faciat Jusficiam universe.

Therefore if he thus totally deviate from the End of his Creation, his Authority ceases, and is at an End. So that nothing is plainer, than that our Ancient Laws have not left the King to have the Right of being King, in case of notorious Tyranny, and Breach of this Original Contract; and that the ancient Lawyers Bradton and Pleta, gave the same Interpretation of this Law, is also as plain.

So that what you have said to evade or misinterpret the Authority of these Authors, as to the Points of Non-Refinishment and Forfeiture of the Regal Power, will signify nothing; for as to what you say of that Clause of Reftinance being left out in all subsequent Charters after this of K. John's, and therefore that it was not binding Law to his Successors, I do not deny the Matter of Fact, that it was omitted; but there was a Deed proved, that the whole Nation ever pronounced their Right of Reftinance in the Charters mentioned; since as they exercised it before that Charter was given, so also they continued to do it in the Reigns of his Successors; as I have shown in the History I have given you of this Reftinance at our last Meeting. And therefore constant Practice is the best Interpreter of this Fundamental Law. As for my Evailion of that Place of Bradton, Non est Rex, &c. I have sufficiently confirmed my Sense of it, by this Law of K. Edward, as also by other Passages out of this Author; and I will leave it to any Man to judge which is the most genuine Interpretation of this Place. He is not a King, (that is ceases to be so) when his Will, and not the Law Rules; or, That he does not all as a King, as
as you interpret it. But you grant such a King is really a Tyrant, yet may not be
restituted, nor can lose his Power. And why? Because it is absolute and unconditional.
This is to take that for granted which we deny, for he that hath not the full
and sole Power of making Laws, and imposing Taxes, is not absolute Monarch;
but the King of England has neither of these, Ergo, &c. And if this be so, see
what Grotius says expressly of such a Prince (as high as he is for the Non-resistance Lib. 1. Cap. 4.
of Absolute Monarchs,) Si Rex partem habeat summam imperii, partem alteram populi
sibi, est senatus, Regin in partem non suam involunti, nisi jura oppositum potest, quia
detenns imperium non habet, quod locum habere confit, estque dictum si, bello
potestatem possit, Rex etiam summam partem habet, non posset non jus habere earn partem
suam, quod sit possit Rex etiam suum partem bello jure amittere: Where you see,
that the Opinion of this learned Author is, That a limited King may not
only be restituted in Cæse he invade that Part of the Supreme Power that does
not belong to him, but may also lose his own Share of the Empire by Right of War.
Now further, that our ancient Lawyers believed, that our King had not the whole
Power, or dominion in their Hands, appears by that Palladium so often cited out of
Bracton, Rex habet superiores, Leget per quam salus est Rex. & curiam Baronom,
&c. which you strive to evade, by supposing I know not what Moral Superiority,
which the Court might only exercise towards the King by Remonstrance, or Petition,
in sett forth his Deviations against a Law. But what if he had refused
to hearken to them? Why then, say you, all the Remedy was expellere Deum
Utorem? Now if this was all, then every private Subject had such a Moral
Superiority; for Bracton says of them, locus est suppliance, ut salus corrigat, &c.
Amenset, quod si nos faceret, &c. then he was to look for God to revenge it. But
Bracton and Fathers are more explicit in this Point, and say, that this Curia Baronom
were not only Socii but Magistri, for say they, qui habet Socium, habet Magistrum.
So that surely this Bride must have been somewhat more than bare Prayers,
Remonstrances, or denial of Money, nor is your Reason to the contrary cogent,
since it is only drawn from a Simile between Christ, the blest Virgin, and the
Law of Moses. Now you know very well that Similes are not Arguments, nor
can any Argument be drawn from them. But indeed it plainly appears by what
follows in Bracton, that he supposed this Power to be somewhat more than nearly
Moral, for he there says, that if the People cry to God for want of Justice
against the King, he will lend for a Foreign Nation, who shall come and deify
both them (viz. the Barons) and their King; which would have been a vain Threat,
if He might have chosen whether he would be reformed by them or not.

And that King James the First, himself was satisfied of this Original Contracț,
may appear by his own Words, in a Speech to both Houses of Parliament, 1609;
where he expressly tells them, that the King binds himself by a double Oath to
the Observation of the fundamental Laws of his Kingdom; Tactly, as 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 King in a Scaniled King-
dom, is bound to observe that Passion made to his People by his Laws, in framing
the Government as agreeable thereunto, according to that Passion which God
made with Noab after the Deluge, &c.

To conclude: if the first King of the Saxen Race took the Crown upon Condition
to maintain the Fundamental Laws and Constitution of the Government, and that
he was never inveited with an absolute Deipotick Power of making Laws, and
raising Money at his Pleasure; but the People referred to themselves their Share of
both, at the first Institution of the Monarchy; all those Princes that claim by Virtue
of their Right, are tied by this first Original Contracț, whether they ever
took any Coronation Oath, or not. Nor though the Crown is now become no more
Elevate, does it at all alter the Condition or the Limitation of his Successors, as
long as the present King holds by, and under the same Title, and by vesture of the
same Original Contracț; since, as it was by the People's Will that it was at first
Elevate, so it was also by their Will, that it became defective; since every En-
tail of the Crown upon Heirs, can only proceed from the People's Agreement or
Consent to maintain it as a flanding Law; or else every King might alter it in his
Pleasure.
As for your next Reply. That if we refit the King, because when he turns Tyrant he acts not as God's Lieutenant, but the Devil's Minisher; for that the it is lawful to refit the Devil, yet we cannot use carnal Force against him. This Assumption is precarious; since if we can suppose the Devil does ever use carnal Force, we may also repel the same by Force; or else those famous Stories of Witches and Spirits being afraid of, and flying from naked Swords, are all false. I beg your Pardon for speaking so long, which I could not well contract into less Comports, without paining by your Arguments and Answers to my Quotations.

I. You have indeed outdone me in making long Speeches; but I have heard you patiently, because I cannot deny but that you have argued fairly, had it been upon a right Foundation; but since it is not, pray give me Leave to set you right, and shew you, that notwithstanding all you have urged to the contrary, yet all our Kings since the Conquest were absolute Monarchs; and if so, not only irrepealable upon any Breach of their Coronation-Oaths, but also have been invested with such an absolute, unconditional Power, as can never be lost or forfeited upon account of the highest Acts of Tyranny. But before I come to my Proofs, give me Leave to say somewhat to those last Citations you have brought from King Edward's Laws, not as from Bruton and Firmoly. First, As to that Law you have cited, that passes under the Title of one of those confirmed by King William the Conqueror, give me Leave to tell you, that I much question whether it be genuine, and not foiled in by some of the Monks that had the keeping of the Copies of those Laws in their Monasteries, after the Original it self was no more to be found. For in the first place, I must observe, it does not favour of that absolute Power that I take King William to have acquired by his Sword, to own his Royal Dignity forfeivable; or that he could lose the Name of King upon any Account whatever; as this pretended Law seems to intimate, by these Words, nec nomen Regis in co constituat. Now that it strongly favours of the Ignorance of the Monks, I shall shew you by the very Law itself, wherein the chief Points for which the King must lose his Royal Title, is not only if he does not defend his Earthly Kingdom, but also the People of God, that is, the Clergy; and also shall fail to reverence Holy Church, that is, the Bishops and Clergy; of whom the Monks looked upon themselves as the chief; and most considerable Part; as also, if he fail to destroy Evil-doers, (that is, Hereticks out of the Church), then, forthwith, not so much as the Name of King must remain to him. Now, pray see the Conformity of this, and whether you will own this to be a Fundamental Law of the Kingdom; for then at this rate, Henry VIII. who suppled Monasteries, and took away Abby-Lands, and let injurious Perfons spoil the Church by Sacrilege; and also all other Princes who have not extirpated those, who, when this Law was supped to have been made, would have paffed for Hereticks, (that is, all Protestants) must have all forfeited their Royal Dignities; And conseqently the Pope did Henry VIII. and Queen Elizabeth no Wrong, if in Purfuance of this Law, he excommunicated them, and declared they had forfeited their Crown; since this Law says, that Pope John tells you that Truth, quod nomen Regis perdit. But nothing makes out more evidently to me the Forgery of this pretended Law, than the notorious Faults there are in the Chronology, where the Sentence of Pope John against King Childerick, is mention'd as an Evidence to make it good; whereas as indeed, it was not Pope John, but Zachary, who gave this Sentence. But in Howden's Copy of this Law, there is yet a more gros Error; for it makes Pepin, and his Son Charles, to have write to King William the Saitard, upon their hearing this definitive Sentence to wit, given concerning the Title of a King, all which is so notorious a Piece of Folly and Ignorance, that it needs no other Contrafertion. But granting that Part containing the Law it self, to be genuine, you shall not set forth your Original Contract, or make it a Forfeiture in the King to do any of those things which you supposed to be main Parts of the Fundamental Constitution; only lays in general, that unless he defend his Earthly Kingdom, and the People of God, and reverence Holy Church, by defending it from injurious Perfons, and removing Evil-doers from it, the Name of the King will not belong to him. Now all this the most absolute Monarch in Christendom, even the King of France himself, will say he performs to a Tittle. And therefore there is no fear of a Forfeiture for any King, that never so Absolute and Tyrannical, upon these Terms, unless he will do that which I think he is too wise ever to go about, to destroy his People wilfully, or to fall upon the Church and Clergy.
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In Answer to your first Authority out of the Mirror, I think it of no Authority, since the Author writ in the Time of Edward I. and II. long after the Saxon Times; and besides, his Relation of Forty Princes chusing a King, sounds like a Fable, there being no such thing mention'd in the Saxon Chronicle, or any other ancient Historian. And as for the rest of the Places you have cited out of Bruton and Fleta, to prove this Notion of a Forfeiture, I must freely tell you, that they do not seem to me to come up to the Point for which you bring them; for as to that Place you have cited out of Bruton, Non est Rex, ut, you and I differ about the Sense of it; and I see no Reason why I may not still keep my own Opinion. The other Place I confess seems more express, viz. "That it is the Crown or Dignity of the King to do Justice or Judgment, without which it cannot hold or confit." This also does refer only to such Justice and Judgment as the King is to give and distribute between Man and Man, without any Relation to his own Actions towards his Subjects. And if a Prince will not do this, either by himself or Deputies, I grant, his Crown or Royal Dignity cannot long subsist to be maintained; since this will bring all things to utter Confusion, to that Strangers will soon be encouraged to invade the Kingdom; nor will the People be at all concern'd to assist such a King against them, since they can be in no worse a Condition under a Stranger than under him. But as for the ancient Superiority of the Law and Court of Barons, there mention'd, to be over the King, that still seems to me to be only a Moral, and not a Coercive Power; since the Law aforesaid but a dead Letter, and can force no Man of it self, without the Power of Men to support it; and there can be no Interpreters of this Law but the King, and his Judges out of Parliament; and the Parliament sitting, that alone, is not the House of Peers or Commons alone, or both together, but the King, Lords, and Commons, jointly, that can interpret Laws. But let the Power of this Court of Barons have been anciently what it will, it seems to relate only to the Peers and Tenants in Capite, and not to the Commons at all, since none ever heard them called the King's Companions: And as for any Coercive Power in the Two Houses over the King, I have already shewed you, that the two first Parliaments of King Charles II. have expressly renounced it for themselves and the whole Nation; and therefore I must still stick to my first Conclusion, That the King is not to be refitted upon any Terms whatsoever, neither can forfeit his Royal Dignity by certain general, antiquated Laws, or by the forced Interpretations of some doubtful, obscure Passages in our ancient Lawyers. But I shall now proceed to prove.

P. I pray give me Leave to reply to what you have now objected against the Authority of that Ancient Law-Book, the Mirror, I think you have no Reason to object against it, since the Author is suppos'd by our Antiquaries, to have perused many ancient Saxon Laws, that are now lost; as you may see in those that relate to King Alfred's Proceedings against his corrupt Judges, and other things. Then as to what you object against the Geminiæs of this Law of Edward the Confessor's, it is certain, that it is found in these very Words, with very little Alteration, in all the Copies of K. Edward's Laws; only in Heawend, instead of Rex quæ Viciæus semit Regis, it is, Rex arque Victius eius, which is no great Difference; and may relate to the King's Lieutenant, in his Absence beyond the Sea, for which there was often occasion for our Kings, when Dukes of Normandy, after their Accession to the Crown. And therefore tho' I grant some Clergymen (they having then all the Learning of the Nation among them) might draw up this Law into the Form it was made, and so render it as advantageous for the Church as they could; yet that this Clause was the Addition of any ignorant Monk (as you suppose) will appear from this, That it is recorded by Heawend, who lived and wrote about a hundred Years after it was thus confirmed: And we cannot supposè all the Copies of these Laws to be lost, and one single Copy to be left, and consist in so short a Time. And tho' it is true, this Law is not found among those yet forth in the last Edition of Ingulph, yet does it not therefore follow, that there was no such Law ever made or confirmed by King William; since those Laws in Ingulph seem to be more like an Epitome of the criminal and feudal Laws, confirmed or added by that King, than an exact Body of all the Laws of the Confulor, those having been writ in Latin, and confirmed by King William in the Fourth Year of his Reign, whereas this Copy was published in French, for the Use of the King's Normans and French Subjects, and that long after King William's coming to the Crown; for Ingulph tells
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tell us, 'That after Donne's Day-Book was made, he brought those Laws down from London in the French Tongue, (in which they were put forth, left be, or 'any of his Monks, should theo' ignorance, happen to offend his Royal Majesty, 'by an unwary Breach of them.') But as for the Facts in the Chronology in the Story of Charles and Pepys, in all the bell Copies of those Laws, this Letter is said to be written by them to the Pope, and not to King William at all; and then it will be at most but a Mif:nomer, or Error of the Transcriber, putting in Pope John for Zachary. But if you will have my Opinion of this Matter, I do freely grant, that this Vulsage in the Law concerning their Princes writing to the Pope about the Deposition of King Chidlerick, might be an Addition of those Monks who first transcribed those Laws, and made short Glosses upon them; and yet the Law it self might be genuine notwithstanding; and if the Law it self be so, it must be understood in a larger Sense than what you would put upon it. For sure by defending of his Kingdom, must be meant, not only the opposing it against Papal Enemies, but also against the Wrongs and Oppressions of his own Ministers and Officers, which if he suffer by a wilful Negligence, or on false Purposes, he will as much offend against this Law, as if he had done it himself, and to will lie under the same Penalty. Much less will these Vulsages concern any danger of the Clergy, and removing the Church, render this Law either void, or impracticable, for suppos'd you take Populus Dei, in the first Sense, to signify the same with Servus Dei, (which I grant always to signify the Clergy in our ancient Saxon Laws and Charters) yet all this does not make this Law void and impracticable, since sure, maintaining the Worship of God is one Part of the Duty of a Christian King, nor can this be well perform'd without some Men set apart for that Purpose, and that these Men cannot attend their Sacred Function, without being maintained in their just Rights and Liberties; neither is it any Consequence, that the Clergy must always confit of the very same Orders of Men, as when this Law was made. So that Suppos'd the Monks were then held as a necessary Part of this Clergy, Will it follow, that it was not lawful for the State to alter or take them away? For them no Religious Order was as when in being, could have been suppos'd afterwards, which no Papil will say. So that the Meaning of this Clause in the Oath is no more, than that the King should, from time to time defend all such Clergymen, such as the Nation, (that is, the Legislative Power) should think useful and necessary for God's Service, without being tied to any certain Orders or Degrees of Men, provided those that are particularly ordain'd by Chrift and his Apostles, for the Service of his Church, be inviolably maintained and prefered. So likewise for the Church it self, granting, (which may also be question'd) that at the Time when this Law was made or confirmed, Popery was come to its Height, and fo was the eftablish'd Religion of the Nation; and consequently that by the Church here mention'd, was then to be understood the Romish Church or Religion, (as we now call it;) yet does it not follow, that the King by this Law is to forfeit his Crown, if he ever alter it; for the Law only lays in general, that he shall reverence the Church of God, that is, That Profession of Chriftianity, or Way, which he and the great Council of the Nation shall, upon the most mature Judgment and Deliberation, think to be so. So that all that can be deduced from this Clause, is, That the King shall reverence Holy Church, that is, maintain the Profession of Religion, which shall be eftablish'd by Law, and shall make no Alteration therein, without the general Consent of the whole Nation in their great Councils or Synods, confiding as well of Ecclesiastical as Secular Members: And to this end he shall defend it from all injurious Persons, that would invade the RIGHTS of the Church and Clergy contrary to Law, and shall root out all Evil-doers, that is, all debauch'd and wicked Professors of Chriftianity; for so Malefactors properly signifies, and not Hereticks, as you would render it, (who are not Evil-doers, but false Beleivers,) or if it should be interpreted for Hereticks, it is not certain that then might be held upon as such, but what the present Church shall so determine; else we must own the former Church to have been infallible in all her Determination. So that I can see no Reason upon the whole Matter, why this Law should now become void or unpracticable by reason of any Alterations in Religion, and of those Men that were the Clergy, in the Functions of it, as long as all the necessary and material Parts of both are prefer'd, as they are to this Day, for otherwise this Law would have tied up the King and Nation from making any Reformation in Religion, tho' never so much for the better; or tho' the National Church had never so much
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quited it, which I suppose no true Protestant will affirm. As for the Authority of that Ancient Law-Book, call'd, The Mirror of Justice, I think I may very well insist upon it, notwithstanding any thing you have urg'd to the contrary.

But as for those Passages out of Bridon and Fleux, which I have brought to confirm and support our Sense of this Law, and which you labour to avoid, by putting too general and loofe an Interpretation upon them; whereby you would make them only to signify, that the King is to maintain right Judgment and Justice between Man and Man, without which his Royal Dignity cannot hold or subsist: But that he is not obliged upon any Penalty to observe the same Things in respect of himself, or his own Officers or Ministers; this is all one, as if a Shepherd, who had a Flock of Sheep committed to his Charge by the Owner, having first fled, and then killed and destroyed them, and converted the Wool and Carcasses to his own private Use, should then tell the Owner, that he was indeed to defend the Flock from Thieves, Wolves and Foxes, but that it was no part of his Bargain to keep them safe untouched from himself, or his Servants, or so much as his own Dogs. But that the Sense of Bridon and Fleux is quite otherwise, sufficiently appear by this; that to now cited, and if they be the Law, pray confirmer of the thee that I shall here add. For Bridon also, in the same Chapter, tells us, 

Ad hoc creatus est [Rex] & electus, ut Fuitim faciat universum. And he also there recites the ancient Coronation Oath in these Words: Debet enim [Rex] in Coronatione sua nomin e Foed Christi hic tria promittere Populo sibi subditco. Imprimis, je eis precepturum, & pro virtus open imperfurum ut omni Populo Christians vera pac omn fuo tempore observetur. 2. Ut ropacitatus & omnes injustitates interdicit. 3. Ut in omnibus Judiciis equitant praecipiat, & mifericiornum, ut indulgant ut suum miserericordiam ad Deum. Now, how can a King observe this Oath, that robs the People of their Goods, and raises Taxes contrary to Law? Or how can he continue a King, who violates all the Ends of his Inheritance? From all which it appears, that by this Justice and Judgment must be meant, not only the King's own observing Justice towards his People, but also his prohibiting his inferior Ministers and Officers from spoiling and oppressing them. And that no Prerogative can justify him in the doing otherwise, is as evident from another Place in Bridon, where he tells us, That Regis potestas juris est, non injusture, & nihil aliud potest Rex nisi quod juris potest.

But Brita is somewhate larger on this Head, tho' to the same Effect, when speaking of the King's Power or Prerogative, he says thus: Et licet omnes potestatem praeclaram, cor tamen effusus in manu Dei effici debet, & ne potentia ius memnon infrereta sseunum impotat temperantia, & lora moderationis; ne trebutur ad injuriam, qua nihil aliud, hoc est in terra, nisi quod de Jure potest: nec obstat quod diciur, quod Principi placet legis habet potestatem, quia equitur cum iegi Regia, quae de ejus Imperio laeta est, non quicquid de voluntaria Regis tamponere presumpturn est, sed quod Magnatum suorum consilio Regi autoritate permittat, & habita super hoc deliberatione, & tradituris habe fuerit definitum. Which not only shews, that our Ancient English Lawyers in this agreed with the Civil Law, and gave the same Account of the Original of the Royal Power as that Law does, viz. that it was conferred by the People of Rome, on the Roman Emperor, by the Rex Regia, mentioned in the old Civilians I have formerly cited; and also shews, that our Ancient Lawyers insisted by that like Law among us, the Royal Authority was originally derived from the Consent of the People of England; without whose Advice and Assent, included in that of their Representatives, here called Consilium Magnatum (Consilium being taken for Consent in this place, as I have prov'd it often signify'd) no Law can ever be made. Now, if the King will not be ruled by this Bridle of Moderation, this Author, as well as Bridon, hath his, as well as the King's Supreme Power, in the Courts of Barons, who were as Masters to put this Bridle upon him. But admit, he will run away with this Bridle between his Teeth; all this had signified nothing, if there be no other Remedy left us, besides bare Supplication or Remonstrances to the King of his Duty; and he might have dissolved the Parliament before ever it could have any Time to do either the one or the other.

To conclude; That the King was at first elected and created for this End, that he may do Justice to all Men; and that this Justice does not only concern his own immediate Justice between his Subjects towards another, but also in respect of himself, his Children and Subordinate Officers and Ministers, as by his Commission, appears by what follows in Bridon, after the King's Coronation-Oath:
BIBLIOTHECA POLITICA.

Potius (Scit Regis) inaps. Juris est non infirmis. Qum ispe, ist Author Juris, non dubit, unde injuriarum nulli occasio, & istum qui ex officie juris prohibere naseip habeat, id infring in propriis perswms committere non debet. So that it is plain, that if he either command or permit thee willful Injuries generally all over his Kingdom, he fails to defend it according to King Edward's Laws; and if he thus fail to defend it, he thereupon loses or forfeits his very Title or Office of a King, since he cannot keep or hold his Crown, or Royal Dignity; for without Justice it cannot subsist, and this by the Original Contráct. Since upon whatever Terms the first King of this Race took the Crown, upon the same Terms all his Posterity who succeed either by Election or Right of Blood, by virtue of that first Compact, are to hold it under the like Penalty of a Fine, in Cafe of a willful Neglect or Violation of their Duty.

M. I confess you have made a specious Proof of this Original Contract you so much talk of; and more than ever I thought could have been said for it: But let it be what it will, it is certain, in the first place, that whatever coercive Power the Two Houses of Parliament might pretend to when Brattle wrote, they have formally renounced it in Two successive Parliaments in the Reign of King Charles the 11d: therefore I shall not inflit any longer upon Old Antiquated Laws, or Original Contráct, which are not directly expressed, but consequentely deduced at heft. But let the truth now tell you, that let the first Infruntion of that Power have been what it will in the Saxon Times, and what Original Contract forever you may please to fancy between them and their Subjects; yet this was all gone, and out of doors, by that absolutions Conquest which King William the Ist made of this Kingdom for himself and his Heirs, who do not at all claim under the Title of the Saxon Kings. For since this Ancestor of our new Kings had no just Title to the Crown but by the Sword, and that he gain'd this Kingdom by the Conquest of King Harold, and the People of England, who had elected, and fought for him; as also by the subsequent Recognition of this Right by all the People of England, in their Oaths of Allegiance so often repeated to King William and his Successors, they have thereby acknowledged it to be as absolution a Monarchy by Conquest, as ever was instituted by any Prince in the World. And tho' I grant, that several of the Conquerors have been graciously pleased to grant divers Privileges to the People of this Nation, and some of them perhaps the fame they enjoyed in the Saxon Times; yet can they not enjoy it by virtue of that Original Contract you suppose to have been made between the first King of that Saxon Race, and the People of England. For, as I said but now, King William had no Right by any Title from King Edward the Conqueror, but wholly by his Sword, as I shall prove by and by.

But however, these Concessions ought not at all to derogate from the Absolute-
ness of the Power, or the Indefeasibility of our King's Title: For since these Limitations of Absolute or Imperial Power did not proceed from any other Original, than the free and voluntary Concessions of our Kings, and not from any Compact with their People; they do not at all derogate from the uncontrollable and unaccountable Sovereignty thereof. So that we may very well differenciá between the Being and Essence of Imperial or Sovereign Power, and the Exercíc or Emanátion thereof. As to the Being and Essence of it, it is in as full Perfection in the Lìterável Man, as in the Arbitrary Sovereign, tho' the Law confines and limits him in the Exercise thereof; but to be confined in the Exercise doth not destroy the Being, nor diminish the Perfection of Sovereign Power: for then the Power of God himself could not be Sovereign, because there are certain immutable Rules of Truth and Justice, within which it is necessarily limited and confined; but God is nevertheless a perfect Imperial Sovereign over the Universe, tho' the Exercise of his Government over his Creatures be limited by the Eternal Laws of Truth and Equity. It is true, that this Limitation of Almighty God is intrinácal, and proceeds from the Perfection of his Righteous and Holy Nature; but yet in the most perfect and absolute Imperial Power may, without a Contradiction, be confined within Bounds, and limited in the actual Exercise thereof; and such Limitation of Absolute Imperial Power (proceeding wholly from itself) doth only qualify and temper, but not destroy the Essence of it. And therefore Coke, in Cawdres's Cafe, saith, That by the Ancient Laws of this Realm, England is an Absolute Empire and Monarchy, and that the King is furnish'd with plenary and entire Power, Prerogative and Jurisdiction, and is Supreme Governor over all Persons within this Realm.

There-
Therefore whoever will consider the Original of this Limitation of Sovereign Power, to have proceeded wholly \textit{ab intrafo} into the voluntary Grant of our first Monarchs after the Conquest; and will also distinguish the Difference from the Exercise of Sovereign Power, will find there is no Contradiction between the Fulness of Sovereign Power in the Root, or Exercise of it, and a Legal Limitation of the Uae and Exercise thereof; and from hence it comes to pass, that the King of England, tho' he be thus limited in the Uae and Exercise of his Power, yet he is still as much the Fountain of all Power and Jurisdiction within his Dominions, as if he were Arbitrary; he hath none to share with him in the Sovereignty, but all Power and Authority is derived from him, like Light from the Sun: in him alone it is radically and originally placed, he hath no Sharers orCopartners with him in the Sovereignty, none co-ordinate with him in the Government, none Equal, no Superior, but only God to whom alone he is subject. Hence faith Bracton, \textit{Omnis guidem sub eo, \\ & ipsa sub nullo, sed totum sub Deo}, non eff inferior sibi subjactus, non Parum habet in regno suo; and afterwards, \textit{ipsa autem Rex non debet esse sub homine, sed sub Deo}.

Therefore tho' I grant the King is obliged by his Coronation Oath, to keep to these Limitations, which both he and his Predecessors have sworn to; yet if he any ways fail in the Performance of it, this Failure cannot give his People any Manner of Right to take up Arms against him, and to reftit his in any such Cafe, much less can it caufe a Forfeiture of his Royal Power, since being at first the sole Sovereign Power, he did not by putting this Limitation thereunto, intend to part with any Share of it to the great Council of the King, or Parliament, but only to take them into a Part of the Care and Trouble ofthe Government, and to limit his Prerogative from passing any Laws or making any Money, without their Assent, unless in Cases of great Necessity; and then, if he is still Judge of this Necessity, as certainly he is in the Intervals of Parliament, it can never be fuppozed, that the first Prince, or his Successors, that parted with thefe Privileges to the People, ever intended to be so strictly tied to them, as that in no Cafe whatever, tho' never so prefting, they should not depart from them, much les that he should forfeit his Crown if he should wholly break them, nay should perfit so to do, and resolve to turn this Limited into an Absolute Deipotick Monarchy, since the Observation of these Laws being but Concessions of his own, or his Predecessors, can never be looked upon as Conditions of his holding the Crown, nor of the Subjects\' Allegiance to it: there being, as you your self confes, no fuch Clause express'd in either Part, neither in the King's Coronation Oath, nor yet in theirs of Allegiance to him, as you your self cannot but acknowledge; and tho' it is true, the King swears at his Coronation to keep and maintain the Laws, yet \\textit{Grotius} tells us, 
\textbf{Lib. i. cap. 3.} That an Empire or Kingdom does not caufe to be absolute, altho' he who is to rule promise some Things to God, or to his Subjects, even such which may appertain to the Manner of the Empire; and that not only concerning the Observation of the Natural or Divine Law but of certain Rales to which without a Promise be never not obliged. So that in all Promises of this kind, the Manner of the Obligation is not reciprocal, or of the fame Sort on both Sides. As for Example, it is only moral in respect of the King, and it is left wholly to God to judge between the King and his Subjects, and to punish him when he breaks his Part: But to the King as God's Lieutenant on Earth, it belongs not only to judge of his Subjects Breach of their Oath and Contract, but also to punish them for doing, and compel them to the Performance of it. And of this Judgment are all the modern Civilians. As for Bellin I have given you his Opinion in the Chapter last cited, concerning this Matter, and he as well as \textit{Grotius} is clearly of Opinion, that absolute Monarchs, such as he reckons the King of England to be, are not to be called in Question or destroyed, let their Breach of Laws and Tyranny be never fo notorious, much lefs can they forfeit their Royal Dignity for such Male-administration. And thou\' \textit{Grotius} is of Opinion, that in Cases of great and evident Dangers of Life, Subjects may have a Right of Resistence against absolute Princes, and those commissioned by them; What is this to the Cafe in Hand? viz. a Resistence against an absolute Monarch for Violation of those Privileges and Liberties that were granted by himself or his Predecessors, and without which Subjects may very well live and subsist, as we see they do, under
the most absolute despoticke Monarchies, where they enjoy no such Thing, tho’ perhaps they do not live so well and freely as we do. Nay, Foppendorf, the Author you so much make use of, in his Seventh Book, will not allow " Subjects to take up Arms, or resist absolute Princes, for too great Cruelty in Punishment, nor for imposing so Immoderate Taxes; since the Presumption of Justice, and Neceffity for the doing of these Things is always on the Prince’s Side, nay, if his Promises are not kept, or Privileges formerly granted are taken away, if the Prince be absolute, and will pretend any Fault, Neceffity, or remarkable Benefit thereby to the Commonwealth, he shall be deemed to have acted by a Right, of which the Faculty of judging is wholly wanting to the Subjects; since all Privileges have this Exception, unless the Welfare, or Neceffity of the Commonwealth forbid them to be observed.

F. Since your last Difcourse confifts of Two Parts, Matter of Faith, and Matter of Right, deducible from that Faith, I shall speak to each of them in Order. First as to the Matter of Faith, it is a great Mistake in you, and Dr. Brady, to maintain that King William I. was really a Conqueror, and by his Sword (without any other Title) obtained such an entire Victory over K. Harold and the whole English Nation, as gave him an Hereditary Right for himself and his Heirs, to the absolute Allegiance of the whole English Nation, without any Reserve or Condition whatever; So much all our ancient Liberties and Privileges being thereby lost and forfeited, this Nation can claim nothing of that kind, but from the Grants and Concessions of that King or his Successors; every one of which Propositions contain many notorious Mistakes in Matter of Faith: For in the first place, K. William never claimed the Crown by Conquest, but by the Adoption and Testament of K. Ethel the Confessor, and I defy you to show me any ancient Law or Charter, either of his own, or any of his immediate Descendants, wherein he is titled Conqueror: Yrs true, in his Charter to the Abbey of Weftminfiter, he says, that by the Edge of the Sword he obtained the Kingdom by the Conquest of Harold and his Accomplices, yet does not found his Right on that Victory alone, but on the Donation of King Edward his Cousin; the Words are remarkable, in ore gladii adepta sunt Regnum Anglorum, de isto Haroldo Rege, cum suis Conquisitis, qui suis Regnum divinae providentiae destinatum & beneficio concefiones Dominii & cognati mei gloriis Regis Edvardi concessum consoci sunt anteurte. And this Donation he calls an Hereditary Right in divers other Charters, as particularly in one also recorded by Infe&uuml;us, beginning thus, In nomine Patris & C&uuml; Spiritus sancti. Amen, ego Williamus, Rex Anglorum hereditario Jure fudit. So likewise his Son King Henry I. in his Charter to the Abbots of Ely, calling him self the Son of William the Great, (not the Conqueror,) Qua Edwardo Regi Hereditario jure succedit in Regnum.

And in verity of this Donation, he was after his Victory against Harold, by publick and full Consent of the whole Nation, or People of England, as also of the Normans he brought with him, Elected or Crowned King, and at his Coronation took the same Oath at the High-Alter at Weftminfiter, which his Predecessors the Saxon Kings had taken before him; with this one Clause farther, which was very necessary to be done at that time, quia quod aqua fure Anglome Frangere tradatur: So that let his Title by Conquest have been what it would, it was either by a just War, or to recover his Due, or by none at all; if the former, he could only succeed to such Rights as King Edward the Confessor before exercised and enjoyed; since he came hither only to take the Crown that was fo bestowed on him, and to hold it under that Title: But if he had no Title at all, but his Sword, he then could obtain no just Right to the Crown of England, either for himself or his Successors. So that if they will only infift upon their Title by the Sword without any preceeding or subsequent Right, they may be as lawfully turned again by the Sword, since it is own’d by all Writers on this Subject, that a Conqueror in an unjust War can obtain no Right over the first Possessors. So much for the Matter of Faith. I come in the next Place to the Point of Right of the Laws of Nations. I grant indeed that a simple Oath, or Faith between an absolute Monarch and his Subjects, to do or perform such or such a Thing; or to let them enjoy such and such Privileges, does not immediately give the People a Power to compel such a Monarch, and his Successors, by Force of Arms, to the strict Observance of them, in Case of a Violation on his Part. But our Case is very different from this; for here a Foreign Prince recovers a former Right to the Kingdom, and that by Force, and is invested with the Crown, in virtue of that Right by which he claimed it, and is also sworn to maintain the ancient Govern-
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Government and Laws, according to which the whole Legislative Power was not in the King alone, but jointly, in the King, and the great Council of the Nation, without whose Grant, or Consent, he ought not to have laid any Taxes upon, or otherwise oppressed the whole Nation, as I shall prove if there be occasion. Now all our Ancient Rights being granted, and acknowledged by him, and a constant Common Council of the Kingdom appointed to meet, to see them observed, as it did many Times in this King's Reign, as also in those of his Successors, they were not bare Privileges conferred of Favour, and which might be observed, or broken at the Will of the Prince that granted them; but a Form or Rule of Government by Laws, confirmed and agreed upon in a standing Council, appointed not only to make them but also to see them observed: As appears by that Paffage so often cited, wherein the King is expressly said to have a Superior, viz. the Law, and the Court of Barons, who were to put a Bridle upon the King, in case of his governing without Law. And this farther appears, by the great Charters of Henry I, K. Stephen, and K. John, &c. in the first of which it is declared, that the Nation had been oppressed by unjust and illegal Exactions, and that all Common-Money, or Taxes, not taken through all Cities or Counties, in the time of K. Edward, and also confirms the Laws of his Father, whereby his Barons, and Tenants in Capite, should be free from all Taillage or Taxes; and he also thereby referred to them the Laws of K. Edward, with those Emendations which his Father had made by the Common Council of his Barons. Now the great Charter of K. John was but an Addition, or rather Explanation of this Charter of K. Henry I, which was at first demanded by the Barons to be again confirmed by this King, at the Inquisition of Stephen Langton, Archbishop of Canterbury. P. 240, 241, 242, as Mr. Hobbes tells us at large.

Now since neither K. William the I. nor his Successors, ever changed the Fundamental Constitution of the Government, as to the Legislative Part of it, (as hath been already proved) and that those Breaches that had been made upon it, by taking Taillage or Taxes, without the Consent of the great Council, are all hereby expressly forbid, those are certainly more than such meer Privileges, which the King himself is the only Keeper of, and can dispense with at his Pleasure; but are indeed such Fundamentals as concern the very constituent Form or Rule of Government; which, as I have also proved, was mixt not limited, in the very first Institution. And though the learned Pufendorf agrees with you in the Caff of Compacts between an absolute Monarch and his Subjects; yet as to the Point in hand he is wholly of my Mind, as you may see in his Academical Difertation, in his Diffcourue de Interrogatis, where arguing against Mr. Hobbes, who will not P. 272, allow of any Compacts between an Absolute Prince and his Subjects, he has this Paffage, which I shall here read to you in English: "That though in Paets, in which a Submission on either Part is wanting, certain and defined Performances may be for forth, to be observed on either Side, from an inniniffick Impulse of Confidence, when either of thes refuse to perform them, nothing but War or the Compulsion of a Superior Lord, common to both of them, remains; yet in Paets, by which one Party is made subject to the other, it belongs to the latter to define what ought to be performed by him, as also a Power over the other, compelling him to the Performance whether he will or no; which Power does not belong reciprocally to the other Party against the former. Hence the Party commanding cannot be questioned for a Breach of Compact, unless he either willfully abdicate all Care of the Commonwealths, or put an absolute Mind towards his Subjects; or manifestly, or deceitfully, (in Latin, falsa modo) depart from those Observations, to which the Subjedcts are subject. And the Subject's Allegiance depends, which is easily to be avoided by any Ruler, if he will consider, that not the highest of Mortals are free from the Laws of Human Chance. So that let the Power of your Conqueror have been never so great, or absolute: it is plain, he not only renounced it himself, but several of his Successors have done the same for themselves, and their Heirs; therefore make the most of it, they must still claim by virtue of the first Contract, to maintain the Constitution as they found it, or else resolve all their Right into meer Force and thereby ciellere lex estant."

It is no wonder that you and I differ in our Conclusions, since we also differ so much in the Premises, and in the very Matter of Facts, concerning King William the Conqueror's coming to the Crown; you saying, he came to it partly by
the Sword, but founded on a Donation of Edward the Confessor; and partly by
the Consent and Election of the People of England; yet you your self cannot de-
yte, but Force or Conquest had a great Share in the Business, and indeed was all
he had; for as for that Donation of K. Edward it is either forged, or else K.
William could claim nothing by it, since England was then either an Hereditary
Kingdom or Elective; and take it which way you will, this Donation of the
Confessor's could signify nothing, either to the Prejudice of the People that were to
Elec, or the next Heirs who were to succeed after K. Edward's Decease; neither
could he claim as Heir to him by Blood; for the Relation between him, and K.
Edward was by his Mother Emma, Sister to Richard the Second Duke of Nor-
mandy, this William's Uncle; so that the Conqueror was no way defended from the
Blood Royal of England: Therefore his true Quarrel with Harold, (let his Pre-
tence be what it will) was not, because he kept a Kingdom bequeathed to him
by K. Edward; no, the Writers relate this King had not Harold for his
Successor; tho' others say, that he recommended Edgar to the good Will of
the English Nobility. So that the only true and just Cause Duke William had of
making War upon Harold, was his breaking the Promises and Oath he had not
long before made him of securing the Kingdom of England for him upon the
Death of K. Edward; instead of doing which he had feiz'd it for himself; and
which is worse refused to restore it, or to much as hold it of Duke William as his
Hosier. So that though for the Strengthening of his own Title, he pretended to
the Will or Donation of King Edward; and to avoid the Env'y of the Name,
might out of Mockery, or to put a better Colour upon this Matter, refuse to
take the Title of Conqueror, and to insist upon the Donation of King Edward;
yet nothing is plainer, than that he could claim by no other Title but the Sword.
And that he looked upon himself as no other than an absolute Conqueror, may appear
by these great and evident Influences: 1. His Change of the English Laws, and in-
roducing the Norman Customs in their stead; and also changing the Tenures of
Lands, not only of the Lati but also of the Bilhops and greater ABBEYS. 2. By
his debarling all those of the English Nation, from enjoying any Honour, Office,
or Preferment, either in Church or State; and also in taking away the Eftates of
all the Nobility and Gentry, not only of those Heirs that had been in the
Battel of Hastings, but also of the rest, so that they had left them but what they
could purchase of those Norman or French Noblemen, to whom King William had
given their Lands, as a Reward of their good Service. For the Proof of both which
Afferances, I have to very good Authority on my Side, and that of Writers
of or near those Times in which these Things were done, that I think no indifferent
Man can have any Cause to doubt the Matter of Fact to have been as I relate it,
not did he by any After-Act ever renounce this Right of Conquest as you suppose,
much less refer it to the Election of the English or Normans; since the former
were not in a Condition to make any farther Resistence against him, the Clergy
and great Men of the Kingdom having been forced to submit themselves to him
without any other precedent Conditions or stipulations, than for the saving of
their Lives. And as for the Normans, they were his Subjects, and they conquered
the Kingdom only for his Use and Benefit, as his Soldiers and Vailts; and it is not
likely he would owe the Kingdom which he had thus acquired by the Sword,
to their Votes or Election; neither does any Author that I know of mention any
Election before his Coronation; when tho' it is true, he took such an Oath as you
went, yet it was the general Terms and Conditions of the ancient
Ancient English Laws, much less to preserve their Rights and Privileges, farther
than he thought fit, and therefore could never take the Crown upon your Con-
ditions of Restitution or Forfeiture, in case of any Alteration in that which you call
the Fundamental Constitution.

This being the true Matter of Fact without any Difficult, it is easy to answer
all that you have said against K. William's acquiring an Absolute, Hereditary
Right to the Crown of England, as for himself, and all his Descendants by the Sword.
First, As to the Justice of the War, and Conquest it fell, I suppose you will not deny, but that Duke William had a good Cause of War against Harold for the
Breach of his Oath; and if so, against all that took his Part at the Battel of Hast-
ings, so that upon the Conquest of Harold, and those that were in that Fight, he
also acquired a Right by Conquest to all that they enjoyed: and consequently had
a Right to Harold's Crown, as well as his other Estate; as also to the Eftates of all
those
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those that were either slain, or escaped alive from that Battle, and not only to these, but also to all the Lands of the whole Kingdom; since the War was made not only against Harold's Perfon, but against the Kingdom of England; the People of which, according to their Allegiance, affidavit him in that War, either with Men or Money. But admiring the War to have been in it itself never fo unjust, yet all Writers on this Subject (even Gronovius and Puffendorf) grant, that Conquest even in an unjust War, with a thorough Settlement in the Conqueror and his Successors, by the Non-claim, Dereliction, Submission, or Extirration of the next Heirs of the former Kings, together with a long uninterrupted Possession beyond all Time of Memory, will confer a good Title; especially when all these were confirmed by a constant Submission and Recognition of the People, tellified not only at the first Conquest, but in all succeeding Times, by as absolute and unconditional Oaths of Allegiance as can be invented, or that were ever taken to the most Abolute Monarch: And such Oaths are always to be interpreted in Favour of the Prince to whom they are sworn, and as briefly against the People that take them, as all Writers also agree. Now, granting this to be the Cafe of King William the Conqueror, that by all or some of these Means he acquired a Right to the Crown, not only for himself, but his Heirs, this Power was Absolute, without any Conditions to be observed on their parts; For the Oath of Allegiance is positive, without any Condition or Relegation. So that I can see no manner of Pretence that the People of this Nation can have, of forcing their Kings to the Maintenace or Observation of those Rights and Privileges, which they, their Predecessors, or Ancestors have for ever granted to them; as Puffendorf, whom you now cited, very rightly observes; and consequently can have no Right to repel Force by Force; since our Kings do not now hold their Crown by Force or mere Conquest, but by all other Things required by the Law of Nations to create a full and absolute Right, viz. a long uninterrupted Possession, and the Absolute Submission of the People for themselves, and all their Descendants. So that tho' I grant bare Conquest, considered as a Force, can give no Right alone, yet it may often be the Mother of Right, and may at last grow to a sufficient Right, by the Means I have already mentioned.

E. Before I reply any thing further to what you have now said to the Matter of Right acquired by your Conqueror and his Heirs, pray, in the first place, prove the Matter of Fact to have been as you lay it; and therefore produce your Quotations from the Authors you mention. But first give me leave to tell you, that Dr. B. and you are the first I have heard to make fo light of this Testamentary Donation of Edward the Confessor, which the greatest part of the Writers nearest that Time, do suppose to have been really made on the behalf of Duke William; and that notwithstanding this Bequest, Harold unjustly, and contrary to his own Oath, did by Force set the Crown upon his own Head, without any precedent Election of the Clergy, Nobility and People, as was required at that time, since it was impossible for them to meet in fo short a time. For King Edward dying on the Eve of Epiphany, was buried on Twelfday; and on the same Day Harold took upon himself the Crown, by the Consent of some of the Bishops and Nobility of his Faction then at London: So that he was certainly no better than an Ufurer. And therefore by the Conquest of Harold and his Party, your Conqueror could acquire no Right over all the Free People of England, since they never gave their Confins to place Harold on the Throne; and consequently King William could have no just Cause of making a Conquest upon the whole Nation, since neither did he ever in all his Reign (as I can find) call a Common Council of the Kingdom to recognize, or confirm his Title. And tho' it is true, Harold proving a Valiant and popular Prince, got the good Will of the common People by divers Acts of Grace, (which he had loft by his violent taking the Crown from Edgar Atheling, the only remaining Male Heir of the Saxon Race) and found very many who were willing to fight for him, not only against the King of Norway, who had a little before invaded the Kingdom, but also against Duke William; yet all these in his Army could amount to nothing near the whole Nation, who never contributed to the War by any publick Vote or Tax; and therefore did not countenance it by giving Money, or raising of Men, as you suppose: So that Duke William could not pretend a Right of making War against any body, but only Harold and his Accomplishes. But as for the Testamentary Donation of Edward the Con- Ed. fedor, tho' you make fo light of it, yet ingulphs says expressly, that Edward the Oxon.

Con.
Confessor, some Time before his Death, sent Robert Archbishop of Canterbury, as his Ambassador to Duke William, to let him know, "That he had designed him his Successor, not only by Right of Kindred, but by the Merit of his Virtue: And that after this, Harold coming into Normandy, promised upon Oath to assist him in it. And Will. Malmesbury says also, That Edward, the Father of Edgar Atheling, dying almost as soon as he came into England, King Edward his Cousin being dead, gave the Succession of this Kingdom to Willam Duke of Normandy, with whom also agrees William of Poetlor, and both of the rest of the Historians of that Age, as well English as Norman: Nor do I know any of them, except Simen of Durham, and Roger Hovenden, who make Harold to have been appointed Successor by King Edward.

But I confess your main Objection is still to be answered, viz. What precedent Right Duke William could have to the Crown of England by this Testament of King Edward, since it was then either an Elective, or else an Hereditary Kingdom, and to this Donation could confer no Right on this Duke, in Prejudice of the People's Right to elect, or else of the next Heir to succeed? In Answer to which, I will tell you, that perhaps you may be surprised, That the Crown was then neither properly Elective nor Successive, but a Mixture of both.

M. That seems a Kind of a Paradox, and what I never heard before: Pray explain your self, for I do not understand how it could be.

F. Why then, I will tell you: The Crown of England, in those Times, was very like what the Crowns of Denmark and Sweden were not long since, and as the Empire is at this Day, in which tho' the Emperors or Diet might chuse whom they pleased for King or Emperor, yet they still kept to the same Family or Line, as long as there were any Males left of it fit to succeed. Which Custom the Normans gave the King in Being a Power, (which by degrees came to be looked upon as a Kind of Right) either upon his Death-beds, or else at any Time before, to nominate or recommend one of his Sons, or near Kindred, to be his Successor, by his last Will or Testament; especially if he had no Sons of his own, as happen'd in the Cafe of King Edward the Confessor. Now this Nomination, tho' it did not alone confer a Right to the Crown, yet it made the Person so named the fairest Candidate for it; and was such a Recommendation to the Electors, or great Council of the Kingdom, as they never suffered by, or denied, as I can ever find by the best Enquiry I have made. And for Proof of this, I shall appeal to the Testament of King Alfred, as you will find it Printed from an Ancient Manuscript, in the Second Appendix to his Life, in Latin, published at Oxford. Which begins thus: "Ego Alfredus divino munere, labore, ac studio Athelredi Archiepiscopi, nec non totius Welf Saxoniae Nobilitatis consensu, pariter & afficio, occident alleam Saxoni- num Rex, quos in Teginnomun nec ultime voluntatis complementum, us fint Advocatis in dispendedo pro faldate anima mea regna electione, confirmo, tam de bredititate, quam deus de Principes, cum seniortibus Populi mei Hierarchi, quos in primis regni mei in cognatione, in tribus delegavit, viz. Athehilda, Athelreda, &c., ita verum qui nostrum diuitias foret superile, ille totius Regni dominio conguardaret, &c. From whence you may collect, first, That tho' this King, in the very Beginning of his Testament, attires his obtaining the Crown, not to any Hereditary Right, but the Confent and Assent of the Nobility of Welf Saxony; yet he also here mentions the Entail of the Crown by his Father's Will, upon his Two Elder Brothers, and himself succedingly, before any of his Elder Brother's Sons, who were living at the Time of the making of this Testament of King Alfred's, as appears by the Will itself in that there are expressly mentioned. Nor was it could this be, that he was King, as well by the Consent or Election of the Welf Saxony Nobility, as by his Father's Will, unless there had been required to make him so? And Will. of Malmesbury tells us of King Athelstan, the Grandson of King Alfred, that Jofua Patris in Testamento, Athelstanus in Regem est acclamatus: But in the Beginning of this Chapter he also tells us, that Athelstanus electus est regem aduam quos vocatur Regen Coronatus est, quamvis quidam Alfredus cum Jofua Josue obtinebam tempestas, upon that Presence that Athelstan was a Baillard. So that you may see, that his Father's Testament was not sufficient without the Election of the Welf Saxony, who preferred him, 'tho' perhaps Illegitimate, before the King. Alfred, tho' Son to King Alfred's Elder Brother, who was set up against him.
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And I doubt not, if more of the Testaments of the English Saxon Kings were now extant, that I could give you more Inflances of this Nature. But that the Perfon so nominated and elected, tho' not the nearest always of Blood, claimed Jure Hereditario, is also as certain, since Braden expressly tells us, "That Heres-

itamentum, or Inheritance, is not derived ab Herede, but Heir from Inheri-
tance; and that Inheritance is the Succession to all the Right which the Prede-
cessor had, by whatever Means acquird. With whom also the Civil Law agrees, Hereditas significatione omnis signifie successores credendum est, est verba non sunt exprim. Nor did this Custom, of thus recommending a Successor, prevail in England alone in those Times, but also was in Use among the French Kings of the Race of Charlemain; wherein the last Will or Adoption of the King, being confirmed by the Election or Recognition of the Eftates of France, gave a sufficient Title to a Prince of the Blood Royal, tho' not Legitimate, nor the next Heir by Blood, to succeed: But the Will of the Prince was not alone sufficient, as Mon-
arch. Measuray has very well observed in his Chronological Abridgment of the
History of France, in the Reign of King Cletay the Second.

So that to conclude, If Duke William of Normandy was thus adopted, named by King Edward the Confessor for his Successor by his last Will and Testament, and this had been without any Blows confirmed by the Council of the Kingdom, by a subsequent Election and Coronation, and that he had received the Oaths and Recognitions of the English Subjects, which always followed that Solemnity, I doubt not but he would have had as good a Title to the Crown, as any of the Kings of the English Saxon Line: I am sure a much better than Harold, who I am not satisfied came in either by the Adoption of King Edward, or by the Election of the People; and therefore Duke William had a good Title against him, as an Uterper; And conquering him and thole of his Party in the Island, and being thereupon Elected, and Recognized, and Crowned by the general Consent both of the English and Normans; I cannot see why his obtaining the Crown against Har-

rolf by Force of Arms, should extinguish his former Right, and create a new Title by Conquest, which he never claimed by; or suppute his renouncing the Confessor's Will, which gave him a Right to be Elected King, according to the Custom of those Times; and to demand the Crown from an Uterper, who had Solemnly sworn to affit him in his Right. But since you fo positively affirm, that no such Proceedings mtened Duke William's Election; I doubt not but to shew

it you from more than one Author, and thole of or near those very Times.

I shall, in the first place, give the Account that a short History, printed at the End of Mr. Taylor's History of Gavel-kind, from an Ancient Manucript in the Bulliotian Library, gives us of this Affair, and who seems to be an Author that lived very near those Times. Londiniim Comenientibus Francis, & Anglis (ad nacio-
tatem Domini) illis/0, omnibus concedentibus, coronam toto Angliae, & Dominatio-
nem jujuspet. And William of Poitou, this King's Chaplain, in his History, re-

lates it thus: Die ordinacioni decreti locutus ad Anglos concedenti formos Eborac.

Archiepiscopus sibiuentis, bonus, efquens, a confentientum eum fibi Dominum Coronari inquitum; protetist in bilarem consenfum universi minime hostantes, ac fi celius

unum mens datu unig voce; Anglosum quam facilis Narrianni conseruerunt

fermoenato apud eos, a fementia praesentatorum Confnntnii Prefule, fec Eletum

conferuant Archiepiscopus, impofuit et diadema, &c.

So likewise Ordoicns Vitalis, a Norman Author, who flourished not long after

in his Son's Reign, relates it thus: Die natatis Domini Angli Londonie ad ordin-

anandnum Regem coronarent, & Guilelmum Ducem Normannorum in Regem Anglo-

rum conjecerunt Archiepiscopus, &c. And goes on to relate the Manner how, just as the Nameles English Author had done before; but then agrees with William of Poitou in all the rest. Dum Aldredus Preful Alloqueretur Anglos, & Godfredus Confuntinicus Normannos, an concedeuerit Guilelum Regnare super fe, & Universi confenfum bilarem protegerentur unu voce non unius Lingae locutione. With whom also agrees Wild Geometricus, in the History of the Dukes of Normandy, who was also an Author that lived in, or very near the Times of this King. His

Words are, Anna incurnas: Domini, ab omnibus tam Normannorum, quam Anglo-

orum praebetit Rex efi electus, & faco oele ob Episcopis Regni dehnbuit, eig regali
diademate Coronatns.

So that you see here are no lefs than Four Ancient Authors, of or very near that Time, who all agree upon the solemn Election of King William, and yet your

XXX
Dr. has the Confidence to tell us, that Mr. Pery only endeavours to prove this Election of King William out of some Fragments of Authors, who lived at some Distance of Time from his coming over hither.

All I confess you have told me more for this mix'd Right of King William's by Testament and Succession, than ever I knew before. But you had dealt more fairly, if you had also added what Dr. B. takes notice of out of Guilielmus Pliatervitus, concerning King William's being advanced to the Crown: For immediately after the Mention of his being Crowned, he concludes thus: Capit. Liberi & Nepotis Jacobis Sacerdotibus Angliae, qua quocumque delegati Sacramentum Anglorum formate, & Jure Belli iis ipse posse. So that here you see he grounds a Title to him and his Poffertiy, not only on his Hereditary Right, but the Oaths of the English, and the Right of War. But as for the Word Election, made use of by those ancient Authors, Dr. B. hath made it very plain in his Historie of the Succession of the Crown of England, as also in his Godfrey, that this Word does not there signify Election, but Recognized and Acknowledged, that such a one is or ought to be King. And I very much doubt, whether this could be properly termed an Election or not. And I know that even at this Day, the King is liable to be dethroned by the People on all the Four Sides of the Scaffold on which he is Crowned, and their Consent is formally asked. Whether they will have this Man to be their King? Yet no Man will try that their Acclamations and crying, Yes, yes, will make our Kings Elective, any more than it could do it in the Case of King William, who had a Title by Conquest precedent to this pretended Election; tho' I grant this Cuckom may have been in use ever since this Coronation of the Conqueror.

But that King William claimed indeed by Conquest, and by no other Title, let us not mind his Euphemous colourable Pretences, but his Actions, which are the best Interpreters of the Thoughts of Princes; and we shall find, that through all his Reign he been governed this Kingdom as a Conqueror: And this I shall prove, by making good the Three Influences I have already given, of his great Alterations of the Property, Laws, and Civil Liberties of the People of this Nation. To begin with the first of these.

For the Proof of which, I shall make use of the Authority of Gervase of Tilbury, a considerable Officer in the Exchequer, in the Time of Henry the 11d. and who received his Information from Henry of Blis, Bishop of Winchester, and Grandchild to the Conqueror, who is most full to that purpose; which he thus deliver'd in the Manuscript Treatise, called the Black book of the Exchequer, which I shall read to you according to the Learned Dr. B.'s Translation of it.

After the Conquest of the Kingdom, and the just Subversion of the Rebels, when the King himself, and his great Man, had viewed and surveyed their new Acquests, there was a brief Enquiry made, who they were which had fought against the King, and secured themselves by Flight. From these and the Heirs of such as were slain in the Field, all Hopes of poffessing either Lands or Rents were cut off; for they counted it a great Favour to have their Lives given them: But as for the dethron'd and fellicit'd, to fight against King William, and did not; if by an humble Submission they could gain the Favour of their Lords and Matters, they then had the Liberty of poffessing somewhat in their own Persons, but without any Right of leaving it to their Poffertiy, their Children enjoying it only at the Will of their Lord: to whom when they became unacceptable, they were every way out of their Eoffices, neither would any restitution what they had taken away.

And when the miserable Natives represented their Grievances publicly to the King, informing him how they were spoilt of their Fortunes, and that without Restitution they must be forced to pass into other Countries at least, King William, it was ordered, that what they could obtain of their Lords by way of Defer or lawful Bargain, they should hold by unquestionable Right; but should not claim any thing from the Time the Nation was Conquered, under the Title of Succession or Deferment. Upon what great Consideration this was done, is manifest (gives Gervase), for they being obliged to Compliance and Obedience, to purchase their
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their Lords Favour; therefore whoever of the conquered Nation posseasted
Lands, &c. obtained them not as if they were their Right by Succession or In-
heritance, but as a Reward of their Service, or by some intervening Agree-
ment.

This alone were sufficient, coming from an Author of such Credit, and living
very near the Time; but besides this, I shall give you the Authority of divers
other Authors to the same Purpose, and particularly Ordeovs Vitalis (whom you
but now cited) tells us how William the Conqueror circumspectly the two great Earls of
Mercia; and that after Edwin was slain, and Morcar imprisoned, then King
William began to fliew himself, and gave his Affidants the best and most confidera-
ble Counties in England, and made rich Colonels and Captains of very mean Nor-
mans: And that he thus disposed of whole Counties to divers great Men, appears by
Domesday Book; wherein it is seen, that as the whole County of Chester was given by
the Conqueror to Lupus, a Norman, to likewise the greatest Part of Shropshire
was given to Montgomery.

And further, he took away from the English their Elates, and gave them to
his Normans; and this he did from his first coming in; For Eor Odo was
made Earl of Berewald and Hereford, at his first coming in, and was Lord of Bet-
vvi in Normandy, and eatablished the Laws of that Town at Hereford. Alan Earl
of Britain, had all Earl Edwin's Lands given to him at the Siege of York, about
three Years after his Arrival. To these I may add the 795 Mannors Robert Earl
of Moreton in Normandy and Corneal in England, had given to him by King Wil-
liam; to likewise Alan Earl of Britain and Richmond had 442 Mannors, and Jeffrey
Bishop of Conquese, had 280 Mannors given him by the Conqueror; besides ma-
ny other Lands of the Saxon Earls, Thanet, &c. were all given to the Normans,
who took their Title from King William's conquering Sword.

So that I think it is very evident, that this King had distributed most of the
Lands of the Nation to his Normans, long before the famous Survey of Domesday
Book was begun; and by that infallible Record, it is clear, that he gave near all
the Lands of the Nation to his Followers, and very little or none to the English,
who held what they had by a new Title, and new Services from the Conqueror, or
his great Lords; or became Tenants to, or Drudges upon their own Lands; as we
also learn from Beadwin and Peto. Here is enough to satisfy any unbiassed Poson,
that the Conqueror did not lay by his Sword after the Battle of Halber.

F. In answer to what you have now said concerning your Conqueror's taking
away the Lands of a great many of the English Nobility and Gentry, it is fo-
apparent in Matter of Fact, that it was a high Piece of Impudence to go about to
deny it; yet will it not therefore follow, that what he thus disposed of was
near all the Lands of England, as I shall shew you by and by: But in the mean
time, to let you see that I am a fair Adversary, I will at present suppose, that
King William took away all the Lands from the former Owners, and gave them to
his Followers, who helped him in his Conquest; but these were not only the
Normans, his Subjects, but French, Flemings, Anglians, Britons, Poivians, and
People of other Nations, who made up a great Part of his Army, and came in
with him under divers great and considerable Men, their Leaders; and whom,
your Dror tells us, came not out of stark Love and Kindness, without any Con-
ideration of sharing with and under him in the Conquest. Now I defer to
know by what Law or Act of theirs, they thus constituted King William an Abso-
lute Monarch over them, and their Defendants? For, as for the Normans, tho'
they were (it's true) his Subjects; yet they enjoyed divers considerable Rights
and Privileges at home, and surely never intended to come over hither, to make
themsevles as great Slaves as the People they had conquer'd; much less can it be
supposed of these of other Nations, who were not Subjects to Duke William be-
fore he was made King. Nor can I see how their taking of Lands from him,
could make him become an absolute and irredible Monarch over them, and their
Defendants. So that if upon your Supposition, all the Owners of Land in Eng-
land at this Day, hold their Elates either by Defeat or Purchase from those An-
cient Proprietors or French Proprietors, they must also succeed to the same Liberte
and Privileges as those under whom they claim, did formerly enjoy; and therefore
can no more than their Predecessors, be absolute Vassals by Right of
Conquest. But before I conclude, I cannot but take Notice of what you have
said,
said against my Proofs of the formal Election of King William, for if the keeping
of a Guard about the Place where the King is Elect and Crown'd, should
vold the Freedom of the Election, I doubt whether the Election of any elective
Kings or Monarchs, even of the German Emperors himself, would hold good.
As for the other Restion, that they could not chuse but elect him, that is yet more
trivial, for there being no more than one Blood to be chosen, they could in
deed chuse no other: But if not having a Liberty to refuse, must void the Right of
Election, pray consider (as I told you before,) Whether there be any Canonical
Election of Bishops in the Church of England at this Day. Therefore I doubt
not but that King William I. was as lawfully and freely elected, as King Edward the
Confessor, his Predecessor, whom all Authors agree to have had no other Title;
and Williamus Geneericrifs, in the Place I now cited, tells us, he was elected
King as well of the Norman as English Nobles: And if the Culfum had not then
been to elect the King before he was Crown'd, it is not likely that your Conqueror
would have introduced the Culfum to the Prejudice of his pretended Right by
Conquest. But indeed there is not any more cogent Argument to prove that
the Crown was formerly elective, than the constant Usage (as you your
self confess,) even since your pretended Conquest to this Day, of asking
the People whether they are content to have such a one for their King.
As for your Doctor’s Quotation out of William of Poitou, pray take Notice, that
he places your Conqueror’s Hereditary Bequest, together with the Oaths of the
English, as his belf Title, and the Right of War itself, by which this Author
did not understand a Conquest of the People of England, but his pre
vailing Argument Haradoll.

M. I do own with the learned Dr. B. that the Defendants of those ancient
Normans and French Earls and Barons that came in with the Conqueror,
and their Poveryr afterwards, feeling the Yoke of feudal Tenures, and other
Prerogatives this King and his Defendants exercised over them, to pre 1 as hard
upon them, as on the ancient English, were those that made such a Diffurance for
their Right and Liberties in the Reign of King John, and Henry III. And tho’
I grant their Ancestors were never conquer’d, and consequently could not be
obliged to him, as to a Conqueror; yet I may, for all this, maintain, that they
and their Poveryr were as much bound to an absolute Subjection, without any
Refrstence, as the English whom they conquer’d; for they were either his own
Subjects in Normandy, before his coming over theirs, or else were such Volunteers
who followed him out of Hopes of Eftates and Preferment. As for all those
of the former fort, and who were his Subjects before, they were not tied only by
their own Oaths of Allegiance which they had taken in Normandy, but were also
bound by the same Obligation of Non-Reftance, as all other Subjects must always
be, both in that and all other Governments. To all which was added another Obliga-
tion in reftion of those who were not his Subjects before, his Enfrance; since
this whole Kingdom was by Conquest the Conqueror’s, as appears in that he be-
flew the greatest Part of it upon his Followers, (whoso Blood runs at this Day
in the Veins of most of our English Gentry and Nobility,) as a Reward for their
Service and Affiance: Tho’ he might leave some part to the English Natives and
their Heirs; yet fo as that he altered the Tenure, and made it defend with such
Burdens as he pleased to lay upon them. So that as well his own Countrymen, Nor-
mans, as those of all other Nations, who thus became Subjects and Feodatories to
him for all the Lands they pollefsed in England, (since he was the only Directus Do-
minus, or Lord of the whole of the whole Kingdom,) were also his Subjects and Sub-
jects, for in case of Treason and Rebellion, or Death without heir, those Lands
were to return to him again, and to be at his Disposal. So that all Subjects, as well
Normans as other Foreigners, who had lands granted to them by the Conqueror,
thus became his dominus Legis, Liegenen, and did owe Faith and true Allegiance
to him, as their Supreme and Liege Lord, as the King is talked in several Stat-
utes; and the Definition of Liegency is fet down in the grand Custody of
Normandy, Ligentia est ex quo domino tenenur est illi sui, &c. that is, Liegency is
an Obligation upon all Subjects to take part with their Liege Lord against all Men living,
to aid and affist him with their Bodies and Goods, and with their Advice and Pow-
er, not to lift up their Hands against him, nor to support in any wise those who
oppose him. And tho’ I grant, that the Supreme or Liege Lord is likewise
bound to govern and defend his Liege People, according to the Rights,
Custums,
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Custums; and Laws of the Country, yet is he not liable to Restraint, much less
Forfeiture if he neglect it. For though if Subjects break their Covenants, and
prove disloyal, all their Lands and other Rights are forfeited to the King; yet, if
the King or Supreme Lord break his Oath, notwithstanding his failing therein,
neither his Crown, nor any Rights belonging to his Royal Dignity are thereby for-
feited. The Reason of this Inequality is because the King gave Laws to the Peo-
ple, but the People did not give Laws to him. So that it is plain, that however
you have the Conqueror’s Entrance, whether by the Sword, or (to avoid the Envy
of the Title of a Conqueror) by a voluntary Submission of the English Nation to
him, as to their Sovereign; the Conclusion cannot vary, because the Duty of Non-
rebellion arises from their own Act, they taking an Oath of Allegiance to be his
True and Loyal Subjects, with which Oath Rebellion can by no means conflict.

P. I must beg your Pardon if I cannot take what you have now said for a sati-
sfactory Answer; since I doubt it will do you little Service, whether you make use
of it either in respect of the Normans, or other Foreigners. For as to the former,
it appears from the ancient Constitution of Normandy, that the Duke was no
Absolute Monarch there, but a Feudatory to the King of France; and farther,
could make no Laws, nor impose Taxes in Normandy, without the Consent of the
Estates of that Duchy; as appears by the Title to the Latin Customs of Norm-
andy, which are at the End of the Old French Edition of the Confluent de Nor-
mandy, Printed at Rouen, 1515, the Title of which is thus, Tara & Confessutitudes
Ducis ad Normannia. There is a Logue to which begins thus; Quatuor Leges & Instru-
tuta que Normanorum Principes, non sine magna praepositione Industris Praetoriarum,
Omnium, & Baronum, &c. non & ceterorum virorum prudentium confilia, & Affini-
fas ad salutem humani sedetis Statusurum. Whereby it is apparent, that the Ante-
cent Laws of Normandy were made by the Advice and Consent of the Estates, for
the Preservation of that Covenant they had formerly made with their first Duke
Rollo, when he had that Dutchy granted him by the King of France. And who-
ever will confute the ancient Histories and Laws of that Dutchy, will find the Dukes
of Normandy no more absolute Monarchs there than the Kings of Norway, from
whence they came; so that if their Duke should have gone about to take away
their Estates, or enslave the Persons of the Norman Nobility and People, he might
justly have been refuted by them. And therefore their taking Lands from K.
William after his pretended Conquest here, must either have confedered an Estate
upon them according to the Laws of England, or Normandy; not according to the
former; for you affirm, that Tenures in Capite, and Knight’s Service, were intro-
duced by his coming; so that if they were by the Norman Law, (as you suppose)
they were then no further Subjects to their Duke by that Tenure, when made
King of England, than they where whilst he was Duke of Normandy, viz. only
according to the Laws and Customs by which they held these Estates: So that if
their Duke was irreprehensible by them in Case of Tyranny in his own Country, fo he
was also here by the same Reason; since whatever he did in respect of the English,
he could acquire no new Right over them.

And that an Oath of Homage alone, doth not make the Person to whom it is
taken irreprehensible, if he makes an unjust War upon his Vassals, appears by the
Dukes of Normandy themselves, who though they held that Dutchy by Homage
to the King of France, and took the same Oath to him upon every King’s Acces-
sion to the Crown, of being his Liegeman, and to be True and Faithful to his Lord
the King of France, for the said Dutchy of Normandy; yet might the Dukes of
Normandy, without any Imputation of Rebellion, have refuted the King of France,
In case he made an unjust War upon them; nor were ever those Dukes accused of
Rebellion for so doing, in all the Wars that they had with the Kings of France.
And therefore the holding of an Estate by Homage and Fealty, doth not supple-
pose that the Lord of whom it is held was irreprehensible, nor doth the Word Allega-
ence signify any more than that Duty which the Liegeman, by the Old Norman
Law, owed to their Supreme Lord of whom they held their Lands. And there-
fore who the King or Supreme Lord of the Fee did not perform his Part of the
Contraet, but went about to turn them out of their Estates, or to invade any of
their just Rights by Force, it was usual for the Tenants in those Times to defy
the Lords, and renounce their Homage to them; for which they used the Barba-
rous Latin Word difidura, in French to defy, that is, to renounce that Faith and
Allegiance, which before they owed them; and the Supreme Lords also often tines

vid. Spelman’s Glossary, fab
verbs difidare.
times defied their Tenants. Thus Mat. Paris tells in Anno 1233, that K. Henry the Third, by the Counsel of the Bishop of Winchelsey, deposed Richard the Earl Marshal. And the next following year, when the Earl, justifying himself in this manner (being then in Ireland), "First I answer, that I never acted treasonably, against the King, for he has unjustly spoiled me of my Office of Marshal, the Judgment of my Peers, and has proclaimed me banished thorough all England; he has burnt my Houses, destroyed my Lands, &c., he has more than once defied me, when I was always ready to hand to the Judgment of my Peers, from which time (said he) I ceased to be the King's Liegeman, and was abdosed from his Honours, not by my self, but by him. And whereas you say, that the King, or Supreme Lord, cannot forfeit his Right, though he breaks his part of the Compact, because of the Inequality which there is between a King and a Subject: If so, then this Prerogative of Non-Resilience doth not belong to the King, as he is Supreme Lord of the Land, as he is King, and giveth Law to the Subjects; which have some Colour of Truth in Absolute Monarchies, but was of no Force either in the Government of Normandy or England, where the Duke or King, without the Consent of his Estates, never could alone make Laws. But as I will not deny our Government to be a Monarchy, so it is as certain, that it is limited in the very Constitution, either by the Customs or Normans, begin when they please; and therefore may this Constitution hold, that in that sense that if the English have now succeeded to those very Lands and Privileges which the Normans anciently enjoyed, then whatsoever Right or Liberty the English Proprietors of Estates do at this Day enjoy, they do not only hold them as the Successors and Defendants of those Normans and Frenchmen, but are also referred to them.

Jure postrimini (as you Civilians term it) since they never submitted themselves, or took an Oath of Allegiance to King William and his Heirs, but only to himself: Personally; there being no such Clause in any Oath of Allegiance, till it was ordained many Ages after in the Reign of King Henry the Fourth; nor was this Oath ever taken by our English Ancestors to K. William as to a Conqueror, but the lawful Successor of K. Edward the Confessor; and K. William’s actual taking away the Estates of a great many of the English Nobility and Gentry, contrary to his own Oath, and without any just Cause, could no more give him a Right to do so, than if Henry the Fourth, or Henry the Seventh, both which came to the Crown by the Affirmance of a Foreign Force, should upon a Pretence of being Conquerors have governed by an Army, and to have taken away whole Estates they pleased, and given them to their Followers that came over with them.

M. I shall not dispute this Matter with you any further, therefore pray proceed to the other Point you took upon you to prove, that King William did not take away so great a Share of the Land of England, as the Dr. and those of our Opinion affirm.

F. I shall observe your Command; and therefore in the first Place I define you to take notice, that according to the Doctor’s own shewing, your Conqueror never took away the Lands of all the Bishops and Abbots of England, much less those that belonged to Deans and Chapters, or to private Churches; and if his Nobles or Followers had unjustly differentiated any Bishop or Abbot of their Estates, the King caused them to be restored again; as appears by many Providences of this Kind, which are to be found in Ingolphus and Eadmerus. This being premised, let us see in the next Place, what Proportion the Lands belonging to the Church, did in those Days bear to the rest of the Lands in England. Now we find in Sprot’s Chronicle, as also from the old Leiger-Book, cited by Mr. Selden in his Titles of Honour, and particularly from that Secretum Abbatis (formerly belonging to the Abbey of Gloucester, and now in the Library of the University of Oxford) that there were not long after your Conquest, 60215 Knight’s Fees in England, of which the Bishops, Abbots, and other Churchmen then enjoyed 26015, when it is supposed this Account was taken. Then it will appear your Conqueror there were above 28000 Knight’s Fees, which belonged to the Church. And in those we do not any way find that K. William dispossessed their Tenants of their Estates, most of which were held in Fee under them, and those Tenants were great and powerful Men in their Countries; and hence we read in the ancient Records and Leiger-Books, of the Barons and Knights, that held of divers Bishops and great Abbots; several Examples of which you will find, in Sir Henry Spelman’s Title Bar. Now it is certain that K. William could not turn all these Men out of their Estates, and give them to his Followers, without com-

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miting Sacriilege, and invading the Rights of the Church, which that King durft not commonly do. So that the utmost you can suppose he could do, was to take the Forfeitures of all such Tenants of the Church, who had taken Part with King Harold, or had any wars committed Treafon against himself, which were far from the whole Number of them: So that here goes off at once almost a Half of all the Lands held by Knight Service, which the King did never dipoffe the ancient Owners of. To these may also be added all Tenants in ancient Demeynes, all Tenants in Soceage, as also all Tenants in Gavelkind, which in those Days made at least Two Thirds of the Lands of Rent, which by the way was never conquer'd, but surrender'd upon Terms, to save their ancient Cults and Tenures, as Mr. Camden himself acknowledges in his Description of this Country; besides what was held in other Counties by the same Tenure; as you will find in Mr. Taylor's History of Gavelkind: All which not being Tenures in chief by Knight's Service, are not registred in Domesday-Book, nor does it appear that the Owners were ever dipoffed of them. To which may also be added the Lands of divers of those smaller Tenants, or Officers of King Edward, whose Names are found in Domesday-Book, who held their Land's rentions offiis.

To all these we may also add, all such Norman Noblemen and Gentlemen, who were many, that having come into England in Edward the Confessor's Time, and having Honours and Lands given them by him, had continued here ever since: And these were so numerous, that it was thought worth while by King William to make a particular Law concerning them, that they should partake of all the Cults, the Rights and Privileges of native Englishmen, and pay Scot and Loæ as they did of these were the Earl of Mortain, besides many others whose Names appear in Domesday-Book. And not only these Men but also divers Cities and Towns held Lands of King William by the same Rents and Services, as they had formerly paid in the Time of King Edward the Confessor, as Oxford for Example. But to give an Answer to some of your Inquiries, as when you say that King William gave away whole Counties, as all Chefsire to Hugh Lupus, and the greatest Part of Shropshire to Roger de Montgomery, &c.

It is a great Error to suppose that these Earls had all the Lands mentioned in these Counties to dipoffe of at their Pleasure, and that they turned out all the old Proprietors, which it is certain they did not; as I could prove to you by several Inquiries of ancient English Families who have held their Lands and enjoyed the same Seats they had in the Conqueror's Time. So that you see there is a great deal of Difference between a Grant of all the Land of a County, and that of a whole County: What is meant by the former is plain, but as for the latter it generally implies no more than the Earlom or Government of that County. Thus whereas your Dr. would have it, that the greatest Part of Shropshire was given to Roger de Montgomery, Domesday only says, that he had the City of Shrewsbury, & totam Comitatum, and the whole County: But that is soon explained by what follows, & totam Dominium quod Rex ipse tenebat; where it is plain that by Dominium is meant no more than that Power to govern it, and receive a Third Part of the Fines and other Profits to his own Use, which King Edward had; for otherwise the Grant of totam Comitatum, had been sufficient.

M. I confess this is more than ever I heard, or considered before, concerning this Matter; but you do not give me any positive Proof that at the Time when Domesday Book was made, there were any Englishmen who held Earloms, or Barones, or other great Elites of the King, or any of his great Men; so that what you have said hitherto, tho' it carries a great Shew of Probability, yet is no positive Proof against the Dr's Assertion.

F. I shall not go about to deny what William of Malmesbury, and Henry of Huntingdon do positively affirm, that for some time before the End of King William's Reign, there was no Englishman a Bishop, Abbot, or Earl, in England; yet does it not therefore follow, that it was thus through his whole Reign, or if it were so, will it therefore follow, that there were few Englishmen who, when Domesday Book was made, pouffled any Lands in England. But that in Part of King William's Reign there were many English Earls and Barons, appears by above a dozen Charters cited by Sir William Dugdale, in the Saxons and Latin Tongues; in his Annals, and in such a manner either directed by King William to Church, who is Thanes, or else in Latin, Omnibus Baronibus, Franciscus E Anglæ; or else Omnibus Baronibus E Fidelibus.
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& Fidelibus suis Francisc & Angliſi satum. The like Charters alſo appear of Hen. I. and the Emprefs Maud his Daughter. So that if Francigena and Franciſc-signify a Frenchman, and Angliſi an Englishman, and if Fidelis does (as your Dr. would have it) signify a Tenant in Capite, then I think nothing is plainer than that there were, for great Part of King William's Reign, both Earls, Barons and Tenants in Capite of English Extraction.

But to come to particular Perſons, it will appear by many Saxon or English Names in Downday-Book, as alfo by several Recitals therein, that there were divers English Noblemen or Gentlemen, who held Lands in divers Counties of England, at the Time when that Survey was made. And for Proof of this, fince to fhort a Conversation as ours will not permit me to run into a long Bed-Roll of Names, I refer you to what the learned and ingenious Mr. Arwood in his Just Anglorum ab antiquo, has observed out of Downday-Book upon this Subjeft; where tho' he has gone over but Fifteen Counties of Thirty, that are surveyed in that Book, yet it will thereby sufficiently appear that your Dr. is much mistaken when he fo positively affirms, that there were few if any Englishmen that held Lands in England. But to give you a Taste of this, I shall return through as many Counties as Mr. Arwood has given us the Names of: To begin which Survey, (where befides the Earl of Morton above-mentioned, who tho' he was a Norman born, yet he was here before the Entrance of the Norman Duke, and held Eftreham in Tenridge Hundred in the Time of King Edward) there was alfo Hugo de Port, an Englishman, who was a very great Proprietor, as may be found under this Title in Downday-Book, Terra Hagonis de Port. Many Manors he had, as thereby appears, in Hampshire he had at leafl Two Manners, Cerseford and Eftreham, from his Anceftors before King William's Entrance; and befides this Gentlemen (as the Earl above-mentioned,) there are no leafl ten in Ten or Eleven, who: as it appears either by their English Names, or elfe by this Note which fo frequently occurs, Hierum tenuit T.R.E. i.e. tempore Edwardi Regis, i.e. held the fame Lands they and their Anceftors did in the Time of King Edward. The like I may lay for the other Counties there mentioned; as Hampshire in the next Place, where befides Radfl de Mortimer who had feveral Lands, T.R.E.: there are no leafl than above Thiry Freeholders more, who by their Saxon Names and want of Sir-Names, feem to be mere English, divers of whom held the fame Thane Lands, which themſelves or their Fatherſ did in the Time of King Edward. And tho' in Buckinghamſhire and Berkshire indeed there are but Five or Six, who held the fame Lands which they or their Anceſtors poſſeffed in the Time of the Conqueror; yet in Wiltsſhire and Dorsetſhire, there appears between Twenty and Thiry English Proprietors, many of whom held whole Townhips when this Survey was made. In Somerſhire, Devonſhire, Staffordſhire, Yorkſhire and Glouceſterſhire, their does appear in moſt of them a Dozen or more English Saxon Names, who held whole Manors. 'Tis true that in Nottinghamſhire, Lincolnſhire and Herefordſhire, there appear fewef English Names, and yet the leafl of their have Three a-piece. So much may suffice for Downday Book: And I doubt not if any one will take the Pains to look over the Titles of the reft of the Counties, he may find enough Indications of the like Nature, sufficient to prove that the English were not wholly poſſeffed of their Eftates, at the latter End of King William's Reign, when this Survey was made. Not to mention Northumberſland, Welfmorland, and the Bishopric of Durham; all which are omitted.

But that the Number of English, which held the Lands in the Time of King William I. and II. was very confiderable, may appear by William of Malmby's relating how the Norman Lords then in England, were overthrown by William Rufus and have fet up his Brother Robert in his Place, who there also fhowed the Manner how that King prevented it. Rex Videris Normannas penes in una Rabi confertratus, Anglos probos, & fortes viros, qui adhuc residui erant imitantur scriptis arceftis, quiibus super injustis suis Querimoniam faciunt, bonisque leges Tributorum devovem Libertatis senationes pollicens, fidelissimis juae obigatiuit; quibus Reditus trull certainly be meant of the Residue or Remainder of those English Genetory, whose Eftates were still left; and herein Ordinum Vita is more exacts, that King William as soon as he saw the Conivience against him; Lentencrum Archipr epum cum Saffraganis prefluibus, & Comites Anglofique Naturales concova vit, & Conitus Adversariorum, & velle fuam expugnandi nos indicavitt.

M. As
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M. As for Mr. Arwood's Catalogue of English Names from Doomfay Book, I have not yet examined them; and tho' I grant there are, and may be divers who do the like, and that they, or their Fathers did, yet they are but a few in respect of the rest: nor are we certain that all those were native English, and not Norman, who held those Lands as well then as before the Conquest, since the Norman and the English Names were often the same. And as for the want of Surnames, that is no Argument they must needs be English, since in those days very few, even of the Normans, but Perfons of Quality and Eftates, had any; as Mr. Cambden shews us in his Remains. But as the thofe Exprefions in the Charters of King William his Son, and then in the English, as well as the French Earls and Baronets, are mentioned; tho' Charters might be made during the three or four ftrft years of King William's Reign, when I grant the English were not wholly difpolifhed of their Eftates, but that there were some of them that held Earldoms and Baronyes in their own Right; but when the fame Exprefions occur after that time, the word Angli or Angligenz, must be underftood in another fenfe, tho' it seems B. A. A. to be put in opposition to Frani: for as by what I have laft are to be underftood fuch French or Norman Baronets, who had Eftates in England as well as in France; so by the former could be only meant fuch Frenchmen or Normans who had Eftates in England only, or elfe the French by Original, were Englishmen by Birth, and are here called Anglif and Angligenf, to diftinguifh them from fuch French Barons as are above-menionef, or from fuch as were born in France. And for the proof of this, I desire you would confult Dr. B.'s learned Glofary, at the end of the Follof Edition of his Anfwer to Mr. P. and his two Seconds, Tit. Angli and Gregori, where he tells us, that thofe Anglif and Angligenz, menioned in thofe Authors and antient Charters, were not English but Norman, and thofe Men of no mean or ordinary Rank, but Earls or Baronets; for they could never have met in fuch numbers, as were requisite for them to do, to protect and defend King William Rufus, had not they been headed by fuch, if they had either Power or Eftates left, that depended not upon the Norman. And if you, or any Man, can fhow me an English Saxen, that was then either Earl or Baronet, or had any office in the Government, or any other renowned Eftates that did not hold them of the Norman, or had at that time any great Woods, Forefts, or Privileges of hunting in them, then I will confefs my felf miffaken. As for W. Malmsbury's Saying, thofe were Anglif probi qui residuis erant, these were only the antiqui et legitimi Barones, who, as Ordinaries tells us, came in with his Father, and fettled themselves here after the Conqueft.

And as for your Quotations out of William of Malmsbey, and Ordnraici B. A. P. p. 50. Vitellius, concerning the English affifling King William Rufus against his Brother Robert, by using the common bait of Liberty, &c. promising that he would alleviate the rigid Laws of his Father, and give free liberty of hunting in his Forefts; 'tis true, he thereupon raised an indifferent Army, confifting chiefly of English, who, as Matthew Paris tells us, were no better than mercenary or flippadary Soldiers, and who had either no Eftates, or elfe had been turned out of them, so that this does not prove that they were Englishmen of any Fortunes who thus affifted William Rufus.

F. As for what you have now faid against the Citations of the Names out of Doomfay-Book, it is not material; since if English Names were then common to the Norman and them, then the Norman Names might be as well common to the English; and then many of them in England, whom by their Names we fuppofe to have been Norman, might be native Englishmen. And as for what you urge against the former words of the Charters I have now cited, I think it is a downright wrifling of the words Francis and Angli, since no Author that I know of but your Doctor is of that Opinion: For that the word Francis or Francigena does signify such Frenchmen who held Baronies in England, is granted on all hands; but how Angli must also signify Frenchmen, seems a Paradox to me: for how could thofe Frenchmen or Normans be termed Englishmen, only because they held Eftates here and not in Normandy? For if the having fuch and fuch Eftates in England would have turned Frenchmen into Englishmen, there needed no fuch dilinition to have been made between French and English Baronets in thofe Charters; since, according to your Yyy Doctor's
Doctor's Notion, the French Barons could be no other wise mentioned here, but as they had Estates here, and therefore could be only writ to in that Capacity, since as mere Frenchmen they had nothing to do here: so that if this Epiteth was in respect of the Tenure of their Lands, they would have been filled English Barons as well as the other. Nor is your other Braision more to the purpose, that by the Anglo might be meant in the Charters of King Henry I. such Norman or French Barons, who because they were born in England, might therefore be called English: for who can believe that in so small a time, as from the beginning of the Reign of King William I. to that of King Henry I., which was but a little above thirty years, so many of the Norman Nobility were dead, as should make it necessary to use a new Distinction of French and English Barons; since by their Tenures they were both alike English? And indeed, though the Anglo signify Norman, is it English, yet is not the word French, the ever so plain, uncertain and equivocal. And as for what Ordevarius says of the old Norman Barons, it would have signified something, if you could have proved he had called them Englishmen, as he does not: but if you carry it further to the time of the Emprefs Matilda and King Stephen, when all the old Race of Normans were certainly dead, then there was much less need of this Distinction, when all that were born in England were English alike; and therefore the word French could only extend to those few Barons, who being born in Normandy, had Estates here.

But since you are forced to confess, that for the first four or five years of King William I's Reign, there were both English Earls and Barons, till the King had by degrees rooted them out, there cannot be a better Argument against your pretended Right of Conquest; since it is plain, King William could never pretend to take away their Honours and Estates as a Conqueror, since by his Coronation-Oath he was sworn to refrain all Rapines and unjust Judgments, then would his Conquests have been against his Scepter, and he would not treat both the English and French with equal Right: so that if he afterwards took away the Estates of English Nobility or Gentry, it was either because they deferred it by rebelling against him, and then it was justly done, or else it was done without any cause at all, but only to oppress and root out the English Proprietors; and if so, such Actions being contrary to his own Claim from Edward the Confessor, as also to his Coronation-Oath, could not more give him any Right to rob or spoil Men of their Estates without cause, than it could give him a Right to rob the Churches and Monasteries of all the Plate, Mony, and Jewells which he found in them, even to the very Chalices and Shrines, as Matthew Paris and other Authors tell us he did in the fourth year of his Reign, when likewise (according as you yourself set forth) he began to shew himself a Conqueror, or rather a Tyrant, in thus committing Sacrilege, and taking away the Estates of the English without any just cause.

But how ever French of that time does not make to be a great Tyrant of your Conqueror as the Doctor; for William of Poitiers expressly tells us, who was Chaplain to this King, concerning his taking away the Estates of the English, and giving them to the Normans, that nulli tamen Galli datum est quod Angios cuique in justitia suis ablatum. And Ordevarius Vitalis, speaking of his dealing with the English at the beginning of his Reign, says expressly, Nominem, nisi quem non damnare iniquum fuisse, damnassit. I shall now conclude with a Reply to what you have said, to evade the Authorities of those ancient Authors I have brought to prove, that in the beginning of the Reign of King William the Second, there were many English Gentlemen left of considerable Estates, whom you and your Doctor would fear make to be no better than mere Mercenaries; which is expressly contrary to the Authority of Matthew Paris, whom you yourself have cited in this Point, as also all other Authors who have wrote of this matter: for Matthew has immediately before these words, Velintis iniqui Rex Williamus, esse posse Regnum iniquitatum rerum confunctuationem Anglorum furtumque, Anglorum injustaque leges & tributaria lege renuntiata, his tamen legis liberalius prominem in primo devium, and almost makes use of the very words that Malmsbury had done before. Now I desire you or your Doctor would satisfy me, how Men, who were remarkable for their Valour and Honesty, and who were so considerable, as to be feant for by Letters writ on purpose, and when they came, should be provi
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mized easier Laws, free Hunting, and a Relaxation of Taxes, all which are Privileges belonging to Men of Estates, could be mere Soldiers of Fortune? And why make it plain that they were not the King's, but their own? Why were they to hunt in, Roger Howden speaking of this very matter, tells us, Et con-
cessit omnibus sylvae suas, & omnium: Sed quisquid premissi parvo tempore
censudivit, Angli sum felixer sum juvabant. But that he did not keep his Promise
as to hunting, as well as other things, appears by a Pallage in Edmerus, where
he gives us as an Example of King Rufus's harsh Nature, "That about fifty
Men of the ancient English Gentry, who in those days enjoyed some Re-

"The King himself proclaims that he had hit the King's
"Deer," and having for this undergone the Trial of Fire and Water, he
was in a great Rage about it: which is sufficient to shew you, that there were
at this time many English Gentlemen left of sufficient Estates to use Hunting,
either in their own or the King's Woods. As for what you urge further aga-
against Mr. A.'s Inflances out of Doomsday Book, it is not considerable: since
it is only an Exception against the Names of Persons there mentioned, that
they were not native English, but Normans, who either were born, or had
lands in England, or else he had the same Names with the English; both which
are gratia dicta: for Doomsday-Book plainly says, either that they or their
Ancestors were here before your Conquest, or else their Names being wholly
English-Saxons, it lies upon your side to prove, that they were Frenchmen or
Normans by Original, which I believe is more than you or your Doctor is able
to do.

F. I cannot blame you if you do what you can to evade this Testimony from
Sharburn's Book, which goes so far as an account of the Original of those
Tenants who held of the King, as Sir H. Spelman tells us, per servitium Dres-
garum, Titular

"born tells us. But tho it is true, as this Book it self sets forth, Edwin of
Sharburn was never restored to all the Lands he held before the Conquest;
yet it is plain, that he had the King's Mandate for his Restitution: and if he
could not obtain it, by reason of the great Power of the present Poitevins,
yet was the King's Right, or King's Right to do him justice; since English
tells us, that for Talhaim seised the Cells of Spalding, and

notwithstanding a Fellow Hearing before the King and Council. And if a great
Man could do this with the Lands of the Church, it is no wonder that
so powerful a Person as Earl Warren could, by his Power, or perhaps by the
Conivance of King William himself, keep another Man's Estate, and make
him come in and stand so near as he would allow him, when he found he
could have no other remedy against those that thus unjustly detained it.

But tho in the beginning of your Discourse you seem to allow a part of the
Story, as it is related in Sharburn's Manuscript, and produce the Testimony of
Bradfin and Eliza, to prove that divers antient English Proprietors, who be-
ing thrown out of their Estates by powerful Men prelately after the Conquest,
were fain to take them again upon performing of Villain Services, tho they
themselves remained free Men; yet your Doctor, from whom you borrow
this, is very much out in his Application of those Pallages he cites: for nei-
ther of those Authors do affirm this of all Owners of Lands whatsoever, but
only there to give us the Original of Socage-Tenants on the King's De-
meines, as appears by Bradfin's Title to that Chapter, from whence the Doc-
tor cites this Pallage, which is, De diversi conditionibus personarum tenentium in
Dominicis Domini Regis. And the first words of this Chapter make it yet
plainer, beginning thus, In Dominici Domini Regis plura sunt genera hominum,

"sunt cumin ibis servis sine naturi, ante Conquestum, in Conquestu, & post Conquestum;

and under these last ranges the Per ons you mentioned. But Eliza is more
exact in his Chapter de Sekemanonis, where he tells us, that these Men were Ten-
ants of the King's antient Mannors in Demene; Et quos hujusmodi culturae
Regis digne sustentavcr, provisa fuit quiet, ne siebas facerent ad Comitatus, vel Han-
dredum tamem pro terra, quorum congregacione tum faciam apellantur, binc eff
quae Sekemanonis bode dicuntur efl. So that the King William might permit his
antient Tenants to be thus outed out of the Estates they held in his own
Demeneis, yet does it not therefore follow, that he took away the Estates of

the
the ancient Owners all over England, of whatsoever Tenures they were, or of whomsoever held. But as for your Quotation out of Matthew Paris, it proves no more than what I readily grant, that King William, after his return out of Normandy, liberally rewarded his Followers with the Eagle, which might have been of such as fought against him at the Battle of Hastings; and as for that little which was left them, which he says was put under the Voke of a perpetual Servitude, he means no more by this Expression, than that new Tenure of Knight's Service which King William imposed upon them, as this Author in the very next Leaf observes, where he speaks of the Lands of the Bishopricks and Abbies, which were held before free from all secular Servitudes, but seruiunt feitis militariis.

At it will not undertake to prove that he quite altered the ancient Laws of England, and brought in quite new ones; yet that he did so in great part, and that by his sole Authority, I think I can prove by sufficient Testimonies: and therefore I shall begin with that of Selden, a Most of Camden, aComparison of Archbishop Llandaff's, who tells us in his History, "That King William, during his Absence in England, chose Ulges and Laws, which his Ancilla toors and he observed in Normandy, made such Persons Bishop, Abbots, and other principal Men, thro' the whole Nation, who could not be thought so unworthy as to be guilty of any Relachance and Disobedience to them, knowing by whom, and to what they were raised; all duteous and honest things he ordered at his pleasure." And after the Hibernian hath recounted in what things he disallowed the Authority of the Pope and Archbishop, he concludes thus: "But what he did in Secular Matters, I forget to write, because it is not my purpose, and because also any one may, from what hath been delivered, guess what he did in Seculars." From which I think nothing is plainer, than this King William did not only design to alter many things in the Laws and Customs of England, but did also actually do it; for to what end did he make the Bishops, Abbots, and other chief persons, who were to be Judges in all Courts? Now that King William governed the Nation as Conqueror, and did so live and repute himself so to be, and as such brought in and imposed new Laws upon the People of this Nation, is clear, as I shall prove from their Particulars.

Enact. The Jusiciaries, or chief Jusiciators, the Chancellors, the Lawyers, the MINIERAL Officers and Under Judges, Baris, Sheriffs, Bailiffs, Saa, were all Norman, from his first coming until above a hundred years after; as I can make it out by particular Inflamers and undeniable Reasons, were not the Catalogues too long to be here inserted. If therefore the Jusiciators, Chancellors, Baris, Sheriffs, Lords of Manors, such as heard Gaits, and gave Judgment, were Norman; if the Lawyers and Pleaders were also Norman, the Pleas and Judgments in their Courts must of necessity have been in that Language, and the Law also, I mean the Norman Law: otherwise they had said and done what they knew not what, and judged they knew not how, especially when the Controversies were to be determined by military Men, as Baris, Sheriffs, Lords of Manors, &c. that understood not the English Tongue or Law; or when the Chief Justice himself was a military Man, as it is often happened, and understood only the Norman Language: and it's hardly to be believed these Men would give themselves the trouble of learning and understanding the English Law and Language.

Secondly. Tho' we have many Laws and Customs from the Northern People, and North Parts of Germany, from whom both Saxons and Normans came; yet, after the Conquest, the Bulk and Main of our Laws were brought hither from Normandy by the Conqueror, from whence we received the Tenures and Manner of holding our Estates in every respect, from whence also we have received the Customs incident to those Estates, and likewise the Quality of them, being most of them feudal, and enjoyed under several Military Conditions and Services: so that of necessary Consequence from thence we must receive the Laws also, by which those Tenures, and the Customs incident to them, were regulated, and by which every Man's Right in such Estates was secured, according to the nature of them. From Normandy (and brought in by the Conqueror) we received most, if not all our ancient Tenures, and manner of holding and enjoying our Lands and Estates, as will appear by comparing our ancient Tenures with theirs,
Dialogue the Truth.

F. I shall not deny but a great part of the matter of Fact is true, as you have now put it: yet tho' I grant, that the Bishops, Abbots, Chancellors, chief Justices, and other great Officers of the Crown, were all, or the greatest part of them Norman; during the Reigns of the two first Kings of the Norman Race; it does not therefore follow, that these Men must have made a Change in the very Substance of our Laws, in matters of Pleading, or judicial Proceedings, they might have introduced a great many Alterations; yet as to the Civil or Municipal Laws of this Kingdom, concerning the De-

sent and Conveyance of Estates, they continued the same after the coming in of the Normans: and the Lands held by Knights Service, descended to the eldest Son; yet Lands in free Seage, and Gavel-kind, to all the Sons alike, as they had likewise done before your Conquest. There were also Estates Tail and Precedent, as now; and there were also the like Customs of the Coun-

try of England, Boroughs English, &c. as there are also this day, and can prove to you by several passages out of our English Saxon Laws. So likewise for Conveyance of Estates, those of the better sort of People called Feoffland, were conveyed by Deeds, with Livery and Seisin, either with or without Warranty, as they are now; but that which was called Feoffsland, held by the mesnons, were only by Livery and Seisin without any Writing. And tho' I grant that the Custom of sealing of Deeds is deriv'd from the Normans, yet that is an alteration only in matter of Form; and as for Goods and Money, they were bequestable by a Man's last Will, as well after, as before your Con-

quest. And if you can have the opportunity to peruse a Manuscript Treatise of Sir Roger Casew's upon this Subject, you will find it there sufficiently proved; That Livery of Seisin, Licences, or Fines for Alienation, Daughters to inhe-

rit, Trials by Juries, Abjurations, Utteries, Caroners, dispersing of Lands by Will, Bidehearts, Goals, Writs, Wrecks, Warranties, Felons Goods, and goods of this kind, were here in being, long before the Conquest, call'd Wills. This being so as to the Common-Law, let us see what alterations there were made in the Criminal, or Crown-part of the Law. First, as to Tresason and wilful Murder, they were punished with Death in the Saxon Time, as well as after; as were also Robbery and Burglary in the Night-time: but as for lesser Offences, such as Batteries, Maims, Robberies, and other Breaches of the Peace, they were punish'd by Fine, as well before the Conquest as after: And as for the Law of England, which was, that if a Man were found murdered, it should be presumed he was an Alien, and the Town thereupon where the Body was found was to be fined, unless the Alien was prov'd, i.e. that the Perfoun was an Englishman; this Custom, tho' it failed to the Reign of Edward III. when it was taken away by a Statute made on purpose, the it may seem a Badge of the Norman Conquest; yet was it indeed a Law first introduc't by King Canute in behalf of his Dames, who being often found kill'd, and none could tell by whom, he obtain'd this Law to be made to prevent it; as you will see at large in the Law, and the Mirror of Justices. But as for Trial of all Offences, it was either by Juries, Fire, or Water Ordeal; or else by Witnesyes, or Compurgator's upon Oath, as well before as after King William's entrance. So that I can find nothing ma-

terial as to the alterations of the Laws, either in matters Criminal or Civil, from what they were in the Saxon time; and this being so, it is easily answ'r'd, how the Judges and Officers might be Norman, and yet the Laws continue English; for first it is certain, that for four or five Years after the beginning of King William's Reign, he made no great alteration in the Judges, and other great Officers of the Kingdom; and by that time those whom he was afterwards pleas'd to employ in the rooms of such as either died or were turned out, might very well come to understand the Laws of England, as far as they differ'd from those of Normandy, which was not in many Particulars; since, as your self very well observ'd, the Saxons and Normans being both Northern People, had many of the same Laws and Customs common to both, and the new Laws might in three or four Years time have very well learnt English enough to understand the Evidence that the Witnesyes gave before them, without any Interpreter.

But, say you, all the Pleadings and Judgments were in French, and therefore the Lawyers and Pleaders must be Frenchmen; this is likewise a falfe

Consequence:
BIBLIOTHECA POLITICA.

Consequence: for pray tell me, why might not the English Lawyers have learnt French enough to plead in three or four Years time; which must necessarily be required before so great an Alteration could be made, or Lawyers enough be brought out of Normandy, and sufficiantly instructed in our Laws and Customs, could be fitted for their Employments? Again, supposing all Pleadings and other Proceedings to have been in French, it does not follow that this Practice could have obtained in all the Courts of England: for tho' I grant it so in the

Kings Courts at Westminster, where the Judges (as you say) were for the most part Frenchmen, or Normans; yet this could only affect either that great Court, the Curie Regis, where the King often sat in Person, together with his Chief Justice, and other Judges; or else the Court of Common Pleas, which followed the King's Court, till it was onely by Magna Charta; or else the Court of Exchequer, where in those days only matters concerning the King's Debts, Lands, and Revenues were chiefly heard and dispatched. But as for the Court of Chancery, it was not then used as a Court of Equity, nor long after, till the Reigns of Henry IV., V., and VI. when it arode by degrees, as you will find at large in Sir William Dugdale's Origines Jurisdictoriae.

So that granting all the Proceedings in these Supreme Courts to have been in French, because the King himself, who sat there with the Chief Justice, and the rest of the Judges, were either Normans or Frenchmen; yet was this of no great Importance, in comparision of the more numerous Suits and Causes which were first begun, and tried in the inferior Courts in the Country, before ever they could be brought up to London, by Writ of Error, or Appeal; which could only be in Causes of great moment, or between the King's Tenants in Capite. So now to let you see that what I say is true, we will survey all the inferior Courts of that time, beginning with the lowest, and going up to the highest of them. The first Court we find of this kind, was that of the Free Borough or Tything, wherein by the Laws of King Edward the Confessor, the Tythingman or Headborough was the Judge; who, as that Law tells us, determin'd all Suits and Differences arising among Neighbours of the same Tything, concerning petty Trepsalles and Injuries, which if they could not be there determin'd, might then be brought before the Court of Baron, which was the Manor Court, and wherein the Suits, and not the other nor his Steward, were the Judges. And this, as Sir Edward Coke tells us, was first instituted for the ease of the Tenants, and for the ending of Debts and Damages under forty Shillings at home, as it were at their own doors. And let me tell you by the way, that forty Shillings was then near as much as forty Pound is now. And if the Businesse could not be ended here, or was too high a nature, it was then brought into the Hundred-Court, where the Hundredrever together with the Suits were Judges; and if they had not Justice there, they might then remove it into the Court of Tything or Lathe, which was not the smaller Court of the Tything mention'd, nor yet the Court-Leet, but a particular Court consisting of three or four Hundreds; which, tho' the Court were, was in being at the time of the Statute of Merton, as I shall shew you by and by: And if the Businesse could not be decided in the Tything, it was then removed to the Shire, or County-Court, as Mr. Lamberti shews us from the Laws of King Edward; which was then held (as now) from Month to Month, and in which, as well as in the Hundred-Court, the Suitors alone were judges. And tho' it can now only hold Pleas (unless it be by Writ of Justice) of any Debt or Damage to the value of forty Shillings; or above; yet we find from ancient Authors, that this Court was so considerable, that we have divers Examples of Causes between the greatest Persons of England, and that for Lands of considerable Value, begun and determin'd in this Court. Thus Eadmerus relates the great Trial at Finnenden-beath, between Odo Bishop of Bayeux, half Brother to your Conqueror, and by him created Earl of Kent, and Lanfranc Archbishop of Canterbury, concerning divers Manors in Kent, and other Counties, whereof Earl Odo had deifiez the See of Canterbury, in the time of Archbishop Siward his Predecessor: whereupon the Archbishop petition'd the King, that Justice might be done him, secundum Legem Terra, and the King thereupon sends forth a Writ to summon a County-Court: The Debate laffed three Days, before the Freeman of the County of Kent, in the presence of many
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many chief Men, Bishops and Lords, and others skilful in the Laws; and Judgment palled for the Archbishops Lawfandr by the Votes of the Freemen; or from murmumam, as the Historian says.

So that to conclude this Head, if no Suit could be begun in those Days, but what was first commenced in the Hundred-Court; no Difying could issue forth till three Demands were made in the Hundred, and from thence to be removed to the County-Court, where regularly all Civil Causes were try'd by the Suitsors as the only Judges, as well as in the Hundred-Court, and Court-Baron: then it will necessarily follow, that, unless you can prove, (which I think is impossible) that all the English were at that time Slaves and VileMen, and had no Freedom of any sort left them; I say, it will follow that all Pleadings and Proceedings in any of those Courts, being before mere Engilshmen, must have been in English, and no other Language. So that after all this great Cry, not a twentieth part of the Suits in England, were brought to London: And as for Criminal Causes, unless in Cates of Trescon, all Murders, and other Felonies were try'd and judg'd in the Country, either within the particular Jurisdiction of Bishops, Abbots or great Lords, or else of such Cities and Towns, who had the Privileges of Infantibus and Outrightthief, together with Fyis and Furse, that is, a Pite to drown, and a Gallows to hang Malefactors: and if the Offence was done in the Body of the County, they were then try'd and condemn'd in the County-Court; Justices Itinerants not being in use till Henry II's Reign.

M. I must confess you have given me a great deal of Light in these matters, more than I had before: but as I shall not dispute whether in the lowest Courts, such as the Tythings and Court-Barons, the smaller English Freholders, and petty Causes amongst them, were settled in the Hundred-Courts, brought in the Hundred, and County-Courts, only the greater Freemen of the Hundred, or County, were Judges. Who these Freemen were, Dr. B. hath sufficiently taught us in his Comments upon the Conqueror's Laws, as also in his Giffary, viz. That they were Tenants in Military Service, who in those Times were the only great Freemen of the Kingdom, and quite different from our ordinary Freholders at this day. These were the Men, the only armed, and chose Juries, and the only armed Jurors, of both in the County and Hundred-Courts, and dispached all County Business under the great Officers. I do not deny but that there might be other lesser Gif. Freemen in those Times; but what their Quality was, farther than that their Persons and Blood were free; (that is, they were not Natives, or Bondmen) it will give a knowing Man trouble to discover it to us. We find in every Leaf of Downlay, Sains & libri hominum, Poffeffors of small Parcells of Land; but what their Quantity was, and what Interest in the Nation, Diets Apolo, no Man yet hath made it out, nor can it be done by the account we have of ordinary Freemen, for a Century or two last past.

And for further Proof of this, That none but Tenants in Capite, or Military Tenants at least, could be Judges in the County-Court, it appears by the Laws of King Henry I, wherein it is expressly laid: Regis Judicis Baroni Caus. Cap. 1. tenuis qui liberae in eis terrar habitent, per quos debem causis singulorum alterna professione tradatur, &c. So that these Barons of the Country being certainly feudal Tenants, this Service of being Suitsors to the County and Hundred-Courts, was a Service incident to their Tenures; and then it will also follow, that B. J. A. p. 25. these Primores, and Probi &c. who as you have now related, try'd this Cause between Barl Odo, and Archbishop Lawfranc; and who (let me tell you) were not only of the County of Kent, but of other Counties in England, where the Mannors and Lands lay, as Eadnorres thaws us; and who were the Jurors in this great Cause, confided of the great Military Tenants, that were not Barons, and which were the Probi &c, for it can be no ways probable, that the ordinary Freemen who made the greatest Number, and were all bound to their good Behaviour, could be the Probi &c legatus hominum, who serv'd upon Juries. To conclude, if I have already prov'd, that King William took away the greatest part of the Lands of England, and gave them to Normans and Frenchmen, who were the only true Freemen or Freholders of the Kingdom; and as such owed Sult and Service to the Hundred and County-Court, in which (as you yourself forth) all the considerable Actions and Real as Personals were then commended and try'd; it will also follow, that the Suitsor,
Suiors, who were the Judges in those Courts, being for the greatest part at least Frenchmen, all the Trials and Proceedings therein must have been in French, and not in English, which is contrary to what you have undertaken to prove.

F. If this be all you have to object against what I have now said, that all Pleadings in the inferior Courts in the Country, must in the time of your Conqueror have been in French, and not in English; I hope I shall give you very good Satisfaction to the contrary, and shall prove to you, that the very same Person who was Judge in the Superior Courts, was also Judge in the Inferior Courts; and the Suits of Persons in the County, tho' they were of ever so small Estates of Freehold: and that those who were thus Judges in the Hundred-Court, were also the same Persons of which the lowest Court, viz. that of the Headborough or Tythingman, did consist, appears by the very Definition of a Hundred; as you may see it in Sir H. Spelman's Glossary, Est antem Hundredos portio Comitatus, quod ulim decumanum partem regis Fidei Juret, non Decuria quod decem, complexus est in seut Hundredos decemat Divis: curam de decem: now that the Hundred-Court consisted of the same Port of Persons with that of the Hundred, is also certain, since all England was then (as now) divided into Counties, Hundreds, and Tythings: so that as the Hundred-Court consisted of a hundred Persons, who had all given Pledges to the King, so did the County-Court consist of all the Freeholders or Freemen of the several Hundreds of the County, who all owed Suit and Service to the County-Court; and as such were returnable upon Juries in all Trials in that Court, tho' they had ever so small Estates of Land; for the Hundred-Court and County-Court had no Laws but that there were no Laws at all for their Estates of Freeholders returnable to Juries, when the Assizes or Trials, to the yearly value of forty Shillings. But that these Suits to the Hundred-Court, must have been for the most part English in all your Conqueror's Reign, your Doctor has given us a sufficient Testimony in his Answer to Mr. A. Foster, where he tells us, the Jurors were antiently call'd Tiftes, and often in Downe-day-Book it is thus found; "T fizator Hundredos, Tifte Hundredos," the 47. Testator Hundredos, Tis Hundredos, the 48. Testator Hundredos, Tis Hundredos. See the Claims in Norfolk, Lincolnshire, and Suffolk, at the end of that Book. Now the use that I shall make of these words of the Doctors, is this: That in many of these Claims the issue is, that such a one held the Land, die qua Rex Edwardeus sui vivos & mortuos. Now I desire you to tell me, if the Freeholders of the Hundred were all Strangers and Normans at this time, as your Doctor supposes they all were that serv'd on Juries in the Hundred and County-Court, how these Men could testify who held the Land at the time of King Edward's Death, and by what Services? And I desire you to be pleased to read and consider the Trial mention'd in Downe-day-Book, between Will. de Cokina, and Pictus the Sheriff, where the Proof was by the best and most antient Men of the whole County and Hundred, that this Land in question belong'd to Cokina per hereditatem sui Antecessoris. So that then the best and antientest Freeholders of the County of Berkshire, were the same who were so in the time of King Edward, and else how could they witness this Land to have been held by Cokina's Ancestors? But because you have two or three small Objections against this Truth, I shall endeavour to remove them. The first is, that tho' whome't one another's Causes in the County-Court, are in the Law of King Henry I. (which you now cited) call'd Barones Comitiast qui liberaTerrae habent. Therefore you imagine that these Barones Comitiast must needs have been all Tenants in Capite, or by Knights Service at least, who by virtue of that Tenure owed Suit and Service to the County-Court; which is a great mistake; since every Freeholder of what soever Tenure, who was resident in the County, owed Suit and Service to that Court, and it was the twentieth of Henry VI. which limited that Service only to Freeholders of forty Shillings per annum, or above. Now that every Freeholder, tho' of ever so small Estate, was antiently a Baron of the County; is also as certain in the antient and larger Acceptation of the word Baron, which did not originally signify only a Tenant in Capite, or by Knight's Service at least, an antient Freeholder, who could have no other cognizance of concerning Freehold in the County-Court. Now that every Lord of a Manor, and Freeholder, was antiently call'd a Thane before the Conquest, appears by this Law of King Knute's, Et habet omnis dominus familiae suam in plegio suo;
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fu.; & f. accusat tur in alioque, responden in Hundrede, sui compellatitur sicunt rei.
Lest sit. Quod f. accusat tur, & fugiat, reddat Demium ejus Regis Veram, e. e. proprium
nauitatis hominis illius; & f. Dominus accusat tur, quod ejus confilis fugerit, allegat
f. cum quoque Thanes, id est Nobilium; & idem sit f. sectus, f. purgatio frangat
bis, reddat ei (fil. Regis) Veram suam, & qui fugerit, extra legem habebatur. I shall
not trouble my self to translate this Law, since the Latin is plain enough; only
notice that by this word allegat, is meant he shall wage Law, or make Oath
together with five thanes, that is Nobilium or Gentilium, & sic f. sectus,
whereof he himself should be the first: where you may see that every Free
holder, being Master of a Family, is here called a Thane, who was to give
Pledge or Security, that all his Family should answer the Law in the Hundred-
court for any Offence they should commit; and these thanes were such as
Mr. Lambert expresseth by Aegis f. est ingenius quinquae: for what he calls ingenius,
bromton calls liber hominis, that is, every Freeholder. So that you see Thanes, ingenius,
and liber hominis, signify all the same thing: that is, the lower sort of Thanes,
or Freeholders who owed Suit and Service to the Hundred and County-Courts.
And that these very Men were such as after your Conquest were called Barones
Comitatus, appears in this, that those who before the Conquest were called
Thanes, are afterwards called Barons of Counties, in all our antient Laws and
Charters: and for this I shall give you the Authority of Sir H. Spelman in his
Glossary, who the he does chiefly understand by this word all fort of feudal
Barons dwelling in each County. Provided namque, cum dominus
not only these, but numer liberorum quinque Thanes, hoc est fundorum proprietarii,
Anglici Freeholders, ut superius dictum est. So that take it in which Sense you
will, this word cannot signify not only Tenants in Capite, or so much as Military
Tenants, as you suppose; since a Man might hold a Manor by other Tenures
than Knight's Service, as by grand or petty Serjeancy, or in Socage by a cer-
tain Rent; and so likewise he might hold any other lesser Estate of Freehold by the
like Tenures: which if it were so, your Doctor's fancy of Tenants in Military
Service being Thanes, the only Freemen of the Kingdom, such as were capable of
serving upon Juries in the Hundred and County-Court, is a mere
Chimeram, without any ground, as I have already proved at our third Meeting;
when I shew'd you by the words liber hominis, to often mention'd in King
William's Laws, are to be understood not only Tenants by Knights-Service, but
any other Freemen or Freeholders, who held Lands or other Possessions:
which may be also proved farther by the Statute of Merton, cap. 10. as appears
by the clause of the first, that is, as is e fingitur, quod quelo liber hominis.

Comitatuum, Tichingum, Hundredum, &c. in Banten, vel ad Curiam Dominii sui,
libere posset facere Actumnum suum, ad feles illas pro eo faciendas. Whereby
you may see, that every Freeman, who was a Master of a Family, and not
under the power of another, was then oblig'd to pay Suit and Service to the County,
Thyting and Hundred-Courts.

But lay you, these Persons who were Jurors in this great Cause between Earl
Odo and Longman, are there called Prorners and Probi Viz, not only of the
County of Kent, but other Countries where the Lands lay; and it is not
probable that the ordinary Freemans, who made the greatest number, and
were all bound to their good Behaviour, could be the Probi & Legales Homines,
who serv'd upon this Jury: Well, I grant it, that these Gentlemen you speak
of, might be Lords of Mansours, and considerable for Quality and Eilate, and
who alone were impanneld upon Juries in this, and other such great Trials of
Novel Disposition; and yet for all that, those leis Freeman, who were not mentioned,
were Legales Homines, and as such were capable of trying all Causes,
of what nature soever; since Sir H. Spelman tells us in his Glossary, Title,
Legales, That in juure nostro de se dicuntur qui se habet in Curia, nec estex sin
universae, non excommunicati, ut infamia, &c. sed qui in legem posuerit.

Hoc est in legem iudicat in formulis juridicis, probi & legales homines.
So that he does not make (as you do) that a Man's Legality must depend upon
his Tenure, but upon his being in Curia. So that 'tis no more an Argu-
ment, than those Men, who in great Trials of the State, and most considerable Men in the Country were impanneld upon Juries in the County-
Court, therefore may not but they could ever serve there upon Juries at all; than
it would be now for a Man to affirm, that because in great Trials at the Af-

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fizes, or at the Bar at Westminster, only Knights and Gentlemen are impannel'd, therefore none but they, and not any Yeomen, or Countrymen can ever serve upon Juries at all.

But let the Gentlemen you mention have been all Tenants in Capite, or by knigkhtly tenure, ye shall yet it will not make good, our assertion, that they were only Norman or Frenchmen; who as the only Proprietors of Estates, serv'd upon this and other Juries at that time: for they must have certainly been such, who of their own knowledge knew the Lands in question, and to whom they did belong before King William's Conquest into England. And your Doctor himself in his answer to Mr. Arnold's Janus, fully agrees to this Truth, as appears by this Passage, which I desire you would read. In Trials of Novels in England, and in several, of the Commons, it is said, that the Juries in the time of the Conquest, and in several of the Kings Reigns previous, being impannel'd out of the same Town and Neighbourhood, of such as did know the Land and things in question, and who had been poffessed of it, and for what time. And to this purpose in an Affize, if none of the Jurors knew the right it fell, or trouth of the matter, and did testify so much to the Court upon Oath, recourfe was then had to others, until such were found who did know the Truth; but if some did know the Truth, and others not, they were brought before the Jurors, and other called by them, until twelve at the least should be found to agree therein: and for this purpose it was that all Sauitors to Hundred and County-Courts were bound to appear there under great Penalties, that there might be a Jury of such as knew the Land; and so far your Doctor is very much in the right. But then, that all the Gentlemen that serv'd upon this Jury must be Englishmen, as plain from the Reason he hath now given us: and if he had not told us, in the beginning of his Answer, the Original Authority for it; to wit, the ancient Laws of England, and the Countrymen of the place, it was not likely he would have been put by, and others called to the Jury, in this Caufe, it will follow for the same reason in all other Counties all over England. Lastly, that the Gentlemen were well skill'd in the ancient Laws and Customs of England, which had been in vain if they had been alter'd as you suppose.

M. I will not deny but that in the beginning of the Conqueror's Reign, many Englishmen might have Estates left them, which might not be taken away till some years after; and Mr. Selden in his Titles of Honour, places this Trial between the Year of King John and Bishop of Durham, when the first Year of his Reign, and I suppose that it happen'd before the fifth Year of his Reign; when Matthew Paris tells us, That the Earls ofEudoine, Mesce and Simon, therewith Egidius Bishop of Durham, as also many thousands of Clerks and Laiks, not being able to bear the Severity of King William, fled into woody and defart places, and from thence got into the Isle of Ely, where they fortify'd themselves; and whither King William follow'd them, and taking the Island made them submit to his overlords; then the King put the Bishop of Durham in Prison; and as for the rest, some of them he kill'd, some he put to random, and others he committed to perpetual Imprisonment: so that I reckon from this time, the King took away most of the Englishmen Estates, as not troubling them any more.

F. If this had all happen'd as you have put it, yet would it, not prove what you have maintain'd: for if those Englishmen who had not been engag'd with
with Harold, or else he had been pardoned for it, still held their Estates, and as you say forfeited them afterwards for Rebellion; then it is certain King William did not proceed against the English as a Conqueror: since if he had, he would have taken away their Estates sine bello; which since, as you yourself confess, he did not, whatever Estates he took away afterwards, it was either for Treason committed by the English, or else wrongfully: if the former, he did it as a lawful King; if wrongfully, then as a Tyrant, and as such could obtain no just right against the English Nation by his unjust Proceedings.

But indeed after all, you are quite out in your account concerning this matter: for as to the great Trial you now mention'd, it could not be in the first or second Year of King William's Reign, nor could happen sooner than the sixth or seventh of his Reign; for Archbishop Sigand was not depos'd till the Year 1070, which was the fourth Year of King William; and in the next Year, being 1071, the Annals of Malmesbury, as also the Chronicle of Thomas Wicks, place the Civil Wars, and first Conquest, and in that Year anno domini 1073, so that it could not be until the Year after this Rebellion at the soonest, when Lanfranc was settled in his Bishoprick, that this Suit was commenced by him against Earl Odo; and therefore a great many of the English Nobility and Gentry had still Estates left them after this Rebellion.

And that they continued to have so many Estates at this time, appears by those Writs of King William, which Mr. Arscott hath given us in his Joma, B. 1. A. p. 42. Among those concerning the Reddition of the Lands which the Church of Ely, which are also transcribed and allow'd by your Doctor in his Answer to it; and I desire you particularly to consider that Writ of King William's directed to Archbishop Lanfranc, Roger Earl of Morten, and Gregory Bishop of Constance, commanding them to cause to be assembl'd all those Shires who were present at the Plea that had concerning the Lands of the Church of Ely, before the Queen went into Normandy, the rent being most material to the Cause in hand, I shall give you in Latin: Cum quibusdam sanctis de Barumibus, quos qui congregaverint, et quos terras ejusdem Ecclesiae tenent, quibus in unum congregatis eligantur plures de illis Angli, qui sunt a parte quod modo terrae inactam promissa Ecclesiae, dixit Rex Edwrd us obit, quod in die decreti ibidem jurando tenetur. From whence we may also gather, that this Trial concerning the Lands which is here order'd, was to be in like manner, and by a Jury of the same sort of Englishmen, who try'd the Cause between Earl Odo, and Archbishop Lanfranc; that is, they were English Gentlemen of sufficient Estates, or the greatest in England. If your Plea now look'd upon is a lit for the time when this happen'd, since the Writ doth not tell us when it was, only that it refers to a Plea held concerning the Church of Ely, before the Queen's last going into Normandy; so that this Trial here mention'd could not happen till after the fourteenth Year of King William's Reign, which I prove thus: This Queen did not come over into England, till the Year 1068. When the King return'd with his Queen out of Normandy after his Coronation, at which she was not present; and in this Year, King William went not into Normandy, but thither only to the Court, to the Time when his Reign, when he went over and took Man; and then whether he carried the Queen along with him is uncertain. But the Annals of Waverley tell us, he went over again the next Year, and then he might carry the Queen with him, which might be the first time he return'd into Normandy: but it appears by the same Annals, that the King went over the Year after; and sayling but a little while, return'd into Normandy to fight against his rebellious Son Prince Robert, where being lying long, he return'd as the Annals say, out of Normandy. Nor do we find he went over again till the fourteenth Year of his Reign, being the Year 1080, and then I suppose since he stay'd there for some time, he carried the Queen with him; and to this last going over I suppose this Writ we have cited refers: for the the Queen went over again after this, yet the return'd no more, because she died in Normandy in the Year 1083, as Ingulph, who was then alive, relates. The use I make of these Particulars is this, That long after the time you suppose the English to have lost all these Estates in England, we here find a great Jury of Englishmen in several Shires in England, to try this great Cause, concerning the Lands which the Church of Ely had been unjustly dethisof. So that here you see, after Z z z the
the fourteenth Year of this King, the English still continu'd to keep their
Бatles, and to serve upon Juries; and consequently the Pleadings before them,
as well as their Verdict, must have been in English.

M. I shall not insist upon this point any farther, yet this much you cannot
deny, but that all the Pleadings and Proceedings at Westminster, as also
the old Law-Books were all in French, as appears by the M. M. of Justice
Bristow, not to mention those of latter Days, as Littler's Tenures, and oth-
er; and so were also the ancient Year-Books or Reports of Causes, all writ-
ten in Norman French, even in our own Age: so that since this proceeded from
that great Alteration which the Conqueror made in our Laws, it is also a
Badge of that Yoke which he imposed upon the Nation by his Conquest. And
to make this yet more plain, that very Copy of King Edward the Confessor's
Law in the C. D. C. which (together with King William's Admissions to them) Inguleth tells us, he brought down with him to his Monastery,
and which he has inserted into his History, as you may find them in the last Edition
printed at Oxford, and were before published by Mr. Sedley in his Notes upon
Endowments.

F. I cannot deny but that some part of the matter of Fact is as you have
here laid down; yet it will not follow that this common use of the French
Tongue in our Reports and Laws did proceed from the Norman Conquest;
or is any Badge of Conquest: For first, the most antient Laws of King William,
which we find in Speelman and Lumbard's Collections, are in Latin, as they were
before the pretended Conquest. I grant indeed those you mention in Inguleth
are in French, but they being most of them Criminal or Penal Laws, or else
concerning Tenures, it is no wonder they were publish'd in the Language of
his Country, that the Normans and other Frenchmen he brought over with him
might understand them; and tho' they were written in French, yet they were
published in English, that the People of that Tongue, that is, the English,
and those who were born in England, might take notice of them. But after these Laws, you will not find any antient
Charter or Statute in French, till the Statute of Wilm. I. which was above 200
Years after your pretended Conquest; for all the Charters of this King
William are in Latin or Saxon, as that particularly granted by him to the City of Lon-
don; so likewise were all the antient Charters and Laws of the other succed-
ning Kings, as those of King William Rufus, Henry I., King Stephen,
and Henry II. King of France, and some of the Laws of Saxon, and
several of their still to be seen in the Archbishop's Library at Lambeth, and
in Sir Robert Cotton's, and also Magna Charta, and all other Statutes and Charters
of King John, and Henry III. till the Statute of Wilm. I. above mention'd:
and therefore it is not likely that this Custom should have taken its original from
Normandy; for if it had, it would have been begun immediately after your
Conquest. And as for our Law-Books, tho' I grant those you mention'd to be
written in French, yet is it not the Norman French, since it differs very
much from the Language in which King Edward's Laws are written, which are
Inguleth, the French of which is so obsolete and obscure, that he that understands
our Law-French very well, can scarcely make any sense of them; but our first
Writers concerning the Laws of England, write in Latin, and not in French, as
you may see by Glanvil, Bradstone, and Hicco, who write before Horn's Mirror
of Justice, or Bristow's Trespass of the Laws of England.

As for your Books and Reports, I grant they are in French; but that this
Custom was not deriv'd from Normandy, is also certain, since the first Reports
we have begin with the first Year of Edward II. except some few Memorandums
of Causes adjudge'd in the Exchequer in the Reign of his Father, above 200 Years
after King William's coming in (as I said now noted;) nor could they be written in
the Norman Dialect, since we had then nothing to do in that Dialect, which
had been conquered by the French in the beginning of King John's Reign, above
eighty Years before any Report or Law-Book was written in French at all; and
therefore were not deriv'd from the original of this Custom from some other Cause
that, the mere Will and Pleasure of your Conquerors, and for this we must go as high
as the Reign of King Edward the Confessor; who, as Inguleth tells us, "ha-
vied lived long in Normandy, and bringing over divers Normans with him,
the whole Nation began under this King to forsake the English Customs, and
"to imitate the French Manners in many things, so that all great Men looked
"upon
A Dialogue the Tenth.

"upon it as a piece of good Breeding, to speak French in their Housels, and
to make their Deeds and Charters after the French manner: so that it was very
caly for King William after his coming in, who (as Ingulf also tells us) ab-
hor'd the English Tongue, to make the Laws of the Land to be pleaded in
the French Tongue, and to make the Boys to learn at School the first Rules
of their Grammar in French; and also to the Saxon or English Hand to be
alter'd, and the French Hand to come in use in all Books and Writings." And
the I confess most of the Chief Justices and Judges were Frenchmen or Nor-
mans, during the three or four first Kings of that Race; yet that alone could
not have casued this Tongue to be so generally used, not only in the King's-
Court, but also in all the Courts at Westminster, after Englishmen began again to
fit there, had it not been for the tact: Content not only of the King, and Peo-
ple of Quality, but also of the Lawyers themselves: for the Law was being
for the most part French, they did not only thereby make the Law the greater
mystery to the Vulgar, but they also suppos'd that such Terms being French,
could not be rendred into any other Language. Yet for all that, it had been
impossible for this Tongue, which was spoke by so small a number of Per-
sons in respect of the whole Nation, to have prevailed so long among the bet-
ter sort of People; had not our Kings for many Ages enjoy'd large Territories
in France, which occasioning their frequent going over thither about Affairs of
War or Peace, as also the French Gentry and Nobility's frequent going over
thither, it is no wonder if that Tongue being the Language of the Court, was
generally understood and spoken by all Noblemen, Gentlemen and Lawyers.
So that I have heard it from a very good Hand, a Person who is well
veried in Antiquity, that a Gentleman being return'd on a Jury in the Reign
of Edward II. was excepted again, because he did not understand French; and
hence it is, that not only the Terms of our Law, but also those of Heraldy,
Honours, and Houses, are almost all French to this day and the Sub-
tute of Edward III. which you bet now mention'd, all Pleas should be in English,
and not in French; yet I desire you to take notice, that this did no way extend
to any matters of Process upon which Suits are founded; but that the Writs,
Declarations, and all other matters of Record were always entered and enrolled
in Latin, from before the Conquest to this very Day, so that there was never
any Alteration as to that point. These things being consider'd, it is no won-
der that Commons of Parliament, who were in the drawing up of all Acts of Parliament, being greater Masters of the
French than Latin Tongues, chose rather to draw them up in the former: and
thus it continu'd until the Reign of Henry VII. when our Statutes began first
to be drawn up, and enrolled in English.

M. I confess you have given me a greater light in this matter than I had
before; yet I suppose you cannot deny that the Tenure of Knights-Service,
with those rents and services due to it of Wardship, Marriage, and the like, were all
derived from the Normans, as appears by the grand Custom of Normandy,
which I have already mention'd: so that tho' it be true that all these are now
taken away by a late Statute of King Charles II. yet since this Tenure, and
those Services are not found among the Seven Laws, there cannot be a greater
Proof of the antient Power of the Conqueror, or of the Servitude imposed
upon the Nation by him; and therefore I look upon it as a very imprudent
part of the late King Charles, to part with so great a tye, which he himself
and all his Predecessors had over the Persons and Estates of all the Nobility and
Gentry of the Kingdom.

F. I shall not take upon me to decide whether it we pollicilly done or not
of King Charles I. to part with the Wardship, and Services of his Tenants by
Knights-Service; but this much is certain, that considering the Abuses and
Corruptions that had crept into that Tenure by degrees, since the first Institu-
ton, both by the unit Marriages of the Heirs, as also by the want of time, that,
was once committed to the Ward's Estate during his Minority, it was cer-
tainly a very great grievance and burden to the Subject; and considering how
many of those Wardships were begg'd by hungry Courtiers, they were of no
considerable profit to the Crown: and tho' I grant they were a very great tye
(or rather dog) upon the Estates of the Nobility and Gentry of this Kingdom,
yet it did not thereby produce any such Love or Obedience, as would retain
the
the Tenants better in their Duty before then since they were granted away. For the Forfeitures for Trea son and Felony, and also Fines for Alienations, are referred to the Crown now as they were before; and as for any love or respect which was antiently paid by the Heir, how could there be any such thing? since the King granted away the Custody of the Heir, and his Lands, to Persons who for the most part made a mere Prey of them; so that they were often married against their Con scents, and their Estates were delivered to them wafted and spoiled: besides also what was exacted from them for Reliefs, and under les muns, we need not wonder if it were rather a Cause of secret discontent and hatred of the King's Prerogative than otherwise. And therefore I cannot think it was so unpolitically done by the King, to render himself gracious and acceptable to his People upon his return to grant their Request, and pass that Act for laying away Waste and Liversies, and to accept of a Revenue by Exact of trelle the Value instead of it.

But to come to the Original of Knights-Service it self, I do not think it was deriv'd from the Normans, since we are certain there were Thane-Lands in England which were held of the King, and that by Knights-Service, before King William's coming over, and there were also middle Thanes who held of those Lords above them by the like Service; insomuch, that in the Laws of King Knute there is one concerning the Heriots, which an Earl, the King's Thane, as well as inferior Thanes, were to pay not only to the King, but to other inferior Lords; which are almost the same as were afterwards refer'd of by the Laws of King Edward the Confessor, confirm'd by King William, as you would find them in Ingelsea; only there is no Gold referred, but only Horfes and Arms: whereas by the Law of Knute, each Earl was to pay two hundred Manuatus of Gold, each King's Thane fifty, and each inferior Thane two Pounds. Only note, that he who is call'd an Earl in King Knute's Laws, is call'd a Count in these; the Thane a Baron, and the inferior Thane a Vassal: and that which is there call'd a Heriot, is here termed a Relief.

And that this Tenure by Knights-Service, which is now call'd Esgudge or Servitium Scuti, was of antient time nam'd expeditio hominum cum scuti, and was in use before the coming in of the Danes, is also as certain: for Sir E. Coke in his fourth Inft. tells us of the Charter of King Canute, who Anna Domini 821. granted to the Abbot of Abingdon many Mannors and Lands; and referred, giving as a reason, Quod legem serviam cum tanti scuti exercere, antiqui pontes & arcus renovant. And also he mentions a like Charter of King Ethelwold to a Knight call'd Athelwys, Anna Domini 955. So that you see not only spiritual Persons, and great Thanes or Barons; but also Knights held Lands by the Service of so many Men before your Conqueror, and your Doctor also himself allows it; for in his Anfwere to Mr. P., in all antient Charters in the Saxons times he translates the word Fides by Tenants in Capite, or Military Service. As all not deny that Military Fees were in use before the Conquest, and also that the feudal Law did obtain here in many things; and therefore I am so far of the Doctor's Opinion, who in his Glossary, Tit. Feudal Laws, tells us; "The feudal Law obtained in most Nations of Europe, and in Normandy was in its full Vigour at the time of the coming over of the Conqueror, but after warders grew more mild and qualify'd, as also the Tenure it self; a perfect Description of which, with all its incidents of Homage, Relief, Ward, Marriage, Escheate, Aids, &c. are to be found in the Great-Cutler's, Cap. 55. 33, 34, 35. And also there were Military Fleets, or Fees, here in the Saxons times, yet not in such manner as after the Conquest establish'd here by William the Conqueror, and according to the usage in Normandy; whereas it appears by Doome-day-Book, in every County he divided moft, if not all the Land of England, amongst his Normans and Followers." Now that this Cutler of Wardship is wholly derived from the Norman Conquest, you shall find in Sir. Edw. Coke's fourth Inft. in the fame Chapter you last cited, as you may here read: "You have heard before that the Conquest; but that regales servitium (which was Knights Service) drew unto it Relief, but neither Wardship of the Body or of the Land, as hath been said, it is true, that the Conqueror, in respect of that Royal Service, as a badge of the Conquest, took the Wardship of the Land, and the Marriage of the Heirs within Age of such Tenants; but this extended not to the Tenures of the
"the Subjects by Knights Service, as it appeareth by Brætan, Dictur Regal
ferovium, quas ejus ad dominum Regem & non aliena, & securum quod in
Conquès fut adiuvamentum, &c." Whereupon Sir E.C. notes (in the Margent)
this Tenure (as before it appeareth) was not then invented, but the Fruits of
this Tenure of the King, viz. Wardhip and Marriage, (which was Brætan's
meaning) the the Conqueror referred for himself; but other Lords at the
first by Special Rerervation, since the Conquest, referred gifts of Lands for
themselves; Regis ad exemplum tantus compositor orbis: wherein that which we
had from the Conqueror we freely confess.

F. I shall not dispute this matter, since it is doubtful whether this Custom
of Wardhip was Norman, or whether it was deriv'd from the Saxons, who
politicly might have some respect to Orphans in such Cases, to train them up for
the Military Service of War; especially being out of such a knownne
need of Relief. Thus Alfred the Saxen King did undertake this Work for the
training of some particular Perions in Learning, for the Service of the Pub-
lick in time of Peace, and Civil Government: and the Sir H. Spelman is of opin-
ion in his Title de Wardas, that Wardhip of the Heir came in with the Con-
quoror; yet Sir John his Son, (who was also a Learned Antiquary) in his Epi-
tlogue to his second Book of King Alfred's Life, prints at Oxford, speaking of
Military Fees granted to the King's Thanes, has this Passage. Hee ejus
vita, pp. 117, 118, 119, 120, p. 121. "Herculus faciat belli fortetu, sine reorem
in hominem, sine necessitate, sine tenebra, condidisse pleuropopum transibat; & si
heredes minoris mater ad Patre
morientem velinquenter, regem educavi eum (upote regi Honemini) committere,
in ut sacram entis & comodum ipso Regis. But whether the Wardhip of
the Body of the Heir, was in use in King William's time or before, is uncertain;
for the Land is in the Charter of Henry the first in Mat. Paris, granted either
to the Widow or next Heir.

But lest these Customs be deriv'd from whease you please, it is a placne Case it
could be no badge of Conquest upon the People of this Nation, and that by
the Doctor's own showinge; for were it a Norman Custom ever so much, if your
Conqueror feirc of all impoised it upon those he brought over along with him,
it could never be a Badge of Slavery upon the English Nation, but rather upon
the Normans, upon whom it was chiefly impoised: and if they afterwards
granted Lands to the English upon the same Terms they held them themselves,
they were no more bound to whom they were granted, than of a knownne
necessity by whom they held them. But indeed this was so far from being look'd upon as any
badge of Servitude, that the Doctor himself is to be beleir'd, "These were
the only Freemen, and their Services (Brætan says) were so notoriously
free, that in Writs of Right it was never mention'd, because so well
known; Notandum in servitio Militii non dictur per liberum servitum, &
cid quo custos, quia tales servitios liberum esse." And however rigorous the
face of it may be at the beginning, it was when your Conqueror came in so
far mitigated as to the rigor of it, that the Teants by Knight Service were
not only free by King William's Law, from all arbitrary Taxes and Tallies, but
also obtained a settled Inheritance to them and their Heirs, as appears by that
Clause in King William's Charter already mention'd; and therefore in the Reign
of Henry III. when William of Warren Earl of Surrey was question'd after the Stat-
ute of Quo Warranto by the King's Judges, by what Warrant he held his
Land, pulling out an Old Sword, he answer'd to this Effect: "Behold my Vid. As an
" Lords, here is my Warranty, my Ancestors came into this Land with this Sword time 
the Balfour, and obtained those Lands by the Sword, and I am resolv'd with
this Sword to defend them against any whosoever shall go about to disposse
me; for the King did himself alone conquer the Land, but our Progeni-
tors were Sharers with him and Attendants therein."

As for what you say, That the Laws in the Customary of Normandy, are the
same with the Laws of England; it is no more than what divers French
writers have taken for it, but do not attribute their being borrowed from the Normans, but quite contrary: for in the first place most
of the Learned Men say, That the first establishment of the Customary of Nor-
mandy, was in Henry I's time, and afterwards again about the beginning of
Edward II's time, when Normandy was not under the King of England. And
Sequius a French Author relates, that King Henry I. establish'd the English pg. 461.

Laws
Laws in Normandy, and with him do also agree Guillaume Brius, Eustachius, and other French Writers, who mention also that the Laws in the Customary of Normandy are the same with the Laws collected by our English King Edward the Confessor: an additional Testimony hereof is out of William de Rivières de Avenon, who in his Latin Comment upon the Customary, proves and demonstrates that the Laws and Customs of Normandy came from the English Laws and Nation, either not long before or after Edward the Confessor’s time.

In the Norman Customary, there is a Chapter of Nances or Diffrets; and it is there declared, that one should not bring his Adonis upon any Seafare, but from the time of the Coronation of King Richard, and this shall be our King Richard I, because no King of France was ever of that Name; and the words Nances and Wirkernomes were Saxon words, taken out of the English Laws, signifying a Pawn or Diffret, and in the same Sense are used in the Customary.

But if you have nothing more to object against what I have now said, pray proceed to your last Head, and let me see how you will prove, that the English left all their Ancients and Liberties and Privileges which they enjoyed under the English Saxon Kings.

Mr. I never heard so much before concerning the original Use of the French Tongue in our Reports and Law-Books, but yet this much I think you will not deny: First, that the Norman French was never used in our Courts of Justice, till after the Conqueror’s Entrance. Secondly, That he did his endeavours usually to root out the English Tongue, by ordering all Children to learn their Grammars in French; and as for Grammar in French; and as for the Normans, and Wirkernomes being especially as to Tenures derived from the English Laws and Customs, I do not deny, but that it may be the opinion of some French Writers that it was so; but I shall believe it, when they can prove that the Wardships and Marriage of the Heirs of the Tenants by Knights Service, as also those Aids they were to pay the King, or any other Lord they held of, towards making his eldest Son a Knight, and marrying his eldest Daughter, were in use in England before the Conqueror came over.

But to observe your Commands, I shall now proceed to shew you by the Conquest, the English for a long time lost all their ancient Rights and Privileges, till they again obtained them either by their mixing with the Normans, so that all distinction between them and the English were taken away, or else they were reformed by the Charters of King Henry I. King John, and King Henry III. I shall therefore divide the Privileges of Englishmen into these three Heads: First, such as concerned their Offices or Dignities: Or, Secondly, Such as concerned their Estates: Or lastly, Such as concerned the Trial for their Lives: in every one of which, if I can prove the English Natives, as well of the Clergy as Nobility, suffered considerable Losses and Abridgements of their ancient Rights and Liberties which they formerly enjoyed, I think I shall sufficiently prove the point in hand. As to the first Head, Ingulph tells us,

That the English were so hated by the Normans in his time, that how well they deserved, they were driven from their Dignities; and Strangers, the most left fit, of any Nation under Heaven were taken in their places.” And Malmesbury who liv’d and wrote in the time of Henry I, says,

That England was then become the Habitation of Foreigners, and the Ruins and Government of Strangers; and that there was at that day no Englishman an Earl, Bishop, or Abbot; but that Strangers devoured the Riches, and gnawed the Bowsels of England, neither is there any hope of ending this Misery. So that it is plain they were now totally deprived of all Offices and Dignities in the Common-Weal, and consequently could have no place in the Great-Council, the Parliament of the Nation, both for the raising of Taxes, and the making of Laws. And tho’ I grant Mr. Pryn and your self suppose you found a Clause in the Conquer’s Magna Charta, whereby you would prove, that all the Freemen of this Kingdom should hold their Lands and Possessions well and in peace, free from all unjust Exactions and Taintage, so as nothing be excited or taken unless free Services, which of right they ought and are bound to perform to us; and as it was appointed to them, and given and granted to them by us as a perpetual Right of Inheritance, by the Common-Council of
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the whole Kingdom; yet this Common-Council will not help you, for without doubt here were no Englishmen in it; for certainly they would not grant away their own Lands to Strangers. These were the Seven Lands which William had given in Fee to his Soldiers, to hold them under such Services as he had appointed them, and that by right of Succession or Inheritance.

We will now come to the second point, viz. the Privileges the Englishmen lost as to their Rights: for whereas before the Conquest you affirm, the King could not make Laws, nor raise Taxes without the Common-Council of the Kingdom; it is certain King William, and his immediate Successors, did by their sole Authority exercise both these Prerogatives. As for his Legislative Power, it appears from the words of his Coronation-Oath, (as you yourself have repeated it out of Florence of Worcester, and Roger Mower,) the Conclusion of which Oath is, Se sub rege legem ferunt et tenent, Rapiunt interque quosvis potestatem. Now the Legislative Power was then lodged in him, why else did he swear to appoint right Laws? For if the Constitution had been settled as it is at present, the Parliament could have hindered him from making any other; and that he could do so, appears by that Yoke of Servitude, which Matthew Paris (as well as other Authors) tells us, King William by his own Authority imposed upon the Bishops and Abbots in England which held Baroines, which they had hitherto enjoyed free from all secular Servitude: he now, says he, put them under Military Service, selling all their Bishopsrics and Abbies, according to his Pleasure, how many Knights or Soldiers each of them should find to the King and his Successors: And putting the Rolls of this Ecclesiastical Service in his Treasury, he caused to fly out of the Kings domes of Ecclesiastics who opposed this wicked Constitution. Now if he could do this upon so powerful a Body, as the Bishops and Abbots were at this time, he might certainly as well relieve the People of England, and therefore Henry of Huntingdon tells us, that King William upon his return out of Normandy into England, Angliis impeditus. Lib. 3, p 379. And that his Son William Rufus imposed what Taxes he would upon the People, without consent of the Parliament, appears by that Pulpit of William of Malmesbury, which he relates in the third book of his Historiæ, concerning Rufus, whom a very mean Clerk he made Bishop of Durham, and Lord Treasurer: the rest I will give you in Latin: sive si quando adhiberis regionis praestitit in memoriam tributum Angliis penderet, duplum adijicaret, juxta videlicet Rege ac domo regis afferentur ingenios; nos aliquem custodem edimus, demovendo templo placetem. So that you may here see that the Kings Edict of Proclamation did not only impose to the Tax at his Pleasure, but his Treasurer could double when he had a mind to, without Consent of the great Council, as we now call it: and this Prerogative was exercised by divers of his Successors, till the Statute de Talagia non comendando was made.

But to come to the last Head concerning the alteration of Trials for Mens Lives and Estates by the Conqueror, from what they were before: it is certain that whereas before the Conquest there were no other Trials for Mens Lives but by Juries, or else by Fire or Water Ordeal, which was brought in by the Danes; the Conqueror tho' he did not take away thefe, yet also added the Law then in use in Normandy, of trying not only Criminals but Civil Causes, by Duel or Combat; all the difference was, that in Criminal Cases where there was no other Proof, the Accuser and Accused fought with their Swords, and the Party vanquished was to lose his Eyes and Stones; but in Civil Causes they could all fight with Balfoons headed with Horn and Bucklers, and he or she Complainon who was overcome lost the Land that was contended for. From whence you may take notice also of a great alteration in the Law, not only concerning Trials, but capital Punishments: so that before the Conquest, all Crimes, even Manslaughter, if it fell, were fiable according to the Quality of the Person, and the Rates set upon each Man's Wergeld, or price of his Head, as you will find them set by the Laws of King Athelstan, after that time instead of Fines, capital or corporal Punishments became chiefly in use. I shall not insist much upon divers lesser Things, which King William as a Conqueror imposed on the People of England; as disarming them of all offensive Weapons, forbidding them to hunt or kill any Deer in his Chafes or Parks, Aaaa relis,
BIBLIOTHECA POLITICA.

rere, under the Penalty of loss of Eyes and Members, as also keeping up and enforcing the ancient Laws of Decencies or Tythings, whereby every ten Families were bound with their tenth Man or Tythingman, Body for Body, of each others good appearance; as also that Law forbidding all sitting up late at Night, or Assemblies after eight of the Clock, but the very clock went so Bed, and put out both Fire and Candle at the ring of the Cofferen Bell; these things I think are very sufficient to prove that King William as a Conqueror did very much abridge, and in some things wholly take away the ancient Privileges and Liberties of the English Nobility, Clergy and Commons, and did also make many and great Alterations, not only in the Forms of Pleasings, but also in the very Substance of our Laws, both Criminal and Civil: and if he did not make more Alterations of this kind, it was wholly owing to his first Will and Pleasure; since, as Suidseram tells us, he ordered all Divine and Secular things according to his Pleasure.

Thus I may the better answer what you have said, I shall partly grant, and partly deny the matters of Fact you have alleged; and also further prove that if they had been alais you have laid them, yet would not they prove your Conclusion. That King William by his own Arbitrary and Tyrannical Measures could create any Right by Conquest, either to himself or to his Successors, and therefore to begin with your first Head, viz. the Privileges of the English Nobility as to Offices and Dignities, to which I grant it was true, as the Authors you have cited relate, that scarce any Englishman was, when the writ, either a Bishop, Earl or Abbot, yet this is to be understood only of the latter end, and not the beginning of his Reign: for as to the Bishops and Abbeys, I do not read of any more than Suidseram Bishop of Canterbury, and Egbert Bishop of Bath, being deprived of their Bishoprics, had Successors put into those Rooms in their Life-times; and yet in the place of this, not any Norman, but one Wake an Englishman was named by the King to succeed. And as for the Earls, of all those who were against him and opposed his coming in, there was not one but he received into Favour, and was put in his Dignity and Estate, and in particular the Earls Edwin and Morcar Brothers, together with Wake and Siward, and Edgar Atheling, whom they had named King of England, who all kept their Earldoms and Estates till tyrannical Proceedings, till three years before this, you have already shown: tho' I confess Prince Edgar had for two or three Years before this, fled into Scotland; but yet was afterwards restored to the King's Favour and his Estate. Nor do I find any considerable Alteration in the King's manner of disposing of his Honours and Preferrments, either Ecclesiastical or Civil, till Earl Wake was convicted of being in the Plot, with Ralph Wake Earl of Northumberland, and other Lords, as well English as Norman, to expel King William; and from that time (being the eighth Year of his Reign) I grant he changed his whole course of Government, and put no more Englishmen into any Places of Honour or Profit; the W. Malmesbury endeavours to excuse the King's Severity in these words, Inde profectum rogis fortis meritis econstauum, St aliquando dura in Anglia tertia, quod penes multum venientia et exsudata temptum: and with this Author's good leave, the King had been the cause of this Conspiracy, by his own Tyranny and Breach of Oaths, as I shall show you by and by.

So that either this King was mov'd by just Provocations thus to debar all Englishmen from being prefer'd to Dignities or Offices, or he was not; if the former, and that he had just cause to do so, it was no more than what any other for into it face who had no Hereditary Right to the Crown, would have done in the like Case: But if the latter, it was not only contrary to Justice, but also to his own Coronation-Oath, one Clause of which, as Malmesbury shews us in his Book of Penticost, was, quod se condum constet et subsequatur, et aequum fuerit Anglorum Hominum, to his own Coronation-Oath, one Clause of which, as Malmesbury shews us in his Book of Penticost, was, quod se condet et subsequatur, & aequaliter Anglorum Hominum, was, quod se condet et subsequatur, & aequaliter Anglorum Hominum. So that this King's arbitrary and violent Proceedings, after he had for some time governed as a lawful King, tho' they might prove him a Tyrant, yet they could by no means make him a Conqueror. And as for the latter part of your Argument, whereby you would prove that in the Reign of King William the great Councils of the Kingdom, that can only be understood (in the strictest sense) of the times after the great Conspiracy I now mention'd; for before, it is very evident that there were many Bishops,
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Bishops, Earls and Barons still left, who must have been Members of the Great Council. Nor can you prove that the Law I have mentioned against the King's taking the Tailage or Taxes without their Consent, was made after that time; but let it be made when it will, you shall never persuade me it was enacted without any Englishmen being present, till you can prove to me that there were no English Tenants in Capite towards the end of his Reign, and that there were then no Knights, Citizens or Barons that represented the Commons in the Great Council; and can give a better answer to those Arguments I have given you to prove they were there; especially that remarkable Clause in the Conclusion of this King's Charter, to the Abbey of Westminster, which mentions divers principal Persons, both of the Clergy and Laity, to have been summoned to that famous Synod or Great Council, when this Charter was granted.

I come now to your next Head, whereby you would prove this King's Abjuration of English Privileges, as to their Estates and Properties, to begin with that of the Legislative Power; which, as you say, was then wholly in the King. Admit it were so, it will not prove that for which you urge it, viz. that it is a sign of the King's Absolute Conquest over the English: for if the Great Council of the Kingdom had then lost its ancient Right, it was his Norman and Frenchmen, as well as the English, that were bereaved of their ancient Privilege, of giving their Consent to Laws; since it is very certain that neither the King of France, nor the Duke of Normandy could at that time make any Laws without the Consent of their Estates.

But the Truth is, that your Conqueror could not do it; for if the Normans he took upon him, and the greatest part of all the Lands in England, they would have been too powerful a Body of Men to be thus made Slaves at his pleasure. Indeed his own Laws shew the contrary, for in that very Law it appears otherwise: "Whereby all the Freemen of L.L. Guia. § 5. the Kingdom were to hold their Lands and Possessions free from all unjust 

"Exclosures and Tailage, and that nothing should be exacted of them, but their free Service, which they were bound to do according as it is appointed 

"them by the King, and if it is granted them by an Hereditary Right for ever, 

"that they hold the Lands and Liberties granted them, for an Hereditary Right, not only by the King, but by the Common-Council of the Kingdom, and that the King could not alter King Edward's Laws without their Consent. The Charter of King Henry I. says expressly; 'Legem Regis Edwardi subsidet, cum 

"his excisionibus quibus Pater sanctemodo Conciliæ Barœnum furnæm. Therefore: as for that Authority you have brought out of H. Hemingston, that upon 

"this King's Conquest, he imposed a heavy Tax upon the English, this is either to be understood of such a Tax as they gave him, voluntarily, the perhaps they d'arly not do otherwise, as the States of Provence and Lan-

"gudie are far to do to the King of France at this day, when he requires it; and yet he does not claim those Countries by right of Conquest: Or if King William imposed this Tribute without their Consent, it was not only contrary to the Law just now mention'd, but also to his own Coronation-Oath, whereby he 

"swore to his own Council, and that his Laws should be justly towards his Subjects; with which, certainly his taking away their Money 

"without their Consent, would by no means coincide. But 20 answer that part 

"of the Coronation-Oath which you think makes most for you, that whereby he 

"swore only to make Laws, which must have supposed the Power to have 

"been in himself, because the Parliament might have hindered him from doing 

"otherwise; this is but a Cavil, for it is already prov'd that he was to make 

"Laws, and raise Taxes by the Common-Council of the Kingdom: and therefore 

"their words may very well bear another Sense, and do only give the King a 

"negative Voice of putting such Laws as the Great Council should offer to him, 

"or such as he might propose to them for their Consent. And I suppose you 

"will not deny but that it is very possible, that either the King or the Parliament 

"may propose such Laws as may not seem equitable, or just; and then cer-

"tainly both the one and the other have a negative Vote, and ought not to give 

"their Consents to them.

But to answer your last Inference, whereby you would prove that this King as 

"a Conqueror imposed what Taxes and Services he pleased; not only upon the 

A a a 2

Laity,
Laity, but the Clergy too; by making the Bishopsprickes, and greater Abbies liable to Knights Service, which you suppose to have been done by his sole Authority, without any Confect of the Common-Council of the Kingdom: this is only 

gratia dilium, and is indeed altogether improbable. For if the King, or his Power, are 

a reddit, he would have imposed this Service upon all the Abbies in England, whose Lands might have been as well reduced to Knights Fees, as those that were put under that Service; and so might have been forced to find as many Soldiers as they had Fees, as well as the Bishopspricks and greater Abbies. But indeed the Clergy were too powerful a Body to be thus arbitrarily imposed upon, and they would soon have complained to the Pope against the King for this new Servitude he had imposed upon them; and therefore I think we may with much more safety conclude with Mr. Selden in his Titles of Honour, that this Imposition of Knights Service upon the Bishopspricks and Abbies, was done by the Common-Council of the Kingdom, it being too great a matter to be done without it. For it appears by 

Eadmer, that the King held a Council this very Year, tho the Laws and Proceedings of it are all lost; and this is the more likely to be so, because this Imposition was not laid upon all the Abbies in England, but only upon the Bishopspricks, and such Abbies as were of Royal Foundation, and held immediately of the King before your Conquest, and were only such as enjoyed male Baroniets; as 

Mar. Paris there tells us.

I shall now come to your last Head, whereby you would prove that your Conqueror, by his sole Power, altered the Course of Trials, and introduced the Custom of Duel or single Combat, in Civil as well as Criminal Causes. The chief Argument you have for this, is, that there is no mention made of this Trial by Duel in our English Saxon Laws before the Conquest: which is but an argument for his at the belt; and you have imposed this Service upon the King, that may expressly that King William introduced it: and the I. grant it is first mentioned in his Laws, yet does it not therefore prove that it was not there before, since it was certainly in use among the French and Longhards, who were German Nations as well as the Saxons. But admit it were first introduced by the Conqueror, this was no Badge of Conquest, for the Normans as well as the English were subject to this Trial, which was in use in France and Normandy long before this King's coming in: so that admit it as you will, it might not have been done by his sole Power, but by some Law made in the Great Council of the Kingdom, tho it be now lost; for we have very few of the Laws that were made by this King now left us, besides those which are called the Laws of King Edward, with this King's alteration of them: all which was certainly done in the Common-Council. The like I may say concerning the alteration of Punishment for Forst-Stealing and other Crimes, which were either punishable by pecuniary Mals, or else by Death, before the coming in of the Normans; since those Alterations might be also made by the Consent of the Great Council: but that the same Forst-Laws were in use before the Conquest as after, you may see in the Forst-Laws of King Edwin, as you will find in Sir F. Smylon's Glossary, "Title Forstes", only the Punishments are there Pecuniary, or else Loss of Liberty, which, after your Conquest was changed into the Loss of Eyes and Members.

But as for other lesser matters, as his disarming the English, and forbidding 

Magna Charta, if these things were done (as I do not find any Law for them, for there is no such thing mention'd in the Law de non iniuriis Comes); they were praetis'd by this King for his own Security, after the English had by their frequent Insurrections made him use all the means he could to prevent it for the future; so that at the moat they were but temporary Conspirations, and did not last long; nor could this Law of the Covertax, Bell be any Badge of Slavery on the English, since we find the same Custom to have been used in Sweden, which you will not say is a conquer'd Nation; nor do I find the Normans after they came over, were any more exempted from this Law than the English Natives. But I much wonder you should reckon the Laws of \textit{Decennaries} or Tythings, among the Badges of Norman Slavery; since if you have read any thing in our \textit{Saxons} Laws, you will find, as Ingalph tells us, that King Alfred first appointed, \textit{un omnis indegita legisal}, in aliquo Cornubia & Domina 

vernarii, & quies sussistit de aliquo larriminum per unus Centurionum vel Decenniis.
Dialogue the Tenth.

undemnatus, paranam demerarium incursurus. So that whatever other Laws you find, either of our Saxons or Danish Kings, or else among those of King William, concerning Triburghs and Tythings, it was only to confirm or reinforce this antient Constitution. But that not only the meanest fort of Freemen, but the greatest and best Nobility and Gentry were subject to this Law of Tything, as appear by the Law I have already quoted of King Knute, whereby every Freeholder was "to have his Family in his Pledge, that is, was "bound to answer for them to the King; and if they were accused to have let "them run away by his Consent, he was to purge himself by his own Oath, "and also the Oaths of five other Thanes, that he was innocent." So likewise the Laws of King Edward, confirmed by King William, are very particular on this Subject, "That all Archbishops, Bishops, Earls, and Barons, Vid. Horden. "should warn their Knights and Servants there mentioned in their Brethren, "that is, in their Private Pledge, whereof the Lords themselves were to be the "Sureties, as appears by what follows, viz. that if any of them offended, "their Lords should be obliged to do Right in their Courts." And to the same purpose is the 49th Law in Ingulph's Copy of these Laws; the words are these: Echajem Seniour etu sibi eran et sun plote, que si tene rent que ait a drece et Hundred; that is, that every Lord keep his Servant in his Pledge, that if he offend, Right may be done in the Hundred.

So that upon this whole matter, I can see nothing considerable imposed by your Conqueror upon the free-born English Subjects, which they were not tired to before the Conquest, or which did not reach all the Norman he brought over with him, as well as they.

As I do confess I did not believe there was so much to be said to prove that William the Conqueror never altered the Law of England, in any of its material Parts: but since you have gone thus far, pray proceed to shew me, that by the way, by the Laws of the Saxons, the King was the Chief, I conceive; as a Conqueror, he might justly have vacated what of them he would, and I do not see anything in his Coronation-Oath that could have hindered him from it.

Fe I doubt not but to give you very good satisfaction in this Point: for not only your Conqueror's Will was never declared, that the former Laws should be abrogated, and till such Declaration all Laws ought to remain in force, even if they were, as the Laws against Christians, according to Sir Edward Coke's Case of the Partizans, &c. Opinions in Calvin's Case; but indeed the antient and former Laws of the Kingdom were so far from being abrogated, that they were all confirmed by him. For in his fourth year, by the Advice of his Baronage, he summoned to London, as the words are in the Book of Litchfield, Omnem Nobilis, Sepulchri, & Leges simul eruditis, ut eorum Leges & Constatudinis audire: Or as Hoveden relates it out of a Collection of Laws written by Glawevel, Feci summomini per antiquiores confessiones Angliae, Anglos Nobilis, & Sepulchri, &c. As twelve were chosen out of every County, who drew what the Customs of the Kingdom were, which (as Mr. Selden tells us in his History of Tythes) being written by the hands of Archbishop of York and Hugo Bishop of London, were, with the request of the same Barons, confirmed in that Assembly, which was a Parliament of that time. And then in Hoveden follow the Laws of Edward the Confessor, so confirmed by King William, among which is that Law concerning the Office of a King, which I have now given you: And before this, at the very beginning of his Reign, he also confirmed the Privileges of the City of London, as appears by his Charter in Saxen, which is to be seen at this day; which is also confirmed by Ordinaria Vitalis: Galileanus Rex multa Lusoniae pot- quam coronam et, prudenter, justè, clementerque dispossuit quaedam ad ipsum Con- sol. 501, 502: tatis commoda, vel dignitatem, alia qua genti procerum universae; nonnulla quibus conumeret Ecclesiae Terra, fura praequisque dediti; optimis rationibus sancti, Jus- dicium lexum multa porfona nequiquam ab eo posse auere. So that nothing is plainer, than that at the beginning of his Reign he strove to oblige all sorts of People, as well the Clergy as Laity, to a good liking of his Government.

As, but yet for all this you your self have granted; that after the time of his Confirmation of these Laws of King Edward, you cannot deny, whether provoked by the frequent Insurrections of the English, or else resolving to make
life of his Right by Conquest, he fell very severely upon the English. Nobility and Gentry, and outed most of them of their Estates, and forced them to flee into foreign Countries; so that it seems he did not lay down his Sword, as soon as ever he came to the Crown, but used it as he pleased against whatsoever English he thought might be dangerous to his Government; so that notwithstanding his Confirmation of King Edward's Laws, and his desire to pronounce his Title by Conquest, as well as for your Authority concerning the Conqueror's confirming these Laws, the main stresses of the Question will lie, whether he admitted any of the English into his great Council, to consult of the wealthy Affairs of the Kingdom, when he had once thoroughly settled himself on the English Throne, especially if it be considered that King William kept not all the Fomilies which he made at all times. Now as you will allow, this Grant was made in the fourth year of his Reign, but he lay not then settled himself so well as he would, nor had he then made an entire Conquest of the Nation; that was not done until after the great appearance of the natural English in Arms, and the great meeting which Frederick Abbout of St. Albans, with others, headed at Berkhamstead, which was not until above four or five years after this Confirmation: so that your Testimony from the Lucchfield Chronicle and Roger Howden, being before he settled himself as he intended to do, signifies nothing; and that it was from some time after this Transfusion, that Ap. Paris,(2) recedes the thorough Conquest and reducing the Nation, appears by this Note in the beginning of the Life of Abbot Paul, Successor to this Frederick,  

The primus Abbati buius Ecclesie sui, postquam Anglia Norman!i penitus sui subjurgatu.

F. I will not deny the matter of Fact in great part to be as you say; but whether the English were to blame to make these Infrachations, or whether they were provoked to it by the King's unreasonable Severities, I have not any time to account, when we competent Judges of it, of what time: if it were their fault, he had no doubt very good cause to do as he did, and to punish such as were guilty; but it was altogether unjust and tyrannical to punish the Innocent with the Guilty. Nor could he have any Right to do it as a Conqueror, since by taking his Coronation-Oath to deal mercifully with his Subjects, and to treat both English and French with equal Right, he had renounced that Title. And that he looked upon himself as a Tyrant, if he had governed without being governed by the Oath, as his Predecessors, I shall prove to you from Abbot Bromen's Chronicle, the Author of which lived in the time of King Richard I., who has (col. 952): these words; Cumque Wuldemus Duas Normannorum, Conqueror Anglia, sepetaa, nempe  

exhorrecesserit, & nomen legitimi Principis induere velit; a Saccado Cant. Archbis. psicopo in Regum posit confessori, &c.

But your Reply, that he did not thereby himself a perfect Conqueror till he be was thoroughly settled, is very pleasant: as if being sometimae crown'd, and taking an Oath to govern justly and according to Law, after four years of quiet Possession, and a voluntary Confirmation of the Laws of his Predecessors, were not sufficient Signs of his peacable Settlement upon the Throne; unless you will have a King to be never settled, until he has, by the force of a Standing Army, got sufficient power to do all he designs, that is, to take all way his Subjects Liberties and Estates at his pleasure, contrary to his own Oath, and the Laws he has agreed to. If those be Signs of a thorough Settlement, pray consider whether the King that is gone away, was ever the least settled at this rate, the I confess he was in a very fair way to give us such a thorough Settlement. But since you date this thorough Settlement from that great Transfusion of Abbot Frederick, I am not afraid to appeal to Matthew Paris, from whom you have borrowed this Relation, where he tells us thus: That after Lanfranc was made Archibishop, the King being now strengthened with both Swords, began more severely and manifestly to oppress the English; who seeing it nearly concerned their very Lives, calling a great many together, made Edgar, Atheling their Leader, in whom the English placed all their hopes; but among all the English, Frederick Abbout of St. Albans was the chief Promoter thereof, being a generous Man, and to be feared for his Riches and Power: therefore the King began to be vehemently afraid; he should lose the whole Kingdom, which he had gained by the Emissary of so much...
Dialogue the Tenth.

much Blood, and also hazard of his Life; and therefore being luckily taught
by the Archbishop's Prudence, he began to sort more mildly with the chief
Men of the Kingdom, humbly proposing Terms of Peace, and with a pleas-
antly Conscientia inviting them to a Treaty (the deceitful, as the end at
last declared) therefore the said English met him at Bertramsted, thinking
no harm, under the leading of Archt. Frederick; where, after many Day
putts, Archbishop Lanfranc being present, the King swore upon all the Re-
licks of the Church of St. Alban, as also upon the holy Evangelists, invio-
lably to observe the good ancient approved Laws of the Kingdom, which
the pious Kings of England his Predecessors, and chiefly King Edward had
classified: and to be pacific, they all returned home very well satisf-
ply.

So that you see this was the third whereby he renounced all
Rights of Conquest (if ever he had say) by prevailing expressly to observe all
the ancient Laws of the Kingdom, since they found his Coronation-Oath would
not bind him, besides his solemn Confirmation of King Edward's Laws, in
the great Council of the Kingdom not long before.

Mr. Bus pray read a little farther, and see how he requested this Force now
put upon him; and whether at all he intended to keep what he had sworn, or
to direct himself of his Right of Conquest; and therefore give me now leave
to read the rest of this Author: But the King cunningly hiding his De-
signs, within a few days after his first how to overcome and feign those
dispersers and subvers, whom he could not, when joined and confederate
together; which he performed by killing, deposing, and banishing many
of them, and violating the above-mentioned Laws. And the English being
thus spoiled at pleasure, and impoverished, without any legal judgment, be-
therewith enriched his Norman, to the great Provocation of his natural
Subjects, who had of their own accord thus excited him. So that
you see he never intended to keep his Oath, that was thus enforced upon him; for
Conquerors do not love to be made slaves to their words whether they will
or no; and therefore I may give you an Answer both on his Coronation-Oath, as
to this now mentioned, from an old English Proverb, That there's
never any Oath but man which broken or kept. More Conquerors than one
have used false Pretences, and made smooth Promises, and dealt cunningly with
the People to carry on their Designs; and have at first taken plausible Oaths, and
broke them afterwards; say took them when they intended not to keep
them, and knew they could not: And for Oath-breaking, Harold, in his Au-
swer to Duke William, when he demanded the Kingdom of him, had given
him a fair Example, that Dulcam Sacerdotum eft frangundas. Many splendid
Oaths, Vows, and Covenants were contrived, and taken by crafty and de-
signing Men in the late times, and imposed upon the People; contrary, to the
Oath of Allegiance they had before taken, for no other ends than to cheat
them into Rebellion, and to make them Authors of their own Slavery; which
was discovered too late, when they were under the power of an Army, and
could get nothing of themselves, as I could prove at large would the time permit.

Before I give you a positive Answerer to what you have said, the I do be-
lieve a great deal of the matter of Pape to be true, as Matthew Paris hath rela-
ted it either from Tradition, or from the Legions-Book of his own Ab-
bev; yet I very much doubt, whether out of Hatred to this King's severe Pro-
ceedings, they did not represent King William's Creelty and Severity much
greater: than it was: for the I grant, after this time, he turned a great many
more of the English Nobility and Gentry out of their Estates, and put divers
of them to death; yet whether he did this without any colour of Law or le-
gal Proof, is very much to be doubted, since we find many Forfeitures men-
tioned in Dommay-Book, which had been needless, if the King had seized all J. A. E. pag.
the English Estates without any legal Trial: As for example, in J. A. E. pag. 209, 108.
flod-Hundred, 8 Decem de J. A. E. pag. 209, 108.

and this was the way of Expulsion in the Active Voice. We find in
Domesday, Earl Ralph held such Lands, Quando (e suae fuit fidei; but more particu-
larly in Cambuslegyre in Wardusm, Marcellius holds of Richard's Ancestor, but
this Walrus holds it. Dies que deliciam certa Regens: all which would have
never been inferred, could this King have taken away Mens Lives and Estates with-
out any colour of Law or Justice. And therefore you may find in all the Hi-
storians
torians of his time, that after the great Plot wherein so many Norman as well as English Lords were concern'd, and for which Roger Earl of Hereford, and Ralph Earl of Norfolk and Suffolk, both Normans, had conspir'd with Earl Waltheof, and other English Lords, to call in the Danes, and dispossess the King, they were convicted by a legal Trial of their Peers, and suffered death for it. So that in this he distributed equal Justice to the Normans as well as the English, who thereupon forfeited all their Estates; and yet notwithstanding this, there were some native Englishman still left, who tho' they had been in Arms against the King, at the beginning of his Reign, yet were nevertheless reconciled to him, and referred to their Estates: As for example, "Edric, "frowned the Forester, who, as Florence of Worcester tells us, was reconciled "to King William, and accompanied him into Scotland soon after." as also "Hermon, Lord of Brecon, Lord of Bangor, who having loft his Estate, "and being outlawed (as Ingulfus tells us) "took Arms against King William, "and joined himself with those in the Isle of Ely; and yet, after divers great "Battles, as well against the King and his Commanders, at length having "obtained his Inheritance by the King's Allowance, he finished his days in "peace." And now here were two considerable English Barons who still enjoyed their Estates, notwithstanding all King William's Severity; and yet I do believe it will puzzle your Doctor to shew me their Names in Doom-sday-Book: so that that Book alone is not, it seems, a certain Rule to discover what Englishmen were then Barons or Tenants in Capit.

But admit all this to be true, as you your self have represented it; can this King's Perjury to his Subjects, and Breach of all Laws, after so many solemn Oaths, give him a Right as a Conqueror over the Lives and Estates of his English Subjects; and that after he had solemnly renounced his Right of Conquest, by a solemn Declaration, in his Subjects, as we shall show you, suppose he still made War? after he had for so many Years laid down his Arms? At this rate I cannot tell when Subjects may be safe. For suppose some Kings that come to a Crown by a mixit Title, partly by Force, and partly by Right, take ever fo many Oaths to maintain the ancient Constitution of the Government, together with the Rights and Privileges of the People; 'tis but their saying afterwards when they have insufficient Power, that they were forc'd upon them, and that they never designed to keep them, and the Business is done, and they may give the Son of Subjects Lives and Estates, who his pretended it and Conquerr whenever they please. Nor doest this only extend to the King himself alone, but to all his Heirs and Successors, who claim under that Title, let them take ever so many Coronation-Oaths, or make ever so many Declarations to the contrary; since they all claim under the same divine Title of the Sword; that is, as you will have it, receive their Crowns immediately from God, and then can never forfeit them, let them tyrannize to the utmost degree imaginable; for you have provided them with two easy and pleasant Exeuses, that all Promises are either broken or kept, and "sacramentum e frangendum."

I cannot but smile to see what an excellent excuse you have found out, for all the Break of Oaths and Covendaments of those engaged in the late Civil Wars, since they might very well plead they had so many Royal Precedents for so doing, as sufficiently authorized it; unless you will have that to be Perjury in Subjects, which must be a Divine Prerogative in Kings. And therefore let me tell you, I am very glad for your own sake, that there is no body here but you and I, since all the Company would have cried out, and said, that this way of arguing were to make open War, not only upon all the Laws and Privileges of this Nation, but also to put the King and People in a State of War against each other: for if he once declares by such Overt-Acts as the of King William's, that he will not be tied, either by his Coronation-Oath, or by any Laws he has made, I doubt their Oaths of Allegiance will not long bind them neither; and they will be very ready to reply, that whatever Power began, and is continued by Force and Violence, may also be call'd off by the like means: and when a King and his People are brought once into this State, it is easy to foretell what will be the Event; either he must turn out, or they must be all Slaves; and I wish it was not owing to such Jesuitical flattering Counsels as this, that the King first loft the Affections of his People, and then his Crown; since Father Peters himself, with the rest of the Jesuits,
Dialogue the Temb.

Ephes., and Arbitrary Ministers of the Cabal, could never have infill'd worse Principles than these; therefore I pray for the future either get better Reasons, or keep thofe to your self.

But God be thanked, both King James I. and King Charles I. had much better Thoughts of the Laws and Liberties of the Nation, since the former hath solemnly declared in a Preamble to the Second Act of Parliament, in the first Year of his Reign, "That not only the Royal Prerogative, but the Peoples Security of their Laws, Livings and Privileges, by the ancient fundamental Laws, Privileges and Customs of this Realm; and that by the abolishing or altering of them, it was impossible but that present Confusion will fall upon the whole state and frame of this Kingdom." And his Son was of the same Opinion in his first Declaration at the beginning of the late Wars: "The Law (says he) is the Inheritance of every Subject, and the only Security he can have for his Life and Estate; and the which being neglected, or disreputed (under what Specious shew forever) a great many are of Insecurity, if not irreparable Confusion, must without doubt come upon them."

If I had no Love at all for the Government and Liberties of my Country (as I thank God I have a great Affection for both) yet should I not have the Impudence to contradict the Scale of two Kings and a Parliament; neither have I so little Value for those things which are the Foundations of our Happiness, as to desire they should be sacrific'd to an arbitrary Power; nor on the other hand, do I consider the King as great a Value for them, as a State of Submission and preservation by Rebellion, and deposing the King, which since I look upon as altogether unlawful, we are then to follow the Apostle's Rule, and do Evil that Good may come of it. But as for what I have urged in excuse of the Conqueror's Perjury, and Breach of Laws, I confess I have said more than the matter will well bear; but I hope you will excuse it, since I confess the Argument is none of mine, but the Doctor's from whom I borrowed it, and I did not consider the bad Consequences of it: yea which I could and might have affirmed, that neither King William the Conqueror, nor his present Majesty, who is his Heir by an Hereditary Right of Succession, either could then, or can now at this day be lawfully refus'd, much less can be depo'd, or can forfeit their Royal Dignity for any Male-Administration or Tyranny whatsoever.

Pray give me your Reason for that, since I think you may be very well satisfied, that the King's Title by Conquest from King William, his Ancestor, cannot be taken from him, and therefore I am as much against Rebellion and deposing of Princes as you can be, and doing of Evil that Good may come of it; yet the question remains still to be decided between us, whether that Refiinance I maintain be Rebellion or not, and whether it be Treason to deny Obedience to a Prince, who hath done his utmost to lose the very name of King, by not observing those Conditions, on the performance of which he can only maintain his Royal and temporal Power? I have fully proved the two Points I undertook, or, both that of the King's forfeiting the Crown in the Causes I have put, as also the falsity of the matter of Fact, whereby you would maintain, that the King has an indefeasible Right to the Crown of this Realm, as an absolute Monarch by Conquest: since you decline arguing this Point any farther, because you find it is not to be maintained, pray let me know what other Reasons you have why you cannot come over to my Opinion.

This am not satisfied, but that a great deal more may be farther urg'd by those who are better vers'd in this Controversy, to prove that his Majesty hath an unforfeitible Right to our Allegiance by the Conquest of King William and his Predecessors; yet I shall not now insist any longer upon that Title, which tho' our Kings have by fo many gracious Condescensions to the People of this Nation, seemed to wave, yet have they never renounced it as I know of: but since his Majesty was settled in the Throne as an absolute and lawful King, by a long and glorious Series of an Hereditary Succession of above fix Hundred Years standing, and confirmed by the Oaths of Allegiance of the People of this Nation both to him and his Ancestors, he is not only our King by the Laws of Man, but God also; to whom, and not to the People,
he owes his Crown; and can therefore neither forfeit it, nor be accountable to them for it: and when you can prove the contrary, you may then convince me to be of your Opinion.

F. We have already partly argued this Point at our third and fourth Discourses, concerning the Lawfulness of Resistance; but since perhaps you may have still somewhat farther to urge upon so important a Question, I desire to hear the utmost you can say, to prove that Kings owe their Power to none but God, and therefore ought never to be refused, neither can forfeit their Crown upon any pretence whatsoever; and therefore pray appoint me some other time when I may wait on you again, and fully discuss this Point, since it is now very late.

M. I am sorry I cannot appoint you any certain time; for since I see so great a Confusion reigns every where, and that there is like to be no Term, and consequently no Business for Men of my Profession, I am resolved to retire for two or three Months into the Country, till I see things a little better settled than they are at present: and I heartily wish that the Convention (which I hear is like to meet in some time) may endeavour the Peace and Settlement of the Nation, by ending for the King and the Prince of Wales out of France; since I do not desire any more Conquests, nor the Government of a foreign Prince, as long as we have a lawful King of our own, who will govern us again if he might: but as soon as I return to Town, you shall be sure to know it; in the mean time I am your Servant.

F. I am yours, and wish you a good Journey.
Bibliotheca Politica.

D I A L O G U E X I.

I. In what Sense all Civil Power is deriv'd from God, and in what Sense it may be also from the People.

II. Whether his Present Majesty King William, when Prince of Orange, had a just Cause of War against King James II.

III. Whether the Proceedings of his Present Majesty, before he was King, as also of the late Convention, in respect of the said King James, are justifiable by the Law of Nations, and the Constitution of our Government.

E A R Sir, you are welcome to Town, you have been absent a great while; and indeed I wonder how you could stay away so long, when such great things as the King's Abdication, and placing his Son and Daughter in the Throne, have been transacted.

M. I thank you kindly, Sir, but yet I must tell you, that I have been so little satisfy'd with what your Convention has done in these matters, that the very hearing of it hath been a great Affliction to me; and it would have certainly been a much greater, had I been upon the place, and seen such horrid things as the Deposition of a King, the disinheritance of his right Heir, and the setting up the Prince and Princess of Orange, who certainly could have no right to the Crown, as long as the King lives, nor yet after his Death as long as the Prince of Wales is in being.

E. I confess there are very high Charges if they would hold; but if you please to consider the Hypothesis I proposed at our last Meeting, that the King had by Breach of the Original Contract made between his Ancestors and Predecessors, and the People of this Nation, to observe the Fundamental Laws and Constitutions of the Kingdom, forfeited his Right to the Crown; all that hath been done in this great Affair, I suppose may be very well maintain'd and justify'd, from the necessity of the thing, and of maintaining the Fundamental Constitution of the Government. And therefore pray give me leave to put you in mind how far I have proceeded in the Proof of this Assertion.

First, I have made out that the King of this Realm is not the sole Supreme Power thereof, neither ever was so, from the very Institution of Kingly Government in this Island.
BIBLIOTHECA POLITICA.

Secondly, I have also prov'd that the King, not having the sole Power, must hold that share thereof which he enjoys, upon this implied or tacit Condition, that if he does what does not belong to him, and the People do assert their Right by opposing his unjust Violence and Usurpations, and that he still obstinately persists in this Violation, he thereby loses and forfeits not only that part of the Power which he does unjustly usurped, but also his own to and for this I gave you the Authority of the Learned Graevius at our last Meeting.

Thirdly, I have also answer'd your main Argument of King William the Conqueror's obtaining by the Sword, and Conquest of King Harold, an absolute Right, and unlimited Power for himself and his Successors defended from him, over the People of this Kingdom; for I think I have sufficiently made out, that King William had no other Right to the Crown of England than by the Testament of King Edward the Confessor, and the Election and Recognition of the People; and this I have prov'd from the uncontrovertible Authorities of the best Historians of that time. So that if he afterwards acted otherwise, and contrary to his Coronation-Oath, it was not as a lawful King, but as a Tyrant and an Usurper on the Rights and Liberties of the People, and he could not by his own unjust Act acquire any lawful Power to govern this Kingdom; and therefore whatever Title King William or his Successors can pretend to, it must be by virtue of the Election of the first King of the Saxon Line, from whom all the Kings of England since Henry I. are defended, and consequently are oblig'd to hold the Crown under the same Conditions on which it was first conferred. And I grant, that ever since the Reign of Edward I. the Crown has been no longer claim'd by Election, but by Succession of him that really was, or else was presum'd to be the Right Heir; yet this different way of acquiring the Crown does not at all alter the condition or manner of holding it, that if he adheres what does not always after that time, as before, been tied to the same, or rather stricter Terms in their Coronation-Oaths, to observe and keep the Laws and Customs of this Realm; and also that the Power of the Great Council of the Kingdom or Parliament making Laws, raising Taxes, and decrying of Grievances arising from the unjust Exercise, and illegal Encroachments of the King's Prerogative, hath been exerted ever since the Crown became successor, as much as ever it was before.

Lastly, I think I have sufficiently made out that King James hath violated the fundamental Condition of the Kingdom, in those several Inancies I have already given, and am also ready farther to make it out if you require it; so that this being the Case, I can see no reason to the contrary, why the Crown or Legal Authority should not become forfeited to the People, who at first conferred this Power on the first King of the West-Saxons.

Mr. I must confess you have done your endeavour to prove those Affirmations you have now laid down, but I am not yet satisfied that you truly have done it. But however, not to run into unnecessary Difficulties and Repetitions, what has been already argued, and which I see you are too obstinate to recede from, I shall now only oppose what you last allert concerning the Crown's being forfeited to the People upon the King's pretended Breach of the Original Contract: for besides the absurdity of making the Crown forfeitable to the People, who are and ever were the Subjects, and not Princes or Governors; whereas all forfeitures still suppose a Right in the Perfons who are to take it as superior to the Party forfeiting; there is also a greater Error and Mistake in your supposing all Civil and Legit Power to be deriv'd from the People, and by them conferred upon their Kings or Governors: whereas the Scriptures plainly affirm, and all Divines do interpret them, that all Civil Power and Authority is wholly from God, and not from the People, who even in elective Kingdoms, tho they may name and design the Perfon whom they will have to be their King, yet is the Power wholly from God, who alone hath right to govern mankind; and therefore as the People do not confer the Power, so neither can it be forfeitable to them from whom it was never deriv'd: and so much I told you at the Conclusion of our last Meeting, tho I had not then time fully to argue this Argument, as now I have. And this will pres the more upon you, because you your selves have already granted at several Meetings, that all Civil and Regal Power is deriv'd from God, and not from the People; and
and therefore your Notion of a Prince or Monarch's forfeiting to them, is wholly false and precarious.

F. If this be all that you have to object against our Assertion of the King's forfeiting to the People, I think I can readily answer those Objections: for as to the first Absurdity which you lay to our charge, how an Authority can be forfeited by a King or Superior to his Subjects or Vaillants, the Absurdity lies on your side; for I do not suppose this Forfeiture to be made to the People as Subjects, but to them consider'd as a Community of Masters of Families, and Freemen; who as the Defendants and Representatives of those who made the first King upon a certain Contract or Condition, upon the non-performance of this original Contract, do the deposit of the Subject of a Servant ceases to be so, and becomes again sui juris, upon his Master's Non-performance of the Bargain made between them: and so this Authority thus forfeited, returns to the Community of Masters of Families, and Freemen, who once confer'd it upon the first King. Nor needs this Forfeiture any more suppose a Superiority, in the Perfons who are to take it, over the Prince that commits it, than when by the Law of England a Tenant for Life aliens in Fee, he in reversion may assign the Fee to the good of his Estate as forfeited to him, tho' the Vid. Coke ap-

Perfon that held it was perhaps his own Father.

M. But is not this then to recede from your former Concession, whereby you grant that Civil Authority is derived from God, and not from the People at all? whereas you now suppose them the only Original or Fountain of Ci-

vil Authority, and from them to be derived to all Princes and Monarchs.

F. This Difficulty wholly proceeds from your not rightly understanding the manner of God's conferring Civil Power or Authority upon those that exercise it. For the better clearing of which Difficulty, let me ask you two or three Questions: First, pray tell me whether you are still of the opinion, that Monarchy is so much of Divine Institution, as that no Government but that may be lawfully instituted by Men?

M. I will not now affirm, that Monarchy is of Divine Right; but this much I may safely aver, by what we can find in Scripture, that God instituted no fort of Government but that; and he did not make Saul or David to be his own universal King, who might be depos'd at the Will of the Estates, but conferred part of his own Divine Power upon them, without any Conditions or Limitations whatsoever: but as for those Governments called Commonwealths, the without doubt they are not of Divine Institution, yet certainly the power of Life and Death, which they exercise, is wholly from God; since, as I have already sa'd, a Man, not having power over his own Life, cannot confer that upon another which he had not in himself.

F. Well, I am glad we are so far agreed, that Commonwealths are endued with real Authority or Majesty as well as Monarchs, and that from no less Author than from God himself; so that whatever you have sa'd concerning God's Institution of no other Government than Monarchy, is either not true, or not to the matter in hand: for in the first place, I have already prov'd at our third Meeting, that the first Government God instituted among the Jews, was an Aristocracy under Moses, Joshua, and the Judges, referring the Kingly Power to a holy Priest. And tho' it is likewise said of himself and of great part of this Kingly Power, when he anointed Saul King; yet God's Institution of Monarchy among the Jews does not render it unlawful for other Nations to institute such other forts of Government, as may befit the Genius of the People, and the publick Good and Safety of the whole Community. But as for your Argument, whereby you would prove the necessity of all Civil Powers being derived from God, because otherwise they could not be endued with the power of Life and Death over their Subjects, I have sufficiently taken off that difficulty at our second Meeting, and shew you, that a Man, in the State of Nature, has not only power over another Man's Life, but also over his own; not only to hazard it, but also to lay down or lose it for some greater publick Benefit to Mankind: which is also acknowledged by the Apostle Paul himself, For a good Man some would even dare to die. But further, to shew you the Absurdity of this Principle, let me put you this Case: Suppose that a Kingdom or Commonwealth were so instituted at the first, that no Subject, or Freeman, should suffer death for any Crime, how great
great ever; which that I do not suppose as a thing impossible, it was for divers Ages exercised in the Roman Commonwealth, wherein no Civil Magistrates could lay any greater Punishment upon a Roman Citizen, than Banishment or Deportation. And if that Copy we have of the Laws of King William I. be authentic, it is by the 67th Law in his Charter ordained, That no English or French Subject should suffer death for any Crime whatsoever, but only be punished either by pecuniary Fines, Imprisonment, or else by losse of Eyes, Hands, Feet, or Members; which Law, tho' I do not say was ever observed, yet it shews it was then supposed to be both possible and lawful. Now if this could be so, there would be no necessity of supposing the Authority of the Commonwealth of Rome, or of King William I. to have been derived from God, since they had renounced and refus'd the great Character thereof, viz. the inflicting capital Punishments; but if for all that, they still continued to be lawful Civil Governments, then it is evident that this power of Life and Death is not that which alone constitutes a Civil Power, and makes it owe its Original to God.

But to return to what your Notion concerning this power of Life and Death hath made me digress from, pray let me ask you another Question: After the Expulsion of King Tarquin, and before the Commonwealth of Rome was formed, where was the Supreme Authority lodged?

M. Why, in the same Body it was afterwards, the People of Rome, comprehended under the Lex Pictorum and Plebiana, that is, the Nobility and Commons; who yet retained the power of Life and Death over those of their own Children and Slaves, tho' they communicated a great part of their Power to the Senate and Consuls.

F. Very well: Was this Authority they so conferred on the Senate and Consuls, the same which they themselves could have exercised? Or was it any new Authority immediately derived from God, and created for that purpose?

M. I do not think it was any new created Authority, but only a part of their former Power, which they so made over to the Senate and Consuls, since they reserved one great part of it, viz. the Legislative Power, wholly in themselves: but however this power which the Fathers of Families, and Free men among the Romans had over the Lives of their Children and Slaves, as also over others who were declared publick Enemies, was derived wholly from God; yet there arose likewise a new Power which these Fathers of Families were not invested with before, viz. that of making Laws, as also of War and Peace: all which Powers were derived from God, for the common Good, and Defence of the whole People or Community.

F. Herein I also agree with you, but then mark what follows: it then plainly appears, that the natural Subject of Civil Authority was the Fathers of Families, and Free men of Rome; and that what share thereof was by them committed to the Senate and Consuls, it was wholly personal, and as their Representatives. This being so, pray you, Queerion? When the Senate and People of Rome did afterwards confer their whole Power upon the Roman Emperors by that Law (called in your Institutions, Lex Regia) was there then created or produced any new Authority from God to the first Emperor? Or was it the same Authority or Majesty which the Senate and People were endued with before? For either it must be the same, or else God must create a new parcel of this Royal Majesty or Authority wherewith to endue this first Emperor; which if you suppose, I can shew you a great many Difficulties and Abdurdities that will follow from this Opinion; for then I might ask you, whether this Royal Majesty be like the Stoicks Animae Mundis, whose Parts are distributed among all the Kings in the World? or whether each King has his particular Majesty to himself? or whether the King dying, his Majesty also dies with him? or whether it extant without him, as the Soul does when separated from the Body, and by a certain kind of Metempsychosis, is transferred to the new Monarch?

M. I do not think at present to affirm, that this Authority or Majesty of the Roman Emperors was originally derived from God, tho' not immediately, but by the Mediation of the People of Rome as his Instruments, especially ordained for the Derivation of this Imperial Power.

F. Well
Dialogue the Eleventh.

I. Well then, I see you and I are at last agreed; for I suppose all Civil Power to be derived from God to the People, and by them, as an instrumental Cause, conveyed to the Person whom they agree to make their King. But if this were so in the Roman Commonwealth, which are not all the rest of the Nations of the World indued with the like Privilege; so that no Man may justly make himself King over them without their Election, or Recognition at least?

II. Perhaps in those Nations where the People have, from the first Institution of the Government, retained the whole Civil Power in themselves, or else by the Extinction of the Royal Family they became possessed of it; this Power, afterwards, by them be transferred or made over to one single Person or more: but this can by no means hold in divers other States, where God immediately bestowed a Civil Power or Authority without any Consent of the People, as it is in the case of Kingdoms acquired by Conquest in a just War, (for as to unjust Wars or Conquests, I freely own they confer no Right at all.) But since you will not, I suppose, deny that such a rightful Conquest confers an absolute Power on the Conqueror, over the Lives and Estates of the Conquered, as also an Obligation in them to submit to and obey the Conqueror; hence must arise a new Civil Power, without any Consent of the People intervening; which Authority, since no Man can confer it upon himself, must necessarily be immediately conferred by God; since, as I said before, the People are only passive, and have no hand at all in the conveying of it. And this is the more remarkable, because I suppose you will not deny, but that where one Kingdom or Empire has owed its beginning to the Election or Consent of the People, I could name ten that have begun from Conquest: So that it is evident, the People are never, or very rarely, the efficient Causes of Civil Power.

III. The question concerning Conquest does not immediately concern our Kings, who, as I have already proved, do not owe their Regal Authority to Conquest, but to the Election and Consent of the People; yet since the Title to a great part of our King's Dominions began at first from Conquest, I shall now lay something of it. First then, you grant that only Conquest in a just War can give the Right to the People's Obedience; and therefore since the greatest part of the Governments have commenced from unjust Conquests, it will therefore follow that the Right of such Princes to those Kingdoms and Territories so unjustly acquired, could not owe its Original to Conquest, but either to a long Possession, or the Extinction, or at least the Dereliction of the right Heirs, together with the Consent of the People to confirm their Titles. So that it is not only my Opinion, but that of the most learned Writers in your own Language, such as Caesar and Polybius: But Conquest alone, tho' in a justest War, can confer no Right over a Free People without their Recognition or Consent. I have added of free People, because I much doubt, upon the Conquest of a Kingdom or Territory (for example) where the People do own themselves mere Slaves to their Monarch; whether their Consent be at all necessary or not, since they fall to the Victor as the moveable Goods of the Prince conquered: but then the Power he has over them, is not his Title, but his Authority, but that of a Lord and Tenant to a Lord and Tenant; nor is it that in all Kingdoms and Territories, obtained by Conquest among us in Europe, Princes do not think themselves free to have any Title to their Subjects Allegiance, before they have acknowledged them for their lawful Sovereigns, by some publick Act either of the Estates or Representatives of the Kingdom, or else by the particular Oaths of all the chief Subjects or inhabitants of those Places.

IV. I shall not at present dispute this Point any farther with you, but yet there remains one great difficulty behind, concerning the manner of God's conferring this Supreme Power upon Princes and States: For you your self have already granted, that the power of Fathers and Masters of Families is not of the kind, but somewhat specifically different from Civil Power or Authority; and if so, since they had not this Civil Power in themselves, I cannot see how they could confer it upon another, since nemo dat quod non habet: And therefore there still seems a necessity of God's conferring a new Power upon that Prince, or upon those Persons whom they shall pitch upon to rule over them.

F. I
I hope I shall as easily remove this Difficulty, if you will please to consider the manner how God confers this Civil Authority upon Men, which is certainly by natural Means, and is to be found out by natural Reason, without any Divine Revelation, since Civil Government was instituted, and Men were guided to obey it, long before the Old Testament was Law of Nature. But the true Original of it is thus to be traced: First, it is certain, that right Reason sufficiently taught Mankind when it began to multiply, and that they were sensible, from the great Wickedness and Corruptions of Men’s Nature, that their common Peace and Safety could not be well maintained, unless Civil Governments were instituted; which could not subsist without a supreme Authority placed in some one or more Persons. This being a DiState of the Law of Nature or right Reason, and so highly conducing to the Good of Mankind; it must needs owe its Original to God, the Author of all Truth, and the Giver of every good and perfect Gift. From whence it follows, that not only the Institution of Commonwealths themselves, but also the supreme Power with which they are invested, does not proceed merely from Men, but from God’s Command, express by the Law of Nature or right Reason: So that the same Legislator, who first prescribed Civil Society, also prescribed the Peace and Order of that Society. Now a supreme Civil Authority, either in one or more Persons, is the Life and Soul thereof, without which it cannot live or subsist.

But it is certain that those things are not only laid to proceed from God, which he immediately institutes, without any human Act intervening, but those also, which Men by the Condesc of right Reason, and according to their pretent Occasions and Necessities, have introduced to fulfill that Obligation that lay upon them, to promote the common Good and Safety of Mankind. And since it is proper, that such Laws, which are given to a multitude, that great multitude, that great Authority which prescribes them to the publick Peace and Concord of Mankind, cannot well be exercised (the Unrulines of Men’s Passions considered) nor be maintained without some supreme Civil Authority to keep Men in order; it is plain that God, who enjoined Men this, does also command that Civil Societies should not be only instituted, but their Authority also obeyed, as derived from himself, and as the necessary means of obtaining this great end of all the Laws of Nature, the common Good and Safety of Mankind. And hence it is that he hath not any where prescribed or instituted any particular Form of Government, but leaves the choice of it to the particular Genius and Temper of each Nation and People.

This being settled, your Objection is easily answered, How Civil Power can be conferred, without an immediate conferring of it from God, since the People in the State of Nature had it not before. This proceeds from your not considering, that this supreme Authority is not like the Soul of Man, an immaterial Power, that gives Knowledge and Understanding to the Body, who may be separated from it; but is only a moral Quality, which may be produced by the mutual Consent of those that institute it, as the productive Cause thereof, tho’ they had it not formally in themselves before; jest as from many Voices singing in Conformity, tho’ in different Tones, there arises a Harmony, which was not in any single Voice alone. Therefore since Civil Authority proceeds from the Non-Resistance of the Subjects, and their Concession that the first Power is not only necessary, but also impossible, without a separate Power of their own, for the publick Good and Safety, it plainly appears, that in each particular Matter of a Family and Freeman there lay (the hidden and disproport) the Seeds or Rudiments of supreme Power, which by mutual Compacts did afterwards grow into a perfect Civil Authority. And thus not only many Masters of Families, and Freemen, may combine together for their mutual Safety to erect a Commonwealth, by appointing one or many Men to rule over them for their mutual Safety; but it is not impossible, but that from the Government of a Master of a Family, having many Villages and Slaves under his power, there may arise a perfect Kingdom: for tho’ the paternal Power does chiefly respect the Education of Children, and that of a Master, the Government of Servants, for his own advantage; yet is there not so great a distance between the Power of a Master of a Family and Civil Authority, that there can be no passing from one to the other, without a new Authority immediately created by God for that purpose.
Dialogue the Eleventh.

Por suppofe a Master of a Family, having a numerous Train of Children and Servants, should permit both of them, by way of Remuneration or Mannumfion, to enjoy fuch a Portion of Lands, or other Goods to their own use, as alfo to govern their own private Families and Affairs as they shall think fuit, provided they will fift obey him as their Head and Governor, and contribute the whole Affidance of their Lives and Fortunes for the publique Safety; I cannot fee any thing that would be wanting to the making fuch a Master of a Family a lawful and abolute Prince, provided he was endowed with fuch a Power as to be able to protect them: yet all this while, without oppofing any new Divine Authority to be infufed by God upon his Accreffion to this Dignity.

Yet I confefs you have given me a more exact account concerning your Sense of this manner than ever I had before; and therefore I fhall not further difpute this Point with you: only let me tell you, that upon this Hypothesis of yours is founded that desperate Opinion concerning the real Authority or Majesty of the People, which the Commonwealths-men fuppofe fift to reside in the difufive Body thereof, after the Government is infufated, and by virtue of which they fuppofe there fift remains a power in them to call their Kings or Governors to an account, and to punish them for Tyranny, or any other fuppofed Faults, againft the fundamental Conftitution of the Government, or of the Original Contract, as thoſe of your Party are plea'd to term it.

F. Well then, to let you fee I am none of thoſe Commonwealths-men who maintain any fuch desperate Doctrines, here I do freely own, that where the People have parted with their whole Power, either to a Monarch, or chief to a supreme Council or Senate, from thenceforth they have nothing at all to do to call fuch Governors to an account, or to punish them for the highest Tyranny or Oppreffion they can commit. The utmost I have allowed as lawful to be done in this Cafe, in all the Conversations we have had, is no more than this; That the People, in cafe they fee themselves like to be defroyed and ruined both in their Perfons, Conftitutions, and Estates, may, even under the moft abolute Governments, fand upon their own Defence, and prevent their being thus totally ruined and enflaved; and may also call off all Allegiance to fuch Powers, in cafe they refuse to treat them with greater Justice and Moderation for the future. But as for fuch limited or mixt Governments as ours are, where the People have fift retained a share in the Legiflature, and alfo in the ruling of publique Taxes; yet if the King is by Law exempted from Punishment, or rendering any account of his Actions either to the People or their Repréfentatives, the utmost that I contend for, is, That fince the King receives only a limited Power of ruling according to fuch and fuch Laws, and will fupra that fhare of the Government that does not belong to him; in fuch Cases, if he refuse to amend, then they may refit his Officers and Minifters, any bafe or diffident, in the execution of fuch violent and illegal Actions. And if he fift perifh, and refuse to amend, that then at laft they may proceed to declare, that he hath forfeited his Crown or Regal Right of ruling over them, and in fuch cafe I hold that it again devolves to the People, from whom it fift proceeded. And that this is no new Doctrin, I have the Authority of Fortifume on my fide, who, in his Treatife De Legibus Legum Am. Cap. 13, p. 138. gives, after having known that all political or limited Governments proceeded at fift from the Consent of the People, proceeds thus, addressing himself to Prince Henry, Son of King Henry V. (for whom he compos'd this Work) Habes ex forfum, Exemp& Subditos, propriis politici Regni formam, ex quibus potest posita fore, quam Rex ejus in Leges ejusdem Subditos volent exercere. Ad Tutias quaeque Leges, ad Subditos, quaeque Corporum & Civium, Rex dignitatis potest esse, & ad eum Populorum Populi effumque substantias, qua non sit in Subditis ulto, non ad eum Populi dominari. From whence we may observe, that he calls the Government of this Kingdom, not Regnum fimplis, but Regnum Politicum, that is, a political有限, Kingdom, in opposition to Regnum Individuum. He calls a Power flaving or proceeding from the People, and if it thus proceeds from the People, it must certainly return to them again upon the failure of the Conditions to be performed on the King's part. Nor does this foppofe any Injury to the Authority in them who take this FORTEUM, any more than it does foppofe it in the People, according to your own Hypothesis, when
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the Civil Authority does again devolve to them upon the death of a King without lawful Heirs.

M. I do now very well understand your Hypothesis, but I think Princes are not thereby in a better Condition by being thus accountable to, and punishable by the People, but that they are rather in a much worse; since you say they may refuse, may kill them, when they are once entered into a State of War against them. For where Princes are accountable to their People or Senate, they may then be admitted to be heard to make their Defence, in case of any Oppression or Misgovernment laid to their charge; as the King of Poland may at this day, to the great Assembly of Estates or Diet of the Nation: whereas in the case of the King, as you have put it, tho' he is not accountable to the Parliament, yet he is still liable to that which is more dangerous, viz., to be judged, cenfured, and declared forfeit by every inconsiderable Fellow of the Rabble, on pretence of violating this Original Contract, and having broken the fundamental Constitution of the Government, and so shall be condemned unheard, and perhaps without any just Cause: so that I think a Man had as good be a Bearward, as a King upon such Terms.

F. The Ends of your Principles I see are not to be pleaded, unless Princes may do whatever they have a mind to without control, or any Man's judging or opposing the Illegality of their Actions: For if a Parliament takes upon it self to judge of the King's Actions, this is calling their Princes to an account, and a thing against the Laws of the Land, as also that of Nations; if the whole Body of the People take upon them to judge when he has violated the fundamental Laws of the Kingdom, and broken the Original Contract, such an Audience to him, this is making him the Judge of his Judges, and cenfured by every mean Fellow of the Rabble. But to let you see that both judging and disobeying the King's Commands, if contrary to Law, is not a thing of such dangerous Consequence as you would make it, appears by the late Petition of the seven Bishops, wherein they take upon them to judge, that the King's late Declaration of Liberty of Conscience being against several Acts of Parliament, they cannot with a safe Conscience publish it, or agree to the reading of it in the Churches. Now I desire to know whether this be not a making the King's Actions liable to be judged and cenfured by every one of the Rabble, since these Bishops acted thus, neither as Privy Councillors, nor as Peers in Parliament? For by the same Right by which they took upon them to make this Declaration, by the same Right, not only every Curate of a Parish, but also every Layman in England, was free to judge of the King's Breach of this Law, and conseqently of denying Obedience thereunto; which Disobedience, if it once prove general, will quickly make the King's persons of no importance, and wholly insignificant to be thought it seems it is not the People judging of the Illegality of the King's Actions and Commands, which is the thing you find fault with, since when these Bishops acted thus, all those of the Church of England highly commended it: So that it seems it is not the bare Cenfuring and Disobedience that makes it a Crime, but it is the resulting such violent and illegal Orders and Commands, and at last declaring that Power void and forfeited by which they were made, that reaches in your Stomach: which is as much as to say, that this Judging and Disobedience in it self is no Crime; but the puffing it home, and doing it in such a way as that it may be meddled for the future; tho this is never lawful to be done, but when things come to that extremity, that all milder Remedies are become inefficual.

But to answer your Objections a little more closely, the Consequences of my Opinion are not so dangerous as you suppose them, if you will please to consider what I have already laid down at our last Meeting. As for the this Refusall is never to be made, but when the violent Breach of the Law becomes evident and undeniable, not to the Rabble alone, but to the whole Nation, which is, all sorts and degrees of Men; and as long as there is any Question about it, I acknowledge it is by no means to be used. And lastly, As to the declaring the Regal Power forfeited, this likewise is never to be done, but when the King becomes so obstinately resolved to pursue those evil and illegal Courses, as that he is utterly irreclaimable, and refutes all Propositions and Terms of amending or redressing them. And as to what you say, that
that the King is hereby deprived of all means of justifying himself, or vindicating his Actions; that is not so, since if a War be once begun, he may do this either by Declarations, Meffages, or Treaties, as King Charles I. did in his War with the Parliament; by which means he gained a great many both of the Nobility, Gentry, and Commonalty to his Party, who were before absolutely set against him. But if you will needs have a Parliament to judge and examine the reality of this Forseiture, I fo far join with you, that tho every private Man may first judge thereof, yet is it not become absolute, and an Act of the whole People, till the Estates of the Kingdom, as their Representatives, have by some folemn Vote or Declaration made it fo.

Well, Sir, I see you can to make the best of a bad Cause; but tho I think nothing of what you have said can give Subjects any Right to reflect, much lefs to cast off all Allegiance to their natural Prince, yet I shall not now dispute this Point any longer with you, but will proceed to the Merits of the Cause, and shall let you fee, that even upon your own Principles, the King has not been dealt withal in this whole Transaction, either like an Ally by the States-General of the United Provinces, or like a near Relation or a Son-in-law by the Prince of Orange, or like a King by his own Subjects. To begin with the States of Holland in the first place, it is apparent that they have acted treacherously with the King, and contrary to the late Treaty of Peace and Alliance, in furnishing the Prince of Orange, as their Captain-General and Stadtholder, both with Ships, Men and Money, to make this late Expedition against England, without so much as ever declaring the Cause of their Quarrel, or demanding any Satisfaction, if any occasion of Difference had been given.

But the Prince of Orange's dealing with the King his Father-in-law, has been much less justifiable: for, in the first place, he is not only guilty of the same fault with his Masters the Dutch, in beginning a War without ever declaring the Causes of it, or demanding any Satisfaction or Reparation if he had been injured, till it was too late to go back, and that his Fleet was ready, and the Army flipped for the Expedition; but what was more unkind from a Neophew and a Son-in-law, who had reason to expect all the Satisfaction which a King of his Father-in-law could give: tho indeed, to speak the truth, the whole War was, in my Opinion, altogether unjust on the Prince's side, since his chief Pretences were to redress Grievances, and to re-establish the Bishops and Church of England with the Colleges in their just Rights, and also re-store the whole Nation to the just execution of the Laws, by a Free Parliament and Privileges. Now I desire to know what the Prince of Orange had to do, either as a Neighbour or a Son-in-law, to concern himself with the Government of Affairs in England, much less to commit to take the part of those many Male contests and Traitors, who, after the Duke of Monmouth's Rebellion, went over into Holland? So that upon the whole matter, I can find but one thing which he had so much as a pretence of making war about, if it had been real, viz. the pretended supposititious Birth of the Prince of Wales; and yet even for this he ought not to have made War, till such time as all reasonable satisfaction in this matter had been demanded and obtained. I pretend that the next Parliament, if the War be declared should meet in November last, had been either hindered from meddling in it, or that they had failed to make a due Enquiry into it. But if we look home—

F. Pray, Sir, before you come to consider what has been done here, give me leave to justify the late Proceedings of the States-General, and the Prince of Orange in this matter. First, As to the States, it is a very great Mistake, that they made this War upon the King in their own Names; they furnished the Prince of Orange with Ships or Men as his Stadtholder or General; they did it as he was a free Independent Prince, whom they looked upon to have a good Cause of making War against the King of England, as one they had great cause to believe was so far engaged in the French Interests, as instead of standing neuter in this War with the Empire, they every day expected when he would join with France, and declare War against them, as they had reason to fear, by several angry Memorials which the French King's Envoy in Holland had not long before given them: so that indeed it was but according
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to the Rules of Self-preservation to begin first, especially when it might be done without their appearing in it at all. But granting this War had been made in their own Names, it had been but a just return for what had been done to them before by the late King, who made actual War upon them, without ever giving them the least notice, or demanding Satisfaction for any Wrongs or Damages received; and this was the more justifiable, because his present Majesty, when Duke of York, was looked upon to be the best safeguard of the Councillors which began that unhappy War, in which he himself served as Admiral. But as to the Prince of Orange, there is much more to be said in his justification: for, in the first place, tho' in some respects he was a Subject, by living under, and enjoying divers Lands and Territories, and Commands within the Dominions of the United Provinces; yet as he is Prince of Orange, he is a free independent Prince, and, as such, has a Right of making War and Peace: and all that is to be further enquired into is, whether the Prince had a just cause of making war upon the King or not. Therefore to answer your first Objection against the Prince's making war upon an Uncle and a Father-in-law, without first demanding Satisfaction, and then denouncing War if he could not obtain it; I confesi this were a good Objection, if you could once prove to me, that the Prince could have been sure to have had granted him whatever he could in reason demand, both in respect of the Church of England, the Security of the Protestant Religion, the Rights and Liberties of the Subject, and his own particular Concerns in the Person of the Prince of Wales. But whoever will impartially consider the Terms that the Prince and King were upon just before his coming over, will find that he was not obliged to give the King notice of his Intentions, by first demanding Satisfaction, and then denouncing War if it had been denied; since the King might then have joined his own with the French Fleet, and sent for French Forces into England, and then all that the Prince could have done, in behalf of himself and his Subjects, and his own particular Concerns, has been to gain that such Satisfaction ought to be demanded in most Cases, yet will it not hold in this; where if the Prince had sooner discovered his Design, the King might have easily prevented them. And how near this was to have been put in execution, may appear by this, That Succours were actually offered by the French King, and if they were refused by ours, it was partly because it was too late for the French Fleet to be then put out, and partly out of a politick Consideration, that besides laying the Hearts of his English Subjects, it might give the French such a footing here, that they would not be easily to be set out again. But indeed it seems as if the old formal way of making war was quite out of fashion; since Charles II. made war against the Dutch, and the King of France so lately against Spain, the Elector Palatine and the Emperor, without any Observation of those Formalities.

But if we consider the Grounds and Causes of this War, as they are set forth in the Prince's last Declaration, they may be reduced to these three Heads:

First, The Restoration of the Church of England, with the Bishops and Colleges to their just Privileges.

Secondly, The securing the Rights and Liberties of the Subject from the Difpening Power, and those other Incroachments that had been made upon them by the partial Judgments of Papilh or Corrupt Judges.

And, Lastly, The Enquiry into the Birth of the Prince of Wales. In all which the Prince was so reasonable, as to refer the Decision of their Differences to the Judgment of a Free Parliament.

Now as for the first of these, That the Prince as a Neighbour, and of the same Religion with us, might justly secure the Interest of the Protestant Religion here, and also redeem the Clergy from the Persecution they lay under, is very evident; since it has always been held lawful for Princes to take the part and espouse the Interest of those of the same Religion with themselves, the Subjects to another Prince. Thus Enthusiasm makes it a good cause of War by the Emperor Confessing against Luther, because he persecuted the Protestants living under his Dominions: So likewise in later Ages, Queen Elizabeth allisted the Dutch Protestants of the United Provinces, and those of France, against the Persecutions and Oppressions they suffered from their own Princes;
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as to the French Protestants, King Charles I. sent a Fleet and an Army to their Alliance in 1627.

But as to the next Head, the Oppressions we lay under in respect of our Civil Liberties, the Prince had as great, or rather greater Right to vindicate than the former. For Bacon and Barclay, tho' they suppose it unlawful for Subjects to take up Arms against their Prince, tho' ever so highly oppressed; yet they count it not only lawful, but generous and heroic for a neighbouring Prince, to rescue injured and oppressed Subjects from the Tyranny of their Kings. So, if the King had by his dispaching Power, his hearing of Taxes without Law, and taking away the Freedom of Elections for Parliament-men, almost totally dissolved the Government, and brought it to the Condition of an Absolute Monarchy, it was high time for the Prince to put a stop to those Incoaracments, both in respect of his own particular Interest, and also of the States, whose General and Stadtholder he is. Of the former, since if this Kingdom should once become of the Papish Religion, by the means of a Standing Army, and those other Methods that have been taken to make it so (granting the Prince of Wales to be truly born of the Queen) yet should happen to die, the Papish Faction here in England would in all likelihood debar the Prince and Princes of Orange from their lawful Succession to the Crowns; or at least would never admit them but upon condition of establishing of Popery and arbitrary Government in England; the former of which is as contrary to their Consciences, as the latter is to their Principles and inclinations.

So on the other side, if the Prince of Wales be not the Queen's true Son, the Prince and Princes of Orange had certainly a much greater Interest, as the presumptive Heirs of the Crown, to demand satisfaction in that great Point, which so nearly concerned their Right of Succession; for then certainly they might justly demand satisfaction, especially when they desired no more but to have the Business left to the Inspection of the States of the Kingdom, as the only proper Judges of the same. For as to the Privy Council, who by the King in his own Person and by his Presbytery (as without any President) determine this matter, their Highnesses certainly had no reason to be satisfied with it; since, besides the incompetency of the Judges, the King himself appeared too partial and interested in the Affair, for them to sit down by their Judgments. And as for what you say, that the Prince ought first to have tried, whether the King and Parliament would give him that satisfaction he demanded; this was very dangerous for him to hazard: for suppose the King would never have permitted this Affair to have been impartially inquired into (granting the Parliament had been (as it was very likely to be) packed and made up of Papists, Fanatics, and Time-servers, who either would not, or else durst not have examined this matter as they ought: his Highness had been then to play an After-game the next year, and what might have happened in the mean time, God knows; and therefore he had all the reason in the World, whilst the French King's Arms were employed in Germany, to demand satisfaction with the Sword in his hand. This is what I have to say in justification of his Highness's Arms, which if I had not just on his side, I think I can as easily prove what has been done for his Alliance by the Nobility, Gentry, and Commons of this Nation, to have been so too.

M. I shall not any longer dispute, whether the Dutch and the Prince of Orange may not make some fair Pretences for what they have done; since making War for Security, and by way of Prevention, is no new thing: tho' I confess what you say, in respect of the Prince of Wales, had been a sufficient cause to make the most true and just grounds for the Siege of Delft. But there was no just cause given why his Highness should suspect his Birth not to be genuine, and that even in the present Convent it self there could be no proof made to the contrary; I think it is now evident, that it was a wicked and unjust Calumny upon his Majesty and the Queen, since he himself, in the last Paper he left behind him at his going away, appeals to all that know him, may even to the Prince of Orange himself, that in their Consciences neither he or they can believe him in the least capable of so unnatural a Fidelity, nor of so little common Sense, to be imposed on in a thing of such a nature as that.

But
But as for those Noblemen and Gentlemen, who have declared for the Prince of Orange since his Arrival, I think that they are no way to be justly called; since granting them to have been satisfy'd, that the Prince's Demands were lawful and reasonable, yet sure they ought not to have taken up Arms on behalf of a foreign Prince, against their natural Sovereign: but if in their Consciences they had believed his Quarrel to have been just, the utmost they could have done, had been to have voted Neuters, without concerning themselves either with the one or the other Party; and then if the Prince had gain'd his point either by Arms or Treaty, they might have enjoy'd the just and peaceable breaking in upon the Church of England's Principles of Passive-Obedience and Non-Resistance, and so many Acts of Parliament made to the same purpose. But as for those Officers and Soldiers, who basely and perfidiously deserted the King at Salisbury, and ran over to the Prince's Army with their Commissions in their Pockets, they cannot possibly be justly called either by the Law of the Land, or that of Nations; since certainly they acted contrary to both.

Before I speak any thing concerning the Basing of the Prince of Wales, give me leave to say something in justification of those Noblemen and Gentlemen you so highly accuse; and tho we discourse'd something of this matter at our last Meeting, yet since you have again renew'd the Charge against them, I cannot but again vindicate them in what they have done. In the first place, pray call to mind, that it has sufficiently appear'd by the small Forces his Highness brought over with him, that he never intended to conquer this Kingdom, or impose any thing upon it, contrary to the known Laws and Customs thereof; and that it appears by his Declaration, his Proceedings against so numerous an Army, made up of the flower of three Nations, depended on that assurance he had of some considerable Assistance from the Nobility and Gentry of England, and perhaps from some of the Officers of the King's own Army; and that this was lawful in both of them, I thus prove: You may remember I made out at our last meeting but one, that when the Nation lay under any great intolerable Oppression, by reason of the Violations of their Rights, Liberties, and Estates: the Clergy, the Commons of the Realm, of all degrees and conditions in the Realm, was it, did always look upon it as their Right and Duty to vindicate the same by vigorous Resistance, when no gentler means could suffice. Secondly, I have prov'd that it neither was, nor could be the intent of those Oaths and Declarations made in the two first Parliaments of King Charles II. to deliver up their Lives, Liberties, and Estates wholly to the King's Mercy, let him use them as he pleased; and if they did not, it must necessarily follow, that upon the King's Violation of their Religion, Liberties and Properties, they had still a Right left them to defend themselves from such Oppression and Tyranny. Lastly, I have also prov'd (as the Convention also lately declar'd) that the King by exercising his disposing Power, by committing and prosecuting the seven Bishops, by setting up an Ecclesiastical Commission contrary to Law, by levying Money by his Prerogative, without or contrary to express Acts of Parliament, and by raising and keeping up a standing Army in time of Peace, commanded by Officers who had never taken the Oaths appointed by the Statutes made for that purpose, and confining of so many Persons, dierers, who having never taken the Oaths of Supremacy and Allegiance, were altogether incapable of serving in his Majesty's Army; and by doing divers other things contrary to the known Laws, Statutes and Liberties of this Realm, too long now to particularize; had broken the Fundamental Constitution of this Kingdom. This being the Case, I desire to know how it was possible for the Nation to have a firm and settled Redress of these Grievances, without a Free Parliament? Or how it was possible to obtain such a Parliament (the late taking away of Charters and Regulation of Corporations consider'd) unless those Obstacles had been first remov'd? And how they could be remov'd, without some Force proportionable to what the King had rais'd to hinder it, I cannot tell. And therefore it is a very vain Project of yours, to supposse that those Noblemen and Gentlemen should have sat still, and not have declar'd themselves some way or other in this Quarrel; which is all one, as to say, they ought to sit in and see a generous Prince ruin'd, who has come in for their Redemption, and that by then expected a Remedy for all these illegal Violations and Oppressions, when the King had kill'd or destroy'd the Prince of Orange.
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change and his Army, by his Majesty's yielding to all the same Conditions that the Prince had demanded. This indeed would have been not to be parallel'd any where but in a Romance.

But as for those Officers and Soldiers who you say defected the King, and went over to the Prince from Salisbury; tho' I grant they make a great noise, yet were they not a Thousand Men, Soldiers, Officers and all, (as I am credibly informed,) which was but a small Number, in comparison with the whole Army: and yet these may very well be defended upon the same Principles with the former; for if the Violations of our Liberties were so great and dangerous, as I have now fet forth, those Gentlemen were certainly oblig'd to prefer the common Good of the Kingdom, in the Preservation of their Religion and Liberties, before any private Interests or Obligations whatsoever, tho' it were to the King himself: therefore it was more his than their fault, if they defected him. And as for their going away whilst they were his Friends, and ought their Commissions in their Pockets, or their Commissions in their Pockets, or had left them behind them; since their going off was a Servant's Decision, and a sufficient Declaration of their own Heart, and what was big with a safe Confidence serve the King any longer in this Quarter. And you see that the Defection of these few Men had such a fatal Effect, that it cast such a panic Terror upon the King, and the whole Papish Faction about him, as to make him run away to London without striking a Stroke. But that the Prince of Denmark, with the Dukes of Grafton and Ormond, and Lord Churchill, were convinced of the danger this Kingdom was in, both in respect of their Religion and Liberty, which was but a small Number, and going with the Prince, where they could never expect to be put into higher Place of Honour or Trust, than what they enjoyed already under his Majesty: and therefore that Expression of the Lord Churchill's, in his Letter to the King, is very remarkable; "That he could no longer join with self-interested Men, who had fram'd Designs against his Majesty's true Interest and the Protestant Religion, to give a pretence to Compose to bring them to Effec." And one would be very much inclin'd to believe it, confederating the great number of Irish and Scotch Papists who had defected, and left him over and left him here; tho' with the turning you and disbanding of a great many English Officers and Soldiers out of several Companies.

But to come to the Business of the Prince of Wales, which you say was a mere Calumny, and an unjust Sufpicion on the Prince's side: tho' I will not affirm any thing positively in so nice a matter, since the Convent has not thought fit to meddle with it; I shall only say this much, that if there have been any Jealousies or Suspicions raised about it, Placing may thank those of his own Religion, who were intrusted with the management of the Queen's Lying-in. For in the first place it look'd very sulpicious to us Protestants, who do not put much Faith in the Miracles of the Romish Church, that immediately after the presentation of the Golden Angel to the Lady of Loreto, and the King's Pilgrimage to St. Winifred's Well, the Queen after several Years' Intermission, should again be with Child; and when she was so, should have two different Parturitions: which tho' it may be so; I turn'd you and disbanding of a great many English Officers and Soldiers out of several Companies.

M. What is all this to the purpose? Was it not prov'd by many credible Witnesses and those of the Protestant Religion, before the Privy-Council, that they were not only present in the Room when the Queen was deliver'd, but that they had seen Milk upon her Linen before her Delivery; and that they had about them her Belly immediately before it, and found that she was big with Child, and the Child deliver'd? and the Milk left there the same distance deliver'd? So that since every Person is to be presumed to be the true Son of the Parents that own him for theirs, do nothing but a direct Proof of that Fact, and that by undeniable Evidence, ought to make any

Man
Man believe otherwise; much more in the concern of the Heir Apparent to the Crown: and therefore I know not what you would have had done, which has not been observed in this nice matter.

F. And, Sir, let me tell you, because it was so nice a matter, and concern'd no less than the Succession of three Kingdoms; therefore the whole Nation, as well as the Prince and Princess of Orange, were to be fully satis'd of the reality of the Prince's Birth: since they were all sufficiently sensible that there wanted nothing but a Male-Heir to entail Popery on us and our Posterity.

And therefore there ought to have been present such Persons as had no dependence upon the Court, and who ought to have been delegated by the Prince and Princess of Orange, since the Princess of Denmark could not be there in Person; but instead of this, the only two Ladies who (as I am inform'd) were trusted by the Princess to be present at the Queen's Labour, were never sent for till she was brought to Bed and the Child dropp'd. And as for the rest of the Women, they were either Lords, or other Persons, who only swear they stood in the Room at a distance, and heard the Queen cry out; and immediately after the Child cry, some time before they saw it. And as for the Ladies, the greatest part of them swore no further than the Lords. So that notwithstanding all that they have sworn in this matter, there might have been a trick put upon them, and they never the wiser: since you may read in Sidensin's Reports, of a Woman who pretend'd to have been deliver'd of a Child by a Midwife within this year, and yet many weeks after, this Woman was to be a supposititious Birth, by the Deposition of the Midwife, and the poor Woman who was the real Mother of the Child, and others that had been of the Conspiracy.

And what has been done once, may be done again.

'Tis true, the King himself with one or two Ladies depos'd something further as to Milk, and the feeling of the Child immediately before the Birth; but his Majesty, if it be an Imposture, is too deeply concern'd in it, to be admitted as a competent Witness. And as for the rest of the Ladies, they are likewise, as being the Queen's-Servants, and having an immediate dependence upon her, to be except'd again, and under too much awe, to speak the whole Truth. But it is very strange to me, that none of them depos'd any thing concerning their feeling any Milk come from her Majesty's Breasts after she was deliver'd. And perhaps there was good reason for it, for I have had it from good Hands, that the had none afterwards, whatever she had before; the reason of which defers to be enquir'd into, since it is very rare. But as for the Witnesses, they were depos'd in the Body of the Queen. She is also a Papist, and consequently a suspected Witness in this Cause. Whereas all this might have been prevented, had the Queen (were she really with Child) been perfused to be deliver'd not within the Bed, but upon a Pallate; where all the Persons whose Business and Concern it was to be present, might have seen the Child actually born: nor need'd they there to have any Men been by, tho' I have heard that the late Queen of France was deliver'd of the present King, the Duke of Orleans not being only present in the Room, but an Eye-witness of the Birth. And so fine, if let the nature had been done, it might have sav'd a great deal of Dispute and Bloodshed which has already, or may hereafter happen about it. And therefore I do not at all wonder that the Prince of Orange should not take this partial Evidence that has been given for sufficient Satisfaction; so that whether this Birth of the Queen's was real or not, I shall not now farther dispute. It is sufficient, that is his Highness and his Princess had judg'd and reasonable judgements of an Imposture, whilst they remain under them, they had alter a just Cause of procuring a Free Parliament to examine this great Affair, and also to obtain it by Force, since it was to be got no other way.

M. I need not further dispute this Business of the Prince of Wales with you, since I daur not appeal to your own Conscience; whether you are not satisfied, notwithstanding these supposed Indiscretions in the management of the Queen's Delivery, that he is really Son to the Queen: and I think it would puzzle you or I to prove the Legitimacy of our own Children by better Evidence than this has been. And I think the whole of your Party may very well defray of producing any thing against it, since the Prince of Orange himself has thought it best to let it alone, as knowing very well there was nothing material could be brought
brought in Evidence against him: But I shall defer speaking further on this Head, till I come to consider of the Convention's settling the Crown upon the Prince and Princes of Orange. But before I come to this, I have many things further to observe upon the Prince's harsh and unjust Proceedings with his Majesty, and refusing all Terms of Accommodation with him, upon his last return to London.

In the first place therefore I must appeal to your self, whether it were done like a Nephew, and a Son-in-law, when after the King was voluntarily returned to White-Hall, at the Persuasion of those Lords who went down to attend him at Feverham, before he had scarce time to reft him after his Journey, and the many Hardships he had endured since his being feized in that Port; and when he had but newly sent my Lord Feverham with a kind Messeage and Compliment to the Prince, inviting him to St. James's, together with some Curtures of reconciliation, as I am informed, the thence should make no better a return to all his Kindness, than to clap up the Messeenger, contrary to the Law of Nations, as his Majesty observes in this late Paper I now mentioned: and should, without any Notice given to the King of it, order his Men to march, and displacing his Majesty's Guards, to feize upon all the Posts about White-Hall, whereby his Majesty's Person became wholly in his power. And not content with this, he likewise dispatch'd three Lords (whose Names I need not mention) to carry the King a very rude and unduíting Messeage, deñring him not to stir till the next Morning, from his Palace, to his Private-House in the Country, altogether unfit for the Reception of his Majesty, and those Guards and Attendants that were necessary for his Security. Nor would thee Lords stay till the Morning, but disturbing his Reft, delivered their Messeage at Twelve a Clock at Night; nor did they give him any longer time than till the next Morning to prepare himself to be gone: and then the King was carried away to Rochester under the Conduct, not of his own, but of the Prince's Dutch Officer, making his Majesty continued, for those few days he thought fit to stay there, till his Escape from thence, in order to his Passage into France: by which means the Prince hath render'd the Breast irreconcilable between his Majesty and himself: For whereas, if he had come to St. James's, in pursuance of the King's Invitation, and had renewed the Treaty, which was un-happily broke off by the King's first going away, there might have been, in great probability, a happy and lafting Reconciliation made between them, upon the Terms of not depriving the Chief of his Liberties, and the Rights and Liberties of the Subject, which you so earnestly contend for; whereas, by the Convention's declaring the Throne vacant, and placing the Prince and Princes of Orange therein, they have entail'd a lasting War, not only upon us, but our Politerity, as long as his Majesty lives, and the Prince of Wales, and his Iliffe (if he live to have any) are in being.

I confess you have made a very Tragical Relation of this Affair, and any thing did not understand the Grounds of it would believe, the King James being quietly settled in his Throne, and the Prince of Orange refusing all Terms of Reconciliation, had seized upon his Palace, and hurried him away Captive into a Prifon; whereas indeed, there was nothing transacted in all this Affair, which may not be justified by the Wrst Rules of Honour, and the Law of Nations: for the doing of which, it is necessary to look back, and consider the State of Affairs immediately after the King's leaving Salisbury, and coming to White-Hall, where one of the first things he did after he was arrived, was to issue out a Proclamation for the calling a New Parliament, which was received with great Satisfaction by the whole Nation; and immediately upon this, the King sent the Lords Hallifex, Nottingham, and Godolphin, to treat with his Highness upon these Proposals of Peace which he then sent by them, and to which the Prince return'd his Anfwer, the Heads of which are very reasonable, when he did not demand any other Security for himself, and his Army, than the putting of the Tower, and Ports about London, into the Custody of that City. Yet I must observe the Iliffe of all those Terms that were proposed by the Prince could be brought to Town, the King following the ill Advice of the Popish Faction, instead of suffering the Elections for Parliament-Men to proceed, as he had promised, and as was hoped for by us, all on a sudden he order'd the reft of the Writs for Elections, that were not sent down,
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down, to be burnt, and a Caveat to be entered against the making use of
those that were sent already into the Country; and at the same time he sent
Order to the Earl of Ferefield to disband the Army, and dismiss all the Sol-
diers with their Arms. But I had forgot to put you in mind, that just before
this the Prince had ran away the Queen, with the Prince, in a Vessel, and that
she carried the Great-Sea of England along with her; whereby it was plain,
the King intended to put it wholly out of his power to issue out any Writs,
or pass any publick Acts, wherein the Great-Sea should be used: and that this
Sea was carried away, appears by its being not long since drawn up out of the
Thames, by a Fisherman's Net, near Lambeth Bridge, where it's supposed to
have been thrown in by the Queen, or some of her Attendants, in her Passage
over the Water: And farther, that the King was then resolved wholly to quit
the Government of this Kingdom, (at least for the present) appears by his so
freely following of the Queen, within three Days after, sailing from his Pa-
lace by Night in a Boat to Gravesend, and from thence in a small Vessel to Fe-
vernon; where how he was seized by the Ships of that Town, and afterwards
sent thither to London, as you have set forth, I need take no further notice.

Now this being a true and fair Narrative of the whole Matter, I shall only
offer two or three Questions to your Consideration, and desire you would give
me a fair and Edition Answer to them: First, Pray tell me whether it
was not the King's fault, that it was rendered impossible for the Parliament
not to be elected, by burning of the Writs, and finding away the Great-Sea?
Secondly, Whether the King by first finding away, did not plainly confess him-
self conquer'd by the Prince, and did thereby Advertise the Government? Also
by his obstinate refusal to redress the Grievances of the Nation, he forfeited
his Crown and all Allegiance from his Subjects, and was not after this to be
consider'd as the Son of the Prince, in the Eye, or by the Prince, so that all
and therefore whatever Treatment he after this received from the Prince, it
was not to be looked upon as done to a lawful King, but a conquer'd Prince;
and the Nightckt might not only justly refuse to treat with him any more as a
Crowned Head, but might also have justified not only the taking him Prisoner,
but sending him into Holland, if he had pleas'd: but instead of this, he only de-
defied his removal out of Town, from that Confusion and Influence of those
Mistakes of his Partiots that foisted to him; and by securing his Person, to put
it out of his power to play any further Game, and rally the late disband'd
Army, of whom there were at least Twenty Thousand of the Sea, Irre, and
English, who would have stood by the King till the last: And therefore the
English, as well as the Dutch, Council about the Prince, did not think it safe
for him to come to Town, as long as the King had his Guards about him at
Whitehall, since they might have been increased to an Army whenever he pleased.

And thought grant good Breeding and Manners, especially to Kings, as also
Respect from a Son-in-law to a Father, are Duties incumbent upon Princes, as
well as private Men; yet when these lesser things stand in competition with
their own Welfare and Safety, as also of the whole Nation, for which the
Prince was how engaged; if he might, for these Ends, justly require the re-
moving and securing the King's Person, it was no great matter what time of
Night he had notice to remove: though this was not done neither with any
Design to circumvent or surprize him, but happened indeed through pure Acci-
dent; for when it was resolved that the Prince's Guards should march to
London and secure Whitehall, it was also resolved that the King should have
notice to remove. And since it was not thought fit to let him know it till the
Polls were all heard, the Ways being very deep and dirty between Wind
and London, the Dutch Guards, commanded by Count Solmss, could not reach
the Town till past Ten at Night; and after that it was near Twelve before the
English Guards, about Whitehall, could be drawn off without fighting; and
still that was done, it was not thought as all proper, or safe, to deliver to the
King the Prince's Message for his departure. So that indeed it was not from any
Design in either the Prince and his Council who ordered it, or of these
Ladies (who very well understood good Breeding) thus to deliver their Message
to him at that time of Night.

But
But tho he was in bed, yet that he was not asleep is very probable, since he had not been above half an hour in bed; and it is not very likely he should be asleep, when he very well knew in the Evening before of the Arrival of the Prince's Traps about Whitehall, and therefore could not be without too much Concern about it, presently to compose himself to sleep.

But as for his Removal from London, it is plain that his Highness was so far from owning, or receiving the King in the same Capacity he was in before his Departure, that as soon as ever he heard he was at the Earl of Winchelsea's; and about to return to London, he sent away Monseigneur Zweisstein with a Letter to let him know, that he desired him not as yet to come to London, but that Monseigneur should come to Tidhills, but monseigneur. So having informed the King by the way, he came in the mean while to Whitehall: yet could not but know that his being there was not with the Prince's Consent, since the same Gentleman followed him thither, and there delivered him the Prince's Letter; so that this second Message by the Lord's Lords could be no new thing, or Surprize to him. Yet that his Highness never intended the least Violence towards the King's Person, may appear by this, that he left it to the King's decision what place he would go to, as also what things he would take with him; when the King refuse to take his English Guards with him, tho they were offered him. And indeed these Dutch Guards that attended him, might, in his Majesty's Judgment, be very well trusted, they being as well as their Officers for the most part Papists; but that the Prince did not intend to detain his Majesty's Person as a Prisoner, may appear in this, That whilst he remained at Reckester, none that would be delivered from him, he and that the officers and Soldiers of the Guards were ordered to be under his Command, and every night to take the word from him; and had it not been for the King's commanding a Centry to be drawn off from his usual Post, he could never have gone away without being disarmed; and if he would have gone away at noon-day, I know not who, unless the Rabble, would have hindered him. So that I think it is evident, that this was the civillest and mildest Usage that a vanquished Prince could expect from him that had so much the better of him, and in whose Power he now was, and I doubt more that the King would have allowed the Prince, had it not been for fortune to have got him as much in his Power: nay, the King was so far from being confined, that is plain he had the liberty given him to go whither he pleased; nor were these Guards placed so much about him for his Confinement, as to secure him from the Infidels of the Rabble, who otherwise there, as well as they did at Faversham, might have express'd too violent a Retaliation against his Person.

M. I cannot deny but you have given a very fair, and as far as I know, a true account of this Transaction, and have told me of all those things which I never heard before; but however, I cannot depart from my first Opinion, that it was neither honestly nor wisely done of those, who took upon them to advise the Prince to put things to Extremities in this Conjunction: and therefore I impugn it chiefly to those English, who supposing they had by taking Arms, and joining themselves to the Prince's Party, provoked the King beyond all possibility of Pardon, were resolved to do their utmost to put it out of the King's Power, by endeavouring to put him in an Account for it. And in performing this, they dragged away the Queen and Prince, and then going away himself, in the middle of a Treaty with the Prince, and thereby leaving his Affairs in such Confusion, may seem to deserve Censure; yet certainly his Majesty is to be excused in a great measure for what he then did: for as he tells the Earl of Faversham, in his Letter to him to disband the Army, That things being come to that extremity, H.D. p. 92. that was forced to send away the Queen, and the Prince his Son, that they might not fall into the hands of those, who had been so far from putting him in an Account, and follow him, since the Troops of his Army were not to be relied on; that it was not advisable for him to fight the Prince of Orange in the head of them, much less was it safe for him to trust himself in the Prince's power; and sure it was but reasonable that Princes, as well as other Men, should provide for their own Security as well as they can.

But yet I can never believe that his Majesty's first going away was any Abdication of the Government, much less a Forfeiture of his Crown or Royal Dignity, any more than the second: For in the first place it could be no Forfeiture,
according to your own Principles, because he had already dissolved the Ecclesiastical Court, and restored the Cities and Corporations to their former Charters and Freedom in Elections of Parliament-men, and put again in Commission all Lords Lieutenants, and Justices of the Peace, who had been before turned out: And if he could not give an entire Redress to all our Grievances by a Free Parliament, it was only because he durst not lay to hold it, since he thought he could have no Security for his Person, the whole Nation being in a manner poisoned and prepossessed against him, by those malicious Artifices of a French League, and a supposititious Prince, and that his Majesty had so many unfortunate Disappointments, and so surprizing and unparalleled Accidents; part of his Army deferring him, and the rest proving unserviceable, when there were such terrible Disorders in the Kingdom, and all Places were either flaming, or about to take the fire of Rebellion. So likewise could it not be properly any willful Deception or Abdication of the Government, since he was forced to quit it, like the Master of a Ship, who when the Veil is like to sink, is forced to leave her, and escape in a Cock-boat. And that his Majesty did not act thus without an Intention to return, and again to vindicate his Right, when Opportunity served, appears likewise in that Passage in the above-mentioned Letter, wherein he defends both the Officers and Soldiers of his Army, then to be disbanded, to continue their Fidelity to him, and to keep themselves from Associations, and such pernicious things. Possibly it may appear, he was only not aware of the return of his forces to his Throne when time should serve; and if he left no Orders at all for the Government of the Kingdom in his absence, nor named any Commissioners or Lieutenants to represent him, it was because he thought it to no purpose; since besides that he could find no body who durst undertake so difficult an Employment, so they that had undertaken it, would have found no body who would obey them; the Generality of the People, and also of the Prince of Orange, would not have been inclinable to the Prince of Orange.

Yet however you fee, upon his return to Town, the King was so well persuaded of the Prince of Orange's kind Intentions towards himself and the Nation, that I verily believe his Majesty would have yielded to any thing that could in reason have been desired of him. And upon this ground I suppose he wrote so kindly to the Prince, and invited him to come to St. James's with what Troops he should think fit for his Security; therefore I must needs tell you again, I think it was a great Oversight of the Prince of Orange thus to let slip this Opportunity, by refusing all Terms of Accommodation with the King, and by clapping up my Lord Ferrershaw, then zealing the King's Person, and sending him out of Town, to let all the World fee he was resolved to treat no more with him. And this being the true State of the Cafe, it is not your laying that he had forfeited his Crown by going away, and consulting his own Safety, that will convince any unprejudiced Man: for as to your notion of a Forfeiture, that it was not then entred into the Thoughts of the Peers, and others of the Privy Council, appears by the Order they made for sending the Lords Ferrershaw, Asby, Tarmouth, and Middleton most humbly to treat the King to return to Whitehall, so that he was received very joyfully, and with great Acclamations of the common People, as he passed thro the City: and when he came to Whitehall, he called a Council, where he made an Order to stop the demolishing and plundering of Houses by the Rabble; so that he was not only received, but also aced as a King after his return to Town. This being the true State of the Cafe, I shall not dispute the Point, whether his Majesty and the Prince were in a State of War or Peace, after his return, or what the Prince might have done as an Enemy and a Stranger to the King's Person, but what might be expected from him as a generous Prince, a Nephew, and a Son-in-law, and one who was bound in Conscience and Honour to consult the lasting Peace and Happiness of the Nation more than his own private Interest, or the Ambition of wearing a Crown.

F. You have made the utmost Defence that I suppose can be brought for the King's first going away; yet if it be better considered, I doubt it will not serve the turn. I see you are forced to lay the whole blame of the King's Departure in the midst of the Treaty with the Prince, and his refusing to call a Parliament according to his own Promise and Proclamation, upon his want of security
Dialogue the Eleventh.

security for himself, the Queen, and Prince, if he had said; by reason of the failure of Fidelity in his Army, the general prejudice of the Nation against him, and the great Firmness and Resolution there was in the Prince’s Army to adhere to him. Now I shall shew you that every one of these were but Pretences, and that the great part of his Departure was, because he feared to leave the Inquiry into the Birth of the Prince of Wales, and the free Examination and Redress of our Grievances, and those Violations he had committed upon the fundamental Constitution of the Government, to the impartial Judgment of a Free Parliament. For in the first place, as to want of Fidelity in his Army, there can be no just excuse for his defecting and disbanding them as he did, without any Pay; since he himself, in his said Letter to the Earl of Revellham, expressly owns, "That there were a great many brave Men, both Officers and Soldiers, among them;" and therefore, if he was satisfied of it, he ought to have first sent for all his Officers, both Colonels and Captains, and have examined them how far they would stand in him in the Defence of his Person and Cause against the Prince of Orange; and he might have also ordered those Officers to have examined every Regiment, Troop, and Company in his whole Army, how far they would engage in his Defence. And if he had proceeded thus at Salisbury, before he fled away in that Confusion to London, I have been credibly informed by several Officers of that Army, that there were found above 20000 Men, that would have stood by him to the last Man, in his Quarrel against the Prince; and therefore I impute his going away, as he did from Salisbury, to some strange panic Fear that God had cast upon him, and all the Popish Faction about him, since he has been known not to want sufficient Courage upon other Occasions. But tho he had omitted it there, yet he certainly ought to have tried this last Experiment after he came to London, rather than have quelled the Kingdom so dishonourably as he did, and thereby by giving the Prince of Orange’s Friends an Opportunity of seizing or getting delivered into their power all the Garisons and strong Places in England, besides Portsmouth, in those three or four days time that he was not heard of; besides great part of the Army, that was not disbanded, had in that time gone in to the Prince, in hopes of their Pay and future Preferment. Now that the King might with safety have reposed with his Army somewhere about London, he himself grants, in his Foresight to the Prince, to the effect, "That in the H. D. p. 90. mean time all Matters were adjusted concerning the Freedom of Elections, and a Security of their Sitting, the respective Armies may be retained within such Limits, and at such Distance from London, as may prevent all Apprehensions that the Parliament may be in any kind disturbed." Which Proposals being made not long after the King’s Arrival at London, we may reasonably suppose, that he was then well enough satisfied with the Fidelity of the greatest part, at least of his own Army, to him; and if he were not, he might have been better satisfied if he pleased the Army to sit with Honour of the Prince. But as for the next Difficulty, the Nation’s being poisoned and perplexed against him; admit it were so, as long as he had a sufficient Army about him (as I suppose he might have had) he need not have feared any thing the People could do. But indeed this was a needleless fear: for before the Parliament could sit, it was not the People’s Interest to hinder it, or to fall upon the King or his Army when matters were in a fair way of Accommodation. So after the Parliament sat, there would have been left nothing of Fear since the Reverence of that Court would have kept them in awe. But as to the Firmness and Resolution of the Prince’s Army, the fear of that was also needless, as long as the King’s Army continued as firm to him; and if the Prince’s Army had been the first Aggressors, I doubt not but the People would have taken part with the King against them. But after all it was certainly (and you must grant it so) much more safe and honourable for the King to have treated with a Parliament, with an Army about him, that might have yielded the same things (as you suppose him willing to have done) after his return to Town, when his Army was disbanded, and London had received the Prince, and had joined with him, and when almost all the strong places of England were in the Prince’s power. So that upon the whole matter it evidently appears, that the King chose to trust his own Person, together with that of the Queen and Prince, to a foreign Monarch, rather than he would rely
rly upon the Justice or Fidelity of his own Nation. And notwithstanding all you have said concerning the King's Willingness, you say in the next place, that nothing the King has done in all their Exorbitances he committed, can in any wise amount to a Portion of the Government, or Abdication of the Government; not to the former, because the King redressed all our Grievances before he went away. 'Tis true, I grant he redressed some of them, by putting divers things in the same state they were before; yet for all this, the greatest still remain'd un-redressed, viz. the raising of Mony contrary to Law, and the Dispending Power, both which (as I have already shewed you at our last Meeting) he never disclaimed, neither took any sufficient Course, by calling a Parliament, to prevent its being exercised for the future; besides his going away, without giving the Prince the Prince might further satisfaction about the Birth of the Prince of Wales. All which not done being, I must still affirm, that this wrought a forfeiture of the Crowns, or an Abdication of it, at least by his refusal to hold and govern it according to the fundamental Laws thereof; for he that destroys the Law or Conditions by which he holds an Estate, does tacitly renounce his Title to it, as I shewed you in the Case of a Tenant for Life, alienating in Fee. So that this being considered, as also that the City of London and the whole Nation had surrendered themselves to the Prince of Orange; and that even the Archbishops of Canterbury and York, together with the Bishops of Winchester and Ely, with divers other Earls, Bishops, and Lords then in Town, had sent an Address to the Prince, immediately upon the King's Departure, and sent three Lords and one Bishop with it, desiring his Highness to come speedily to London, and to take the Government upon him, having before declared that they would, with all their utmost Endeavours, assist his Highness for the Establishment of the Prince of Orange; the Princess upon the King's Return, to surrender that Power which the Nation, as far as it was able to do without a Parliament, had put into his hands; and that to a King, whom he had very little reason to believe, would affeit it any better than he had done before.

But I see you willfully decline entering into the Merits of the Cause, and arguing the main Point in the Controversy, viz. Whether the King was in a State of War or Peace with the Prince upon his Return; for if he were still in a State of War, the Prince might certainly very well stand before the Earl of Fetterham (his late Majesty's General) for offering to come within the Limits of the Prince's Quarters without his leave, especially since he was still answerable for doing his Endeavour to disband an Army (a great part of which consisted of Papists and Foreigners, with their Arms in their hands) whereby they might have robbed and spoil'd the Countries, or at least have kept those Arms to renew the War again with the first Opportunity; so that it will appear to him, as a thing for him to think over, whether the Prince could have gone without his leave (being now Master of the City) which could so far offce all the Prince's just Rebellions, and make him so far confide in the King's Word, as to come to London, whilst he remained there with his Guards, and all those Papists and Tories in and about London ready to take his part, and rally again into a new Army upon the first Signal.

But as for any Proposals of Peace or Accommodation, which you say the Lord Fetterham brought with him, I neither know nor have heard of any such thing. 'Tis true, the King says in the said Paper he left behind him, that he had writ to the Prince of Orange by the Lord Fetterham, and also mentions some Instructions he had given him; but what they were, he does not tell us: but sure they were not Proposals of Peace, since it is to be supposed, that the King would not have sent any thing of that consequence, without first acquainting the Privy Council with it before it was sent. But since we hear of nothing concerning them, we may very well suppose there was no such thing; or if they were, his Highness was the final Judge whether they were reasonable or not: and if the King had any Design to propose any Just or reasonable Terms, whereupon he might have hoped to have been restored again to his Royal Dignity, he had a very fair Opportunity for it, when a great Council of the Nobility were met at St. James's, in order to sign an Accommodation, to hand by the Prince in the calling of a Free Parliament: for the King might then, if he had pleased, have made his Proposals by such of the Lords and Bishops as
he could most confide in, and have conjured all the Peers there assembled to have interceded with the Prince of Orange to renew their Treaty with the King, which had been before unhappily broken off; and then if either the Peers had refused to do this, or the Prince had refused to hear them, the King might then (I grant) have had sufficient reason to declare to all the world, that he was not fairly dealt with. But for him again to go away only upon a Pretence that his Person was under Restraint, when really it was not, plainly shewed, that he had no sincere Design of making an amicable and of those Differences of Policy not desired to be settled to his Throne by the general Consent of the Nation; but either hoped for it from those Civil Differences he expected we should fall into upon his Departure, or else to the Arms of France. And this being the Case, I think nothing is plainer, than that the King, both by his first and second Departure, hath obstinately refused all those means whereby the Nation might have been satisfied, with a due Consideration of his Person and Authority which he lived, and of the suppos'd Prince, when his Legitimacy shall be sufficiently proved, and made out before 10 o'clock upon the King's grace: for that since I have already proved that the King had, before the Prince's Arrival, committed so many Violations upon the whole Constitution of the Government, and that those Violations, if wilfully and obstinately persisted in, do at last produce an absolute Abdication and Forfeiture of the Crown itself; I think the last King has done all that could be required to make it fo.

But I have forgot to answer one Objection you made, viz. that the Peers and Bishop, as they invited the King to return to Windsor, had no other Consideration of this Forfeiture, nor the People of London, who, they say, received him with great Joy and Acclamations; and that therefore it is wholly a new Invention. To this I answer, That if the Lords you mention did send this Message to the King, it might be because they were surpriz'd with his unexpected Return, and had not well considered all the Circumstances of the Case, and thereby did more than they could well justify, having before declared, they would stand by his Highness in procuring a Free Parliament, which must certainly be realized, since it was then gone, and the throne empty; and that the same had invited him to come to London as well as the City had; and how that could consist with inviting the King thither, without the Prince's Consent, I do not well understand. But it seems they quickly altered their Sentiments, as appears by their present after publishing a Paper, in the nature of an Association, to stand by the Prince, without taking any notice at all of the King: and the very day of the King's Departure they met to consider upon the Prince's Speech he made to them, declaring them to adhere to the Right of the King's Person means how to pursue the case of his Declaration, in calling a Free Parliament. And within two days after they presented the Prince with their Advice, to call a Convention on the 22d of January, which was also the next day agreed to by one hundred and sixty Persons, who had served as Knights, Citizens, and Burgesses in any of the late Parliaments, in the time of King Charles II. without taking any notice at all of the King: for tho' it was true he was then gone, and the throne empty, and City, two or three days after, the Peers went to the Prince; yet when the Peers met both the first and second time on the 21st and 22d of December, he was still here, for the King did not leave Rochester until the 22d in the morning. So it is plain, it was not their Design to own, or take notice of him any more as King; and that which makes it more remarkable, is, that several of the Bishops, viz. the Archbishop of York, together with the Bishop of St. Asaph, and others, joined with the rest of the Peers in these Address's; which was a plain sign they all of them had Power to be now at an end. But as for the Acclamations of the People, or any great Joy in the City expressed upon the King's Return to Town, I doubt you have had a false account of that matter; for I cannot hear that any of the Citizens went out to meet him, or set any Lights in their Windows, tho' he came into London after it was dark, or that any of the better sort bid him God-speed. I grant indeed, there was a great many of what you call the Mob, but more Boys than Men, who followed his Coach, making noises, whilst I for my part distinctly looked on.

M. I cannot deny but you may have given a true account of those Matters, since you may have observed them better than I; yet as you yourself have related
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lated them, sure the King had sufficient cause to consult his own Safety, and make his Escape as soon as he could: for what could he expect when once the Prince had secured his Person under a Guard, and had refused to treat with him as King; and that also the Peers, and divers of the Bishops had made an Association to render the Prince of Orange, and his brother, a freind adverse to him, without taking the least notice of him, as if there had been no such thing as a King in being? I say, what could his Majesty now expect, but either a more close Confinement, or else being taken off privately by Poison, or some other ways, since he could not be forgetful of the King his Father's Saying, That there is no great distance between the Prisons and the Graves of Princes? Or admit he had lived till this Convention-State, what could he have expected more, than retaining the bare Title of King, whilst the Prince of Orange, or some others, should have used him, had wholly missed his pleasure? Or else they might, according to your Doctrine, have either declared the Crown forfeited, or else that he had abdicated it by his going away. Or who can tell but they might have again renewed the Villany of 48, and have made him undergo the same Fate with his Father?

F. I grant you have urged the utmost that can be to justify the King's second Departure; and as I would not deny but that he was the best Judge of his own Danger, so were the Prince, Peers, and Commons, together with the City, the belt and only Judges we could then have of the true means of our Settlement and Safety: since after so many Breaches that the King had made upon his first Declaration and Coronation-Oath, as also his going from his late Promise of calling a Free Parliament; I cannot see what farther Security he could have given us that he would not repeat the same things over again.

H. D. P. 110. Or admit the Prince had suffered him to continue at Whitehall, and to call a Free Parliament, what assurance could he have given, that in the end of another forty days we should not have the same Trick played us? and then in March or April have been left in the same State of Confusion we were in in December, to the certain Ruin of these three Kingdoms, and Holland into the bargain? And then by that time the French King might have got ready an Army and a Fleet, and under a pretense of redeeming his Majesty from the Constraint he lay under, and of restoring him to the free Exercise of his Regal Power, have invaded this Kingdom. And I suppose you cannot deny but the King would then have had Papists and High Tories in his Bed, and High Lords in his Pockets, with him in this pious Design: for certainly the Scruples of the High Churchmen would have been the same they are now, the Obligations of the Oath of Allegiance the same, and the suppos'd Sin of deposing a lawful King the same, tho he had utterly refused to give the Prince and Nation any sufficient Satisfaction. So that then if we had been forced to take Arms, and to declare he had forfeited his Right to the Crown, all these things would have given as great a Scandal, rather to the Nation to take him at his first Offer; and since he had thus rashly defected the Throne by a needless Departure, to resolve he should ascend it no more.

But suppose (what might as well have happened) that the Quarrel being renewed, the Prince and his Party had been killed, or expelled the Kingdom by the King, do you think he would have granted us then what he would not grant us now? Would he not, think you, have disbanded his Protestant Army, and have kept only Inish, Scotch, and French Forces in pay, and have every day increas'd them? What relief can we hope he would ever after this have shewn to our Laws, Religion, or Liberties, when he had now no longer any thing to fear? The memory of what happened after the Duke of Monmouth's Defeat (the effected only by th'ose of the Church of England) will certainly never be forgotten by others, whatever you Bigots of Loyalty may pretend or say.

So that for my part I stand amazed to see you, and so many others, scruple submitting to the present King; for if ever Man had a just cause of War, he had, and that creates a Right to the thing gained by it: the King by withdrawing, and disbanded his Army, yielded him the Throne; and if he had without any more Ceremony ascended it, he had done more no than several Princes formerly have done on the like occasions: for the Prince was no longer then bound to consider him as one that was, but as one that had been King of England;
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England; yet in that Capacity he treated him with great Respect and Civility; how much forever the King complained of it, who did not enough consider what he had done to draw upon himself that Usurp. But as for your Infusion, that if he had aaid, he might have run the same Fate with his Father, I think it is fuller of Passion than Truth; for besides that the Lords and Commons would have been the Impediments to have committed the Villainy, the Prince himself, as a Nephew and a Son-in-law, would never have suffered it.

M. Well, God only knows the Event of things, and we ought to judge charitably, and fill to hope, that if the King might have been restored upon Terms, he would have been the better for his Affliction, and have amended all those Errors he committed; since he had seen that neither the Nation, nor yet his Neighbours the Dutch, would permit him to make himself an Absolute Monarch. I believe he would have been too much afraid of the King of France, ever to have made use of his Forces, to have settled Popery and arbitrary Government; and without his Assistance, I suppose you will grant it could not have been done, since he plainly found that a Protestant Army would never have joined with him to act in such pernicious Designs: but however, let the worst have happened that could be, I think it had been much better for the Nation to have endured it with patience, than to have done that which was Evil, tho' for the procuring of the greatest seeming Good, tho' for the advantage of our Religion and Civil Liberties. And therefore it had been better for us, in this extremity, to have trusted God than Men, since he always promises to protect those that rely upon him, and strictly perform his Will. And admit the worst that could have happened, God would either have removed those Afflictions from us in due time, or have given us patience to have borne them; since I suppose you will not deny, that God oftentimes brings Perfections and Afflictions; and that in the Church and Nation, either to purge Sins, or else to give an occasion for those that are truly pious and sincere, to shew their Courage and Constancy in suffering for the Truth, and by withstanding, not by Force, but Passive-Obedience, all the King's illegal and arbitrary Commands, if he should, after a Re-establishment in the Throne, have again renewed his former Courtesies. These are the only Remedies which we of the Church of England, as obedient Subjects to the King and his Laws, must think it our Duty fully taken in this Case.

F. I do not deny but what you say is in the main very pious and honest, were the Case as you have put it; but the greatest part of your Discourse depends wholly upon those old Principles and Prejudices, of the Unlawfulness of all Resistance of the Supreme Powers, and that the King is the only Supreme Power in this Kingdom: both which Propositions I have sufficiently confuted at our third, fourth, and fifth Meetings, and also at our last file: one in which I gave you a true account of the legal Scale of those Oaths and Statutes of King Charles I. concerning Resistance, as was also given by the best Lawyers, and most considering Men of the then Houses of Lords and Commons. So that if the means we have used are lawful, both by the Laws of God and Man, I think we are not bound to bring Afflictions upon our selves, but to avoid them all we can; especially when they come evidently attended with the utter LoSs and Ruin of what ought to be most dear to us, our Religion, Civil Liberties, and Properties, and that not only for our selves, but our Polterity, who perhaps would never have regained them when they were once lost: of which the French Nation is an evident Example before our eyes, who by not opposing the arbitrary Power of their Kings in due time, have fallen into a Government almost as despotic as that of Turkey. For when once the common Good of the Subjects ceases to be the main End of the Government, the Government then ceasing to be God's Ordinance, degenerates into Tyranny: which I think may be always lawfully opposed by a freeborn People, who at first agreed to be governed, not as Slaves but Subjects.

But as for the first part of your Speech, it needs not any long Answer; it first supposes the King might have been again restored upon Terms. Now since it is plain these Terms must have been imposed upon him against his Will, and as necessary Conditions of his Restorarion, I would be glad to know who it was should undertake to impose them upon him, and to see them kept when they had
had been made, whether the Prince of Orange or the Parliament. If the former, I grant indeed he might have made such Conditions with the King, that the Church of England, as well as the whole Nation, should for the future enjoy their just Rights and Liberties; but then the Prince must either have trusted wholly to the King's Honour, or else he must have had some strong Places put into his hands for a Security, that the King would not again make the same Violations upon our Laws, Religion, and Liberties, as he had done before. Yet I suppose you will not deny, but that the King might, if he had pleased, have broken them all again, so soon as ever the Prince's back had been turned, and that he had been once engaged in a War with France; which could not have been long avoided, considering the necessity there is at this juncture of time for the States of Holland (and consequently the Prince as their General) to engage with the Emperor and King of Spain, to drive the French out of the Empire, and to hinder him from making himself Universal Monarch of Europe; which it is plain is the thing he now drives at. But if the Prince should have kept any strong Places here as cautionary Towns, for the King's Performance of the Terms agreed upon, this must have been done either by English or foreign Forces: if by the former, this would have been looked upon as inconsistent with their Duty and Allegiance to the King, if he should have commanded them to be delivered up into his hands; since you tell us, the King has the sole Command of the Militia, and consequently of all Garisons manned by his Subjects within his Dominions. But if the Forces that should have held these Places had been Dutchmen, or other Foreigners, it would never have been endured either by us, or by the Allies, that any should weaken the French in the Hold of the Kingdom; and the King might soon have wrought (by some Jealousies and Sufpicions, which he would not have failed to have raised) that the Nation it self should have joined with him to drive them out, and then the King might have done what he pleased without controul. But if you will place this Power in the whole People or Nation, or else their Representatives the Parliament, of holding the King to the Terms agreed upon, this could not have been done without their consent, and a power of redressing him, in case he infringed them; and then either they must have given up all their Liberties to the King's Will, or else farewel to the darling Doctrines of Passive-Obedience and Non-resistance. So that, take it which way you will, all imposing of Terms upon the King, either by the Prince of Orange, or the Nation, would in a short time have become either unpracticable or insignificant. Nor is your other Supposition any whit truer, that the King would never have made use of the Forces of France, to subdue and keep under the People of England, for fear he should not be able to get the French out again. "Tis true, this would be a very good Argument to a Prince who was no Bigot, and was not resolved to introduce his Religion by all the ways and means he could; but how near the French Forces were to be brought over into this Kingdom the last Summer, is very well known to those who were then in France, and saw them upon the Sea-Coast ready to embark: nor was their coming over put off by any other Motives, than that the Earl of S. and Lord G. two of the Cabinet-Council, represented to the King, that it would be the only means to make the whole Nation rise up against him, and join with the Prince of Orange as soon as he landed; and which I suppose was the only reason that hindered it, for that the French King offered to send them, is very certain: Yet it does not follow for all that, but the King might take an Opportunity of doing it another time, and bringing them over in their own Ships, if ours would not do the Business.

And tho I will not affirm that there is any private League with France, for the extirpation of the Protestant Religion; yet this much I think may be sufficiently made out, that long ago the King was wholly in the Interest of France, as appears by Coleman's Letters (whilst he was his Secretary) when Duke of York. The first Passage is to Sir William Throgmorton, Feb. 1, 1672. Ten well know that when the Duke comes to be Master of our Affairs, the King of France will have reason to promise himself all things that he can desire. The next is to Father La Chaife, the French King's Confessor, in their words, That his Royal Highness was convinced, that his Interest and the King of France's was the same. And whether the Duke, by his Accession to the Crown, has showed any Alteration in his inclinations
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climations to France, either in respect of Religion or Interest, I appeal to the World.

Not is your next Supposition left out of the way, that the King could have made use of no Forces but French to settle Popery and Arbitrary Government here, as if he had not Secess and Irish Papists enough in his Dominions for this occasion. And as for Arbitrary Government, we have found to our grief, that there are too many mercenary Soldiers in the King's Army, that are bought only for Pay, and would have affiled the King to have raised Mony without the Parliament, lay to pull the very Parliament out of doors if he had bid them; and if some of them were discontented when the Prince came over, I do not so much impute it to their honest Principles, as fear, left they themselves should be cashiered, and Secess and Irish lifted in their rooms. So that upon the whole matter, considering the Temper the King was in ever since his last coming to Town, and that as soon as he arrived the Priests and Jue- suits flocked about him as thick as ever, that they and the French Envoys were his chief (if not his only) Cabinet Counsellors, I cannot see (unless he had taken new Measures) how we could have been secure, or could have relied on any thing he could have further promised, nay swore to perform; since no Oath could be more farced than that at his Coronation, when he swore to main- tain the Church (that is, the Doctrine of the Church) of England, and the laws of the Kingdom; if that be a true account of the form of it, which we have in Print.

As at this rate of arguing, I know not what to say to you, since this Ar- guement amounts to no more than this, That the King could upon no account be trusted, and therefore was not any more to be treated with. If this were so, to what purpose did the Prince of Orange declare, that he came not to conquer the Kingdom, but only to procure a free and legal Parliament, which could not be called without the King's Consent, and owning his Authority? Neither could they have done the lazy Act for the Amendment of our Grievances, without his Majesty's Consent. Or to what purpose did the Prince enter into a Treas- ty with the King's Commissioners at Hungerford, if his Royal Word and Prom- ises were not to be relied on? But if his Majesty could ever be trusted, I see no reason why he could not have been so, as well since his last coming to Town as before, since he came voluntarily; and, as I have great reason to believe, with real Intentions, to grant and perform whatever the Nation could reasonably expect of their Grievances; and which makes the reasonable Security of his performance for the future, without divesting himself of his Royal Power of making Laws, and protecting his Subjects.

But as for the former part of your Speech, whereby you would prove it lawful to resist the King, because you say it conduced to the common Good and Interest of the Nation, both as to the Protestant Religion and Civil Liberties; this is no more than the old Commonwealth Maxim in other words: which is that the Safety and Preservation of the King, or the supreme Powers of a Commonwealth (who, according to your own Principles, are the Representatives of the People, and consequently part of it) be likewise comprehended and maintained (as they ought to be) in their due Power and Authority. For Bishop Sanderson, in his learned Lectures, hath very well proved, that those cannot be separated from each other, without destroy- ing the Civil Government, which is all the Security we have for our Civil Liberties and Manners; and we see in those few days in which his Maj- esty's Person was withdrawn, when there was no Civil Government in being, that there was greater Enfingement of them, both by plundering and destroying of Houses, and Spoliation of Parks and Forests in three or four days time, by the Violence and Fury of the Mob, than have been committed by the most arbitrary Kings from the Conquest to this day.

F. You very much mistake me, if you think I maintain that there was never any time after the Prince's Landing, that the King might not have been treated with the Administration of the Government; but then it must have been upon such Terms, as should have secured us for the future from having the like, or worse things over again. As in the first place, he should have renounced his Subsequent Power, and that of taking the Excise without Act of Parliament, and levying Chimney-money upon Cottages and E

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Owens, directly contrary to Law. Next he should have disbanded his standing Army, and kept up no Forces in time of Peace, besides the necessary Guards of his Person, the number of which should have been agreed upon by Parliament, which should also have sat once every year, or two years at least. And lastly, that in respect of the Church, as long as he or his Successors continued of the Roman Catholic Religion, the Nomination of all Bishops, Archbishops, Deans, with other Ecclesiastical Preferments, which are not in the immediate Dispofal of the Lord Chancellor, should have been in the Archbishops and Bishops of each Province; they chancing two, out of which his Majesty should have chosen one, for to supply each Bishoprick, &c. as it became vacant.

And therefore, for my own part, I was so far from believing all Agreements with the King to be unpracticable, that there was no body rejoiced more than I, when upon his Majesty's first return to London, he so far complied with the Desires of the whole Nation, as to issue out his Proclamation for a Free Parliament, and that he sent down his Commissioners to treat with the Prince; and I had then great hopes of an Accommodation. But when I find the King had burnt the Writs for the Election of Parliament-men, and had sent away the Queen and Prince, together with the Great Seal, that no more Writs might be issued, and that before ever the Commissioners could return to London, or before any Answer to the Prince's Proposals was given by the King, he had withdrawn himself, and done all he could to get away into a foreign Kingdom; it was then, and not till then, that I saw all hopes of Agreement aboiled. And I do you put a great firebox upon the return to Town, which, you suppose, was with a Design to agree with the Prince in that thing that could be in reason demanded, I can see no cause for your drawing such a Consequence from it; for if he did not look upon himself as safe here before his Army was disbanded, he could not think himself more safe, when it was either wholly dissolved, or else was gone over to the Prince. And therefore I have much greater reason to believe, that his Return again to Town was only to comply with the preface Necessity, and to wait for a fitter Opportunity. But if he had gone away, there being never a Veloci that he could transport himself, especially if that be true which I have heard, that the King declared to a Person of Credit, That the Queen had obtained from him a solemn Oath on the Sacrament, on the Sunday, that if she went for France on Monday, he would not fail to follow her on Tuesday following. And if this were so, tho he was disappointed in his intended Falsage, yet still was he under the same Obligation to the Queen: nor do I see any Transfagion of his with the Prince of Orange, or with that of the Church of England, as to believe that he can pretend to have married his wife, since his long Consultations with the French Envoy, and the Priests and Jesuits, could only tend to the taking new Measures for his Departure, or else how he might imbibe us further while he haizd, by some faint hopes of new Treaties and Agreements.

But as for the other part of your Answer, whereby you would confute my Notion of the Lawfulness of Renounce, for the Defence and Preservation of the People, and perhaps of our Lives and Provisions; I hope I shall let you see, that it is not I, but your self, who are mistaken in this matter. For first, all Writers on this Subject, and even Dr. Sanderfon himself, in his Lectures of the Obligation of Conscience, do acknowledge that all Civil Government is principally ordained for the Good and Preservation of the People; and that the Good of the Governours is only to be considered secondarily, and in order to that: which if so, I pray tell me whether the Good and Preservation of the People ought not to be considered in the first place, since the end for which a thing is ordained, is always more worthy that the Means by which it is procured. And therefore I shall freely grant, that as long as the Safety and Interest of the King, and that of the People are all one, and can any ways confquit together, and that he makes the Happiness and Preservation of the People to be the main end of his Government; I so far agree with you, that the Good or Preservation of the Prince or Supreme Powers cannot (say ought not) to be separated from that of the People; but when they or the Government thereof interest quite different from that of the People (as the Princes do, who turning Tyrants go about to inflame them) they then cease to be the true Heads of that political Body the Commonwealth; and thereupon the
the Community or People become free, and at liberty, either to oppose or remove those artificial Heads, and to set up new ones in their room. So that since Similes are not Arguments, your Comparisons between a Natural and Political Body, hath only served to impose upon your Judgment in this matter; and therefore I affirm that a Natural and Political Body do wholly differ in this point: for in a natural Body, the real Good of the Head cannot be separated from that of the Body, nor the Good of the Body from that of the Head; nor yet can the Body alone judge of the proper means of its own Preservation, nor when it is hurt or assaulted, but by the Head, which is the Principle of Sense and Motion. But in a Political Body it is quite otherwise: for first, the Supreme Powers of a Commonwealth, which you suppose to be Head of this Political Body, do often pursue and set up an Interest quite different from (say contrary to) that of the Body or People, and that not only to their prejudice, but also sometimes to their destruction. And, secondly, when they do this, the Political Body, or the People will in evident and apparent Caves judge for themselves, let this Political Head say or declare what it will against it, and will when they are thus oppress'd and enslav'd by those that they have submitted to as their Political Heads, and in such cases of Extremity, endeavour to free themselves from the Severity of their Yoke.

M. Notwithstanding what you have now said, I am not yet convinced, that the King had no real Design to redress our Grievances, and to make a final settlement to that great Nation; for tho' I do not deny he has been licentious with some Priests, and others of his own Perversion, as also with the French Envoy after his coming to Town, yet might this be for no ill Intent: and he did also converse with divers Reverend Bishops and Lords of our own Religion, to whom he still expressed a great Desire of making an end of all Differences between himself, the Prince, and the whole Nation. And this I suppose is the true reason why the Archbishop of Canterbury, (who sign'd the first and second Address to the Prince, upon his Majesty's first withdrawing himself, yet) has been ever since so sensible of that Misfortune he then committed, that he has never appeared or acted in any Meeting of the Peers, nor yet in the Convention. And that his Majesty, even at Rochefort, did not lay aside all thoughts of Agreement, and making up all Breaches between himself and his People, I could give you another Demonstration, which is not commonly known, and which I had from a particular Friend, viz. That the King, during his Confinement there, sent a Lady I could name on a Message to two Reverend Prelates of our Church (together with an Emerald Ring from his Finger, as a Testimony of the Truth of her Commission) to this effect, That his Majesty, being sensible of the sad Condition the Church of England as well as himself was in, and that there was no way so likely for him to get out of it, as by granting his Subjects, and particularly the Church of England, such Securities for the Enjoyment of their just Rights and Liberties, as they could in reason demand; therefore he wholly left it to the Discretion of those Bishops, to make a Treaty, and to conclude Bishops that were to make more Proposals they should think reasonable on his behalf, for the Satisfaction of the Church, and Safety of the Nation, and that he would be ready to grant and ratify them whenever he should be required.

F. This is indeed more than I ever heard before, and can scarce believe: but did the Lady go and deliver her Message? And pray what Answer did those Bishops give to this fair Proposal?

M. Yes, the Lady delivered her Message, and those Bishops answer'd both to the same effect. That they had a real Duty and Affection for his Majesty, and a great Desire to serve him; but that considering the great Power of the Prince of Orange, and his present Aversion to any Agreement with his Majesty, they very much feared that the Peers would not venture to give the Prince any such Advice, or to interpose with him on his Majesty's behalf: which in my opinion was very meanly and cowardly done of them, not considering their Duty to him as a King, and those particular Obligations under which they stood as his Benefactor, and who had been the greatest means of their being raised to those Dignities in his Brother's Reign. Now I desire to know, if this Message had received its intended effect, what greater Demonstration his Majesty could have given
given to satisfy the World that he really intended to set all things right again, had he been permitted to do it.

F. I will not farther question the Truth of this Relation, tho' perhaps I might have sufficient reason for it, since you say you had it from a Person of good Credit, and who was privy to this Trans faction; nor yet will I be so inquisitive as to know the Names either of the Bishops, or of the Lady, since you make it a Secret: but yet notwithstanding, I do still very much question whether the King did ever really design to do what he then offered, and did not intend to put a Stop upon their Lobbies, to serve his present Occasion, and to see if he could divide the Bishops and Peers of the Church of England from the Prince of Orange's Interest: and so by making them offer such Proposals as the Prince should not think fit to agree to, might make them declare against his Proceedings, which would have created great Divisions and Heart-burnings between those of the High Church of England Party and the Prince; and thereby have involved us again in fresh Disputes, of which no doubt the King and the Popish Faction were like to receive the greatest Advantage: for you know the old Saying, Divide et impera.

But to let you see that I do not speak without just Grounds for my Opinion, let us examine every Circumstance of this matter: First, if the King had meant really, is it likely that he would have trifled a Humain of that high moment to a Woman, when he had then the Lords of Alebury and Arron, besides other Protestant Gentlemen then waiting on him, and they were much from him? Has he preferred her to this Lady, that has not the least pretense to believe if the King had meant really, that he would not have sent his Proposals in Writing, since he very well knew from the Prince's Declaration, as well as the Bishops Petition and Addresse to him, what the whole Nation, and the Church of England in particular, required of him? But forthwith he must send a loose and uncertain Message, which it was in his power to disown whenever he pleased, by saying, the foolish Woman misook his Meaning; and he also would so much his Lieutenant, as to take the whole upon her Self, whenever it should serve the King's turn so to do. And therefore I think it was very wisely and honestly done of those Reverend Prelates to refuse medling in such a ticklish Affair; since it is plain by his not making any such Proposals to the Prince of Orange himself, or the Lords about him, that he was not to be made privy to it; but rather it should be carried on, whether he would or no, and without giving him any satisfaction in his particular Concern as to the Prince of Wales. And lastly, I desire you farther to consider, whether the King might not have better, whenever he had made voice whatever Agreements or Concessions he should have then granted either to the Church of England, or to the Nation, by pleading afterwards, that they were obtain'd by Duress, whilst he was not sui juris, but under the power of the Prince of Orange.

I have but one thing more to add, which I before omitted, which is to make some Reply to what you said concerning the mischief that the Mob has done upon Heights. It was hid under this Craftsman, his Majesty had made therefore granting the Matter of Fact, that much mischief and Spoil has been committed; yet I deny that it is more than has been done by the most Arbitrary Kings since the Conquest to this day, as you are pleased to affirm: for I believe you forget the thirty Parishes Churches and Towns, which our Historian tells us, your William the Conqueror, and his Son Edgar, destroy'd, when they enlarged new Forests, and therein set contrary to their Oaths, like true depopulating Tyrants. You likewise forget the miserable Spoil and Waste which King John and Henry III. made upon the Hoaxes, Castles and Estates of the Barons and Gentry of England, who opposed them in their unjust and illegal Violations of Magna Charta, besides other Tyrannical Actions of the same kind committed by King Edward and Richard II. too long here to relate. But in these Mischief were done you speak of, whom have we to thank for it but the King; who stealing away on a sudden, without leaving any Orders for the Government of the Kingdom, all Persons in Commission, either Civil or Militia, depending on the Order of Commission, and Conventions were not able to prevent or redress the Government, as he did? Besides, you very well know that the common People were so enraged against the Popish Faction, for so many infamous
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Silent Actions they had committed in King James's Reign, and so many apparent Breaches and Contempts of all the Laws made against them, that you cannot wonder, if they were rid of the Fear of the Infringement of the Spaniards Ambassadors, which I grant was contrary to the Law of Nations; there were very few Popish Houses plunder'd or spoil'd, but such as had before rendered themselves some ways or other obnoxious to the Laws, by their Apo
cacy and accepting of Commissions, which they were utterly disabused by Law to take: and tho' to my knowledge the Deputy Lieutenants, and Judges of the Peace, did their utmost in most Counties of England, to quell those Riots and Diforders, yet the Mobile were too much enraged, and too much re
dious to be commanded, when like a vicious Horse, whose Rider is cast off, they run away with the Bridle in their Teeth.

Ain. I confess you have made the best Apology for the Mob that the matter will bear; and I cannot deny, in comparison of what has been done in other Nations on the like Occasions, it was a very civil Mob: but yet this may serve to let us see the Danger of your Doctrine of Resistance, since by the same Law, by which they then pull'd down and plunder'd the Popish Chappels, and Roman Catholick Houses, by the like Right they might have done the same Violences upon any other Nobleman's or Gentleman's House in England, whether a Papist or Protestant, that they had a spleen to; since it was but their crying out that he was a Papist, or at least a Favourer of them, and then it had been enough to make them suffer, as if they really had been so: as I could tell you of my own knowledge, of a very honest Gentleman of my Ac
cquaintance, who became he was a true Son of the Church, and had been al
ever a Loyal Subject to his Majesty, and a great Enemy to the Whig Faction In the Country, and had also put the Law severely in execution against the Diforders, was like to have had his House plundered by the Fanatick Mob of a certain Town, from which this Gentleman's House was not far distant.

F. If you please to consider it, this is a very unjust Inference from our Doctrine; for these Actions were not any Resistance of the Supreme Powers of the Nation, but certain violent Actions or Revenues, which the Rabble thought they might take upon them whom they looked upon as public Enemies, when there was no Civil or Military Power in being that was of suffi
cient Strength to keep them in order. But if you please to call to mind my Positions, I do by no means allow the Rabble or Mob of any Nation to take Arms against a Civil Government, but only the whole Community of the People of all Degrees and Orders, commanded by the Nobility and Gentry there
to. And tho' I grant the People may be sometimes mistaken in the Exercise of this Right (as what is there, tho' ever so lawful, that may not be abused?) yet I think you will grant, that the bare Abuse of a lawful thing is no sufficient Ground for the taking away the Liberty of exercising it; and I think I have sufficiently proved, that the total Denial of this Liberty would be of far worse con
cquence to whole Nations and Kingdoms, say to all Mankind, than the al
lowing of it (as those of my Opinion do) only in cases of extreme Necessity, and when no other Remedy will serve.

Ain. I will not renew this old Dispute again about Resistance; we sufficiently know one another's Minds about it, and are not, as I can see, like to bring over either of us to the other's Opinion. But since I know you have studied the Common Laws, and Histories of this Kingdom better than I, I cannot for
bear making divers just Reflections upon the late Proceedings of the Convocation: for tho' indeed they had no Legal Authority to assemble upon the Circular Letters of a Foreign Prince, yet since this was the greatest (if you only mean Liberty we had left us) and the only Means to procure a Settlement, if it had used that Power as it ought to have done, I will not quarel or dis
pute the Legality of their Meeting; but then they must use it only for lawful Ends, and such as in their private Capacities they were obliged to pursue if they were able. Therefore when they assembled, if they would have main
tain'd the due Rights of Monarchy and Succession in this Kingdom, sure they ought, in the first place, to have enquired what was become of the King, where
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where he was, and who forced him to go away: And when they had known that, they ought then to have joined in addressing to the Prince, that since he had declared that he came not to conquer this Nation, but only to free it from Arbitrary Government, and restore it to its just Laws, there could be no sure Enjoyment of these without the King, therefore he would join with them in tendering to him, to desire him to return to the Government of these Kingdoms, and to govern them according to Law. But instead of this they not only neglected taking any notice of the King, as if he were not at all in being, but have also refused to receive those gracious Letters he sent them, in which he promised to amend all former Errors, and to govern according to Law: which certainly deferred to be taken notice of, since coming from their Lawful Prince, they ought at least to have proposed some Terms to him, before they had proceeded to that rash and unparalleled Vote, which I desire I may read to you word for word, because I intend to examine every Clause of it. Resolved,

That King James II. having endeavoured to subvert the Constitution of this Kingdom, by breaking the Original Contract between King and People; and by the Advice of Jesuits and other wicked Persons, having violated the Fundamental Laws; and having withdrawn himself out of this Kingdom; hath abdicated the Government, and that the Thron is thereby vacated. I shall make bold to consider each of these Clauses, one after another: And therefore first pray take notice, that this Vote of the two Houses was first above a Week's Debate in the House of Lords, which past in the House of Commons in two or three days; because divers of the Lords, as well Temporal as Spiritual, did with great Honour, Reason and Resolution oppose, and protested against it to the last: and it was carried at last by very small Majority. But that we may examine each Clause of this Vote: first, it is here only said, That King James II. endeavoured to subvert the Constitution of this Kingdom; not that he really did it, which is as much lower than you are pleased to put it, as endeavouring a thing falls short of actually doing it: and therefore it is very hard to declare a Prince to have forfeited, or abdicated his Kingdom, for bare designing and endeavouring; since those things that you bring to prove it, may bear a much more favourable Interpretation, especially with Subjects, who are no fit Judges of the private Designs of Princes, which may oftentimes tend to quite other Purposes than what we suppose.

As for the next Clause, by breaking the Original Contract; I have heard that divers of the Lords and Bishops, who were for the King against this new Invention of an Abdication, put the other side very hard to it, to make out this Original Contract, and desired them to shew in what part, either of our Common or Statute Law, it was to be found; for they knew no such Maxim in the Common Law, nor no such Clause in any Statute, ancient or modern. And tho I confess you have undertaken to prove to me, that there is such a thing, yet it has been only byfar-fetch'd Consequences, and from the old Form of Government among the Saxons, of above 600 Years standing; which if there were any such thing, it is now become so antiquated, and out of date, that neither the King himself, nor yet our Lords, Bishops or Judges, except some few Lawyers of your Kindred, ever before now thought of any such thing. I pass by the next Clause, by the Advice of Jesuits, &c., because I cannot lay by whose Advice those things, which you call Breaches of the Fundamental Laws, were said: but as for the next, wherein the Violation of these Fundamental Laws is laid to his charge, I confess you have given me a pretty large Catalogue of these Fundamentals at our ninth Meeting, which yet you cannot say are to be found together in any one Law; but are to be picked up here and there out of Magna Charta, and divers other old Statutes. But since the King and Parliament have declared in the first Year of King James I. that there are such such things as Fundamental Laws and Privileges, I will not say there are none; yet certainly any Breach of them by the King was never intended to create a Forfeiture of the Crown: for if it had, I think there would have been but few Kings or Queens of England, who would not have forfeited, for some one or more of these Breaches, committed in their Reigns, by the Advice of their Judges and Counsellors, as these were lately by
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by the King: for I suppose you cannot expect that Princes should see any otherwife in matters of Government than by other Mens Eyes, nor hear but by other Peoples Ear. And therefore if the wilfull Breach of these Fundamentals musse cause a Forfeiture or Abdication of Government (call it which you please) methinks it had been reasonable for the Parliament to have given a Lift of these Fundamentals in some one Law, that the King might have been sure to have avoided the transfiguring of them, and fear of losing both his Royal Dignity, and his Penalty ought also to have been declared.

But the next Clause doth more particular Consideration (sic.) And having withdrew himselfe out of the Kingdom, hath abdicated the Government. Now I must confess, it is the first time that ever the King's going away, for fear of losing both his Royal Dignity and his Life, and that with a declared Design and Intention to return again to the Exercise of the Government, whenever he might do it with safety, should be judged a wilfull Defention or Abdication. D.D. p. 147.

I am sure there is nothing in our Common or Statute Laws, that can at all warrant this Notion; for Common Law is nothing but ancient Usage and inmemorial Custom. Now Custom supposes Precedents and parallel Cases; but it is granted on all hands, that the Crown of England was never judged to be abdicated, by the withdrawing of the Prince, before now: And therefore it follows, by undeniable Consequence, that this Opinion can have no Foundation in the Common Law, because there is not so much as one ruled Case to prove it by.

But if we come to those Precedents we have in our English History, I shall give you such of them as I can remember. We read in the Reign of Edward III. that when he fled from the Forces of his Wife and Son, who had seiz'd the Kingdom by Force, the King being deserted by his Soldiers and Followers, endeavoured to get into the life of Lundy for safety; but not being able to make it, was driven back, and taken in disguise at the Abbey of Nesbit in Wales. Now it is certain, that King Edward went away without appointing any Governor of the Realm in his absence; and if this Notion of an Abdication had not been put to the Lords, and the Parliament needed not have been put to their threats to find out so many other matters for which to depose him. The next is the like case, of Edward IV. who when the Earl of Warwick had raised a great Army against him upon a sudden, and forced him to fly with a few Followers to the Duke of Burgundy, his Brother-in-law, though Henry VI. was again put into the Throne; yet was it not objected against King Edward, that he had left his Title to it, or that it was become vacant by his deserting it. And if these two are not parallel Cases, and do not reach the matter in hand, I desire you to shew me wherein they differ from the present Case of the King.

But I am come now to the last Clause of all, That the Throne is thereby become vacant, which seeming only to refer to the Clause of Abdication, I think I have said enough already against that Notion; therefore we will admit at present, for Discourie sake, that the King had really abdicated the Government, by deserting the Kingdom, and thereby wholly lost his Regal Power. Now according to the Fundamental Laws and Customs of this Realm, which is, you know, an Hereditary Monarchy, the eldest Son, or other next Heir, either Male or Female, immediately succeeds the King his Father, or other Predecessor, and that without any Interruption at all; so that the Reign of the Successor immediately begins from the very moment the last King or Queen desecrates. This being the settled Law, I cannot see any one step the Convention has made in their whole Proceeding that can be justly judg'd by the Fundamental Laws of the Land, or the Laws of Equity and Justice; for Equity has no quirts in it, and never lies at a catch: Reason is always just and generous, in p. 149.

It never makes Mens Misfortunes an Accasation, nor judges in favour of Violence; for indeed what can be more unrighteous (tho in the Cafe of a private Person) than that any one should suffer yet worse for being injured, and be barring his Rights for the Injuries of others? If a Man should forfeit his Houlé to those who set it on fire, only because he quitted it without giving some formal Directions to the Servants, or be obliged to lose his Estate for endeavouring to preserve his Life; I believe it would be thought a strange piece of Justice in any Law whatever: and if this be proved illegal, the Title of
your present King and Queen being wholly founded upon the Validity of this Vote, will prove To likewise.

F. Well, you have made a pretty long Discourse in defence of King James's Actions, as well as of his late Defection, and I have heard you patiently, because I grant you have put a great deal of matter in a few words; and I think all things in your King's defence. I begin with the first false step that you say the Convention made, in not inquiring after the Causes of the King's departure, whither he was gone, and their not voting of an Address to the Prince, to desire his Return. As for the first of these, they were not at all oblig'd to do it, since a great many of the Peers and Bishops, and Members who were then in Town, very well knew the Causes of the King's Departure, and that he either went away voluntarily, or at least without any other necessity than what he had brought upon himself, by his own evil Government, or the ill counsel of others; which may be easily proved by several Circumstances: for it is very well known, that above a Fortnight before the King went away, the Lord D—— and Mr. Brom did not flock to declare that it was necessary the King should withdraw himself. So that it is plain the Popish Faction knew of it long before it was done, and that it proceeded wholly from their Advice appears further by a Letter to the King when he was at Salisbury, which can be yet produc'd: he was there told that it was the unanimous Advice of all the Catholics at London, that he should come back from whence, and withdraw himself out of the Kingdom, and leave us in Confusion; alluring him, that within two years or less, we should be in such Confusions, that he might return and have his Ends of us. Now if the King was pleas'd to take such a desperate Counsellor's Advice, and thereupon do all he could to quit the Kingdom, the Cause of his going is too evident, as well as his design of returning, to have his Ends of us (as they phrase it) that is, in plain English, to have both our Religion, Laws, and Liberties, and every property wholly at his disposal: in the next place, they needed inquire where he was, for every one knew he was gone into France, to the greatest Enemy of our Religion and Nation, as well as of the Prince; and therefore it had been altogether unsafe and indifferent for them to have join'd in an Address to the Prince for his return: for whilst he was in such hands, what hopes could we have of his returning to us with better (but rather worse) Affections towards the Church of England and this Nation, than what he carried with him?

But you say they refuse'd to receive his Letters; for my part I do not know that he ever sent any, at least to the House of Commons. I heard indeed, that one of the King's ordinary Servants was at the Door of the House with such a Letter, but that he was so inconsiderable, that no body would receive the Letter, or make any mention of it in the House: and it was very strange, that the King should have never a Friend there, who had so much Courage and Kindness for him, as would take the Letter and move for the Reading of it, that he had run the risk of being committed for his pains: for at the House of Commons is not to be blamed for not receiving a Letter which was never offer'd them. But as for the House of Lords, I have been told it was mov'd to be read there, but it was carried in the Negative, because it was not brought by a Person of sufficient Credit; and therefore it was the King's fault if he would employ such mean Persons in a matter of that great moment. And indeed if we may give credit to those Copies of these Letters which I have seen, they retain'd rather a justification of his past Actions, than an Acknowledgment of those Violations he had committed upon our Laws: for as to his promising to govern by Law, there is nothing in that, for he never yet own'd that he govern'd otherwise. 'Tis true, there is in one of those Letters an Expression of his amending past Errors; but those are general words, and may mean such Errors, as he had committed in the ill management of his Designs, which he would have mended, whenever he was to do the like things again. This may very well be the true Sense of a Letter, it is very likely, written with the advice of the Jesuits, and Advice of a French Cabal. But you would have him sent for, to return upon certain Terms: I wonder you should be so undutiful, as to urge it; since if he is an abolute King, without any Conditions whatever, he ought certainly to be restored, as King Charles II. was, without any Terms or Conditions at all; and rather so, than with
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with them, since he cannot give us greater assurances for his keeping them than he has already broke, unless you can suppose, he would give us the Guaranty of the Pope and the King of France for their Performance: the former of whom believes, that there is no Faith to be kept with Heretics; and for the latter, supposing the King and him to pass his word for the Performance of these Conditions, pray consider whether the Bond of two Bankrupts can ever pass for a good Security. And so much for the Letters and Addresses.

I come now, in the next place, to consider your Exceptions against that Fundamental Vote of the Houfe of Commons, concerning King James’s Abdication of the Government, and thereupon declaring the Throne vacant. To begin with your first Exception, I think it is a very small one, that because this Vote declares the King to have endeavoured to subvert the Constitution of this Kingdom, that it was very unjust to declare him to have abdicated the Government for a bare Endeavour, because we are not ignorant of the triumphs of the Actions of Princes. To which I answer, that in this Case, a bare Endeavour ought to be sufficient; if it so evident, that there can be no dispute about it: for if he had once actually subverted it, the two Houses could never have met to have made this Vote; and if in the case of Kings, the very bare Design or Endeavour to destroy them be sufficient, tho' it be never reduc'd into Act, I cannot see why the same Rule the endeavours of Kings to destroy the fundamental Constitution of a mixt or limited Kingdom should not have the like Contraction in respect of them: since according to the Maxim you but now cited (and which I have sufficiently justified) that in all such Governments, the Safety and Preservation of the People (that is, of the Government they have established) is to be prefer’d before that of the King alone, when acting in a direct Opposition thereunto; or otherwise, it would be in the King’s power to destroy the Constitution whenever he pleas’d: since according to your Doctrine, the bare endeavouring it would be nothing; and after he had once brought it to pass, it would be then too late to retrieve it.

But that the King did really endeavour thus to subvert the fundamental Constitution, appears not only by his cloathing and threatening Members to turn them out of their Places, if they would not submit to his Will in taking off the Penal Laws about Religion, whereby all Freedom of Voting would have been quite taken away; but when the King saw this would not do, he then fell a new modelling of Corporations, and by bringing in new Charters, to get it into his own power to nominate, or approve of all Mayors, Aldermen, and Common Council Men, who in those Corporations having the sole Elections of Parliament-Men, he would thereby have had the naming of them also in his power. Your next Exception is against their declaring him to have broke the Original Contract between the King and the People; for that you are not yet persuaded there was any such thing, because we cannot shew it you in any Copy or Deed, Statute-Book, written in the words, As for the Statute-Law, I grant there is no such express Contract to be found in any Statute; yet doth it not therefore follow, that there is no such Contract by the antient Common-Law of the Kingdom. Now that our fundamental Laws are not all to be found in Writing is no wonder; since it is a Maxim of our Common-Law, that it was not a Law, because it was written, but it was written because it was a Law; for it was a Law when it was only in the Breast of the King and People of this Nation, without any writing at all: and you your self must grant, that if the Hereditary Succession to the Crown be a fundamental Constitution, it is notwithstanding no where to be found in Writings as I know of, but the contrary is asserted by divers Acts of Parliament, But that there is such a thing as an Original Contract, I shall prove from such a necessary Consequence as I think cannot be denied: for as that Statute of King James 1. sets forth (which I have now cited) and your self have already acknowledged, there are such things as fundamental Laws (that is, Laws that are the Constitution of the Government); there must have been also an implicit fundamental Covenant or Contract on the King’s part, that he would maintain them without any Violation; and this is that we mean by an Original Contract. And if it were not so, it had been the most foolish and unreasonable thing in the World to require every King to swear before he
was crown'd, that he would maintain the Rights of the Church, and the antient Laws and Customs of the Kingdom. And that this was antiently look'd upon as a renewal of this Original Contract, appears by all our antient Historians, who till the Reign of King Edw. I. never give the next Heir the Title of King, but of Duke of Normandy, till he was actually crown'd, and had taken his Coronation-Oath: and for this I desire you would consult all our antient Historians since your Conquests, beginning with Ingolf and Eadmerus, and ending with Tho. Walsingham.

But as for your Exception against his violating of the fundamental Law, it is yet more trivial: for you cannot deny that there are such things; and if so, surely a King may violate them if he pleases: and therefore your excuse for the King's Breach of them, because they are not to be found together in any one place, but are to be pick'd up here and there from Magna Charta, and other Statutes, makes nothing against the Validity or the Validity of his knowing them: for as before they were reduc'd to Writing by those Statutes (which only declare and confirm the antient Common Laws and Liberties of England) they exist'd (as I said but now) in the Heads and Hearts of the King and People; so when divers Kings of England by their tyrannical and illegal Practices had made divers Violations of these fundamental Rights and Privileges, there then grew a necessity of new granting and confirming those Liberties, and consequently of reducing them into Writing, which there was not before. And that in the Conven Rebecca, Magna Charta, and other Statutes, made in the time of Henry III. Edw. I. and divers others of their Successors, were made either for their Explanation, or Ratification, according as occasion requir'd; and as several Princes had more or less violated these fundamental Laws of the Government: for before they had so done, there was no need of the Parliament's making, or declaring any Law about it. But if the King would have but read and considered the Articles exhibited in Parliament against Edward and Richard II. he might, in his heyday, the Laws all together, that will make a Prince to be declar'd by his Subjects to have forfeited his Crown.

But that King James had before his Deferment endeavou'rd to extirpate the Protestant Religion, the Laws and Liberties of the Nation, appears by those several Articles the Convention has given us in their late Declaration, which they presented to King William upon their declaring him and his Princess King and Queen of England, and to which I shall refer you, since it is commonly to be had: you know it consists in the recital of divers things, the Violation of which has been always contended in all Kings Reigns a Breach of the Original Contract.

I come now to the last Clause save one you except against, viz. 'That having withdrawn himself out of the Kingdom, he hath abdicated the Government.' Now your main Argument against it is, That the King's Deferment of the Government being only for fear of his Life, or of being depos'd from his Royal Dignity, he could not by his going away be fai'd to abdicate or renounce the Crown, since he went away with an intention to return, and repudiates it as soon as he think he might. To which before I make any answer, I must freely own, that were this the Case as you have put it, I think there would be no great dispute about it; since I grant that a King who is thus forc'd to fly for fear of his Life, ought not to have any such Injustice put upon him. But if you plea for better to consider it, the Case was quite otherwise: for I have already prov'd that when King James first went away, he had then an Army about him, was free, and in his own Palace, and was at that time in actual Command with the Prince, nor had London, nor any considerable Place in England then surrender'd it to the Prince: so that if there was any necessity for his Departure, but what he had brought upon himself by his refusing to call a Parliament, burning the Writs, and sending away the Queen and Child, together with the main Instrument of Government, the Great Seal of England; this must certainly be look'd upon as a wilful Forfeiture or Abdication of the Government: and it is from this first going away, that I suppose the Convention dates his Abdication. And tho' it is true, after his return to London, he took upon him to make an Order in Council to stop the further pulling down and plundering Popish Chappells, and Papists Houses; yet was it sign'd by very few of the Council, and almost only by those who had been in some Office or Place of Trust: so that tho' he was then own'd by them, yet since
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Since that Order did only ferve to shew his Zeal for the Popish Party, and was never obeyed or taken notice of by tho' to whom it was directed; and that neither the Prince nor the City of London owned him afterwards, since it had already delivered it self up to the Prince, and had as well as the Peers invited him to repair to that City; I cannot see that so slight an Affair, as this Order of Council, should be counted a Return to, or a Re-establishment in the Throne: since the King had not only left the Crown by his wilful Departure, without seeking Parliament, or giving the Prince and his Ministers the great Business of the pretended Prince of Wales, or the Nation, by repairing those desperate Breaches he had made upon our fundamental Laws; but had also lost his Title to the Crown, by being conquer'd by the Prince in open War, as I shall prove more at large another time. So that if you please better to consider this Vote of the Convention, you will find that these words, had abdicated the Government, do not only refer to the last Clause of his having withdrawn himself out of the Kingdom, but to every one of the former Clauses, viz. "His having endeavoured to subvert the Constitution of this Kingdom, his breaking the Original Contraét, and his having violated the fundamental Laws." So that it is plain, their notion of Abdication was not fixed only in the King's Defertion, or bare withdrawing himself out of the Kingdom, but from his renouncing the legal Title by which he held the Crown, and setting himself up as a despotic Sovereign, and ruling by a mercenary Army; and therefore all that you have said about the King's quitting the Government with a design to return to it again, as soon as with safety he might, is altogether vain; for as he went away because he would not govern any longer as a King by Law, so hath he yet given us no satisfaction that he would not return again to govern worse than he did before, had he an opportunity so to do; that is (as the Letter I cited but now paraphrizes it) to return, and have his Ends of us. So that this being indeed the Case, I think I can very well justify the last Clause in this Vote, that the Throne was thereby vacant.

And as for those Considerations, which some have made upon the resignation of the King, some of them have been very well, and therefore I shall consider them as they are. But I shall not go into any particular of those Articles, which the late Declaration happens did fo highly tend to subvert the Protestant Religion, and the Laws and Liberties of this Kingdom. I shall begin with the first, viz. "His assuming and exercising a Power of dispensing with, and suspending the execution of Laws, without Consent of Parliament." Which Power, let me tell you by the way, was not affected to dispense with all Laws or Statutes whatsoever, but only such as the Subject has no particular Caufe of Action in, and where the Damage that may and may not concern the publick Safety, of which the King has no Knowledge, and not any particular Man's Interest. I suppose you cannot but have read that learned and short Account of the Authorities in Law, upon which Judgment was given in Sir Edward Hale's Case, written by Sir Edward Herbert, Lord Chief
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Chief Justice of the Common Pleas, in vindication of himself; wherein I think he proves beyond any possibility of a just Answer, that the Diffension granted to Sir Edward Hales to receive a Commission, and act as a Colonel of Foot, was good, notwithstanding his not having received the Sacramento, and taken the Oaths and Teft appointed by the Statute of the 25th of Charles II. where he first proves from my Lord Coke's Authority, that it belongs to the Prerogative to difpense with a Penal Law, as the Penalty whereof is only popular and given to the King. And to shew you that my Lord Coke (who was never counted any great Friend to the King's Prerogative) was notinges in this Opinion, he gives you also the Authority of the Year-Book of Henry the VIth, where it was owned by all the Judges, 'That the King can difpense with all things which are only Mala Prohibita, and not Mala in se, the expressly forbid by Act of Parliament; for the (says the Act) before the Statute, coining of Mony was lawful, but now it is not so, yet the King can difpense with it.' So that, say I, if he can difpense with that which is now made Trefon by Edward III. he may certainly difpense with all other Penal Statutes of a les nature.

But because I grant there is some Difference between common Penal Laws, which barely prohibit the doing of some things under a Penalty; and this Act, in which there is also an express Clause of Non-obstante, that all Licences or Diffensions, contrary to this Act, are declared absolutely void: yet the said Chief Justice herein does prove, that this Clause of Non-obstante is void; and he makes this out, not only from confant Practice in other Statutes of like nature, but also from the Opinions of Plowden, and the said Lord Coke.

1. As to the Statutes. There is a Statute of the 23d of Henry VI. that no Man shall be Sheriff for above a Year. That all Letters Patents, made for Years or Lives, shall be void. That no Non-obstante shall make them good (which shews that the Parliament thought the King could otherwise give them by a Patent, as by a Non-obstante.) This Act a Penalty of 500 l. and the Party is also disabled from bearing the Office of Sheriff in any County of England, and also every Pardon for such Offence shall be void." So that in all respects this Statute anwers that of K. Charles the Second now in difpense, only in this the Penalty to the Proctor is higher, viz. 500 l. and the Disability is not only from holding that Office, but any other whatsoever for the future.

Vid. the Year-Book 2 H. 7. T. M.

And yet it was resolv'd by all the Judges of England, in the second of Henry VII, in the Exchequer-Chamber, upon the King's Power of difpensing with this Statute of the 23d of Henry VI. that the King's Diffension with that Statute was good; and so it hath been held ever since: for it is very well known that the King hath not only exercised this Prerogative of difpensing with this Statute, for divers Sheriffs holding more than a Year, but hath also granted this Office for Life, as appears by the same Case cited by Plowden (in his Commentaries) between Grendon and the Bishop of Lincoln, where it expressly says, "That notwithstanding this Statute of Henry VI. the King's Grant to the Earl of Northumberland to be Sheriff during Life, ought to have a Clause of Non-obstante, because of the precise words of the Statute before-mentioned; and with such a Clause of Non-obstante the Patent to the Earl was good."

But yet my Lord Coke is more express in his Opinion concerning these Diffensions; for in his twelfth Report he has these words: "No Act can bind the King from any Prerogative, which is sole and infeeparable to his Person, but that he may difpense with it by a Non-obstante, as a Sovereign Power to command any of his Subjects to serve him for the publick Well: and this solely and infeeparably is annexed to his Person. And this Royal Power can not be restrained by any Act of Parliament, neither in Theis, nor in Hypothetis, but that the King by his Royal Prerogative may difpense with it; for upon the Commandement of the King, and Obedience of the Subject, does his Government consist.” And therefore for this reason he allows this Judge-mercy of all the Judges in England, in the 3d of Henry VII. to have been according to Law, that judged the King's Diffension, with this Statute of Henry VI. to be good; and he also infances in another Statute, in the 4th of Henry IV. in which it is ordained, "That no Wellman should be Justice, Chamberlain,
berlain, &c. nor any other Officer whatsoever, in any part of Wales, notwithstanding any Patent made to the contrary, with Clauses of Non-obstantes licet sit Waliscus natura: and yet without question the King may now grant those Offices to Welfhamen with a Non-obstante. And the said Lord Coke, in Cal- vin's Case, tells us, That the same was resolved by all the Judges of Eng-Rep. VII. p. land, (viz. in the 2d of Henry VII.) that every Subject is by his natural Al-14. allegiance bound to serve and obey his Sovereign, &c. And he then proceeds to recite the Statute of the 2d of Henry VI. and the Opinion of the Judges above-mentioned, and gives us this Reason for it, for that it bar the King of the Service of his Subject which the Law of Nature did give unto him. This is there reported as the Sense of all the Judges of England in King James's time; and therefore since this has been ever the Opinion of the Judges, and a constant Prerogative exercised by the King ever since, I desire you would shew me any Difference, why the King's Dispensation to a Sheriff should be good for the holding of his Office for above a Year, notwithstanding the Statute of Henry VI. and yet a Dispensation for the taking or holding any Office in Civil or Military, without taking the Oath prescribed by the 5th of Charles I. should be declared a Breach of our fundamental Laws: for I can see no manner of difference between them, since their Preambles set forth the Design of the Law much to the same purpose, viz. That of making the Statute of Henry VI. is the inapprposable Damage of the King and his People, Perjury, Man slaughter, and great Oppression. And in the Statute of King Charles II. the Morning-recited are of a much less Nature; not great Dangers which may arise from a Papist being a "culants, and quieting the Minds of his Majesty's good Subjects." So that the Subject of either of these Acts being Mala in feo, but only Mala proibita, if the King might dispense with the one, he may certainly do as much with the other for the same reason.

Therefore if this be so, I need not say much against the second Article in the Declaration of the Convention against the King's Proceedings, viz. His committing and prohibiting divers worthy Prelates, and others, as not being to be excused from contumacy to the said affirmed Power. For by the Opinion of all, or most part of the then Judges, the King's Power of dispensing with this Statute of King Charles II. was good, it was certainly much more lawful in dispensing with all other Statutes against Papists and Nonconformists, since they are no more than bare penal Statutes, without any Clauses of Non-obstantes. And thus I grant that King Charles's Declaration giving a Toleration to Papists and Dissenters, by dispensing with all the Acts against Maffes and Convictiles, were declared illegal by the House of Commons in the year 1672. and that the King, to get a good Sum of Mony, did recall that Declaration; yet it was never declared by him to be illegal, only that it should not be drawn into consequence for the future: and you know an Address or Declaration of the House of Commons alone, was never looked upon as a Declaration of the whole Parliament. And the Opinion of the Judges hath ever been, that no Statute or Judgment of Parliament can bar the King of his laws; for which this of dispensing with such penal Laws is one, so that it was certainly very undutifully done of the Bishops, not only to deny distributing his Majesty's late Declaration for Liberty of Conscience in their several Dioceses, but also to have the Confidence to give him a Petition, where-in they desired him not to insist upon the Dismission and Reading of it, because it was against Law: to admit it were, being no way contrary to the Law of God, they ought to have obeyed it, since their bare distributing of it was not more lawful. So that it being a great Misdemeanor in these Bishops to deliver this Petition, their Commitment and Prosecution at Law for the same was also illegal, and what the Privy Council told his Majesty he might well justify: so if the King was too severe in this matter, they were to bear the blame, and not he.

F. I cannot deny but you have given a just account of the main Arguments made of by the late Lord Chief Justice Herbert, in defence of the King's dispensing Power, and of giving his own Opinion, but notwithstanding all that Gentleman has written in defence of it, the King's Declaration of Indulgence, and his Dispensation grounded thereupon, to be both
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[Text continues...]

But to answer your main Argument, that the constant Practice hath been otherwise for the space of above 200 Years, and that confirm'd by the Judgment and Subjects of all the Judges and most confederates, and that it was ever since that time: to answer this I say, it is necessary, that I give you a short History of the dispensing Power, and the Original of Dispenations, with Non-obstantes, which arc so far from being as old as your Conquest, that the first News we bear of them, is from Mat. Paris; who expressly tells us, they were first introduced by the Pope, and were afterwards inflicted into the King's Patents and Protections, in imitation of them, by King Henry III. so they were never made use of by any of our Kings to enslave Acts of Parliament, till after their state of Mortmain, which was made in the Seventh year of Edward I. Which first Attempt must needs be illegal, because contrary to Magna Charta, Ch. 36. which is the first Law which prohibits Alienations in Mortmain; and was not only known to when enacted, but is also confirmed by many after Acts of Parliament, and ordered to be observed in all points: Insomuch that when the Clergy petition'd King Edward I. for a Relaxation of this Statute of Mortmain, his answer was, that he could not do it, because it was enacted Commonly and Certain, &c. and therefore I must suppose, that the first dispensing Power was given occasion to the dispensing with other Acts of Parliament also, tho' at first they were very rare, and seldom occur in the old Books, but are more frequent in the new; and that our Judges and Courts of Justice have invented little Distinctions between Malum in se, and Malum prohibitum, between Laws made pro bono publico, and Laws of more private regard; between Laws in which the King's Profit and Interest is concerned only, and Laws in which the Subjects have an Interest, and are intituled to an Action as the Party griev'd: yet the Cates that have hitherto come before them judicially, have been
been Questions upon Dispenfations granted to particular Persons, to exempt them, pro hic & nunc, from incurring the Penalty of such and such a Law; but a Dispenfection and Suspension of so many Laws at a lump (as the late Declaration of Indulgence did take upon it to do) has been so far from receiving any Countenance from Courts of Justice hitherto, that it has always been a fatal Objection against an particular Dispenfection of it; it was for this Reason frequently called and frustrated the whole Law, for that such a Dispenfection is in effect a Repeal of the Law itself: And therefore in that great Case of Thomas and Sorell, in the Lord Vaughan's Reports, where Dispenfations with penal Statutes are in some Cases allowed; yet it was then agreed by all the Judges, that the King had no power to suspend a Law for ever.

But to let you see how jealous the Parliament, and in particular the House of Commons, has always been of trifling the King with an unlimited power of dispensing with penal Statutes, with Non-obstantes, appears also by several other Laws of great moment, and in particular from the Statutes of Provisos and Provisions; and I could shew you from divers Records of Parliament, in the Reigns of Richard II. Henry IV. and Henry V. that they never intrusted the Crown with an absolute power of dispensing with those Statutes but only for a time, as till the next Parliament or longer, as they thought fit. But since I have not now to express to you so many Precedents at length, I shall only tell you, that as to the main Instance you rely upon, the King's dispensing with the Statute of Sheriffs, at first it was not taken for law, as appears by several Acts of Parliament, as in the 28th of Henry VI. whereby those Sheriffs that had held their Offices for more than a year are pardon'd: likewise in the Act of Edward IV. there is a like Statute pardoning those Sheriffs, "who by reason of the late Troubles in the Realm, had held for above a year;" yet nevertheless it confirms all former Acts concerning Sheriffs for a time at home. And this held as far as any of them which is long after the Judgment you mention in the Exchequer-Chamber, of all the Justices in England to the contrary: for there was then an Act made, which reciting all the former Statutes about Sheriffs as then in full force, it enacts that the Sheriffs and Under-Sheriffs of the City of Bristol, may continue to occupy their Offices, in like manner as the Under-Sheriffs, and other Sheriffs Officers in London do, without any Penalty or Forfeiture for it, nor for any other Act to the contrary notwithstanding. From which all Statutes it is sufficiently appears, that neither the Sheriffs of those times, nor the City of Bristol, nor the whole Parliament, when that Act was made, did believe the King had power to dispence with the Act of the 24th of Henry VI. concerning Sheriffs; for if they had, certainly it had been much easier and cheaper for them to have obtained the King's Dispenfation, than to have got an Act of Parliament for it.

M. I believe you may have cited these Statutes right enough, but yet I think they are not sufficient proof against so solemn an Opinion, as that of all the Judges in the Exchequer-Chamber, 2d of Henry VII. And whatever the Parliament might have declared in the case of this or that particular Statute, I confess carries some Authority with it; yet ought it not to be countervaled by so solemn a Judgment as that of all the Judges and Lawyers of England, together with the King's confant Exercife of this Prerogative, not only since, but before that time, and that without any Question or Dispute with the Parliament about it; as in the Case I have already put to the Statute, that forbids any Wellman being an Officer in Wales. To which I may add divers other Cases of the like nature, such as the Statute against a Judge's going the Circuit in his own Country, as also those Statutes that prohibit the King from granting Pardons to Persons convicted, on condemned for Murder, with several other penal Statutes I could name: for tho the King's hands are tied up by particular Clauses of Non-obstantes, yet has his Majesty, and his Predecessors, at all times exercised their Prerogative of dispensing with all those Acts upon, non. thiskinge, those Acts of Parliament, with Non-obstantes to the contrary. And tho I grant you have given me several Precedents of the Parliament's sometimes restraining the King in this Exercife of the dispensing Power; yet they are all, or the greatest part of them, before the beginning of Henry VII's Reign, when I grant the Law first began to be settled in this matter. And since the...
Judgment of all the Judges in the Exchequer-Chamber is the only Rule of Law we can have in the Intervals of Parliament, and this Case of Dispen-
sations being by them adjudged, and ever since the beginning of Law, without the least Dispute, I can see no reason we have to question it now.

But as for the Statute of the 6th of Henry VIII. which you urge as a Prece-
dent to the contrary since the Reign of Henry VII. I think it will not reach
the Point in question: for the Act you now cited seems to me no more than
a private Act for the Sheriffs of Bristol alone, who being it seems afraid to
rely upon the King's Dispenations, because they thought them too, chargeable
to be taken out as often as they should have need of them, did think it a great
deal less Charge and Trouble to pass an Act of Parliament to indemnify them-
selves, which I grant put that matter beyond all dispute. But since this Act
of Henry VIII. I find no Controvert between the Parliament and the King about
his Power of dispensing with penal Laws, till the Reign of King Charles II.
when I grant the House of Commons did address his Majesty, that penal Stat-
tutes, in Matters Ecclesiastical, cannot be suspended but by Act of Parlia-
ment; as also the last Address of the House of Commons in 1605. against
the King's dispensing with the Officers of the Aisle, their holding Employ-
ments without taking the Oaths and Teft according to the Act, whereby they
were appointed. But these being only against the King's Power of dispensing
with Laws Ecclesiastical, as concerning Liberty of Conscience, can no ways be
extended to their excepting against the King's Power of dispensing with divers
other penal Laws (I will not say all) which have Non-obstante in them.

F. Since I see not only your Opinion, but also that of most of the Judges
 acquiescing being by the King's own dispensing with the power of the King's
thing, and this matter of the King's dispensing with penal Laws, has been chiefly (If not only) founded upon that Opinion of all
the Judges in King Henry VII's time, give me leave to examine the validity
of that Judgment; for if that can be proved not to have been according to
Law, or else never given at all, I suppose you must grant that my Lord Coke,
and all others who have founded their Opinion upon this adjudged Caufe of
Henry VII. were mistaken.

Now pray give me leave to argue a little with you in point of Reason: If
a Non-obstante from the King be good, when by Act of Parliament a Non-ob-
stante is declared void, what doth an Act of Parliament signify in such a Case?
Molt we say it is a void Clauze? But then to what purpose was it put in? Did
the Lords and Commons, who drew this Act of the 23d of Henry VI. as also
those Acts concerning Sheriffs, understand this Clause of Non-obstante to be
void when they put it in? If it were so, and contrary to the King's Preroga-
otive, why did the King pass this Act without any Refusal or Protestation
against the King's dispensing, was then the power of the King, which it is,
with the Authority of the two Houses of Parliament against the Opinion of the Judges.
But if it were not a void Clauze then, how came it to be so afterwards? Pray
say what Alteration has been made in the Laws of England by Act of Parlia-
ment as to this Point, since the time that these Acts have been made; for if
not, how comes a Clauze that had force in 23 Henry VI. to have none in 2 Hen-
ry VII? Could the twelve Judges in the Exchequer-Chamber, by giving their
Opinions, destroy the force of an Act of Parliament?

M. I do not say they can, only I affirm with my Lord Coke, and all the
Judges, That no Act can bind the King from any Prerogative which is infor-
parable from his Royal Person, but he may dispense with it by a new Obstan-
te, as a Sovereign Power to command any of his Subjects to serve him for
the publick Weal.” Nor can this Royal Power be restrained by any Act of Parlia-
ment: And upon this ground it is that my Lord Coke, in the 12th Re-
port (from whence I have taken this Conclusion) maintains, that such Dispen-
sations made by Sheriffs are good; and upon the same ground the Dispen-
sation lately granted by the King to Sir Edward Hale, and all other Popish Of-
ficers and Miniflers, as well Civil as Military, must be also good.

F. But admit I shew you that there was never any such Judgment in the
Exchequer-Chamber, in the 2d of Henry VII. as my Lord Coke and late Lord
Chief Justice Herbert suppos'd; will it not then follow, that all their Argu-
ments, that are wholly founded upon this Statute, will fall to the ground?

M. Yes.
Dialogue the Eleventh.

M. Yes, indeed, that will be something; but how will you prove that? Can you believe so many learned Judges should be mistaken in this matter, and those of your Opinion only should make this Discovery?

F. I do not desire you should believe me, but your own Eyes, and therefore look upon the Year-Book it self. Here you see that it is indeed so far true, that all the Judges were of Opinion, that the Grant of the Sherifdom of the County of Northumberland, to the Earl of that County for Life, was good, but do not tell us all the Reasons whereon their Judgment was grounded; tho' I must to have been because the Sherifdom of that County had been commonly granted for Life, before this Statute of Henry VI. was made; as appears by these words in the Year-Book: For it (viz. a Sherifdom) is such a thing as may be well granted for Term of Life, or Inheritance, as divers Counties have Sheriffs by Inheritance, which began by the King's Grant. Then was shewn a Refundation (I suppose it meant an Act of Resumption of the Sherifalty) as appears by the following words; and then was shewn a Prevoj for it, Comnt-de N. and if so, the King had a Right to grant it only for Life again: But none save Radcliff (one of the Barons of the Exchequer) cites the Statutes of the 28th and 42d of Edward III. against Sheriffs holding for above a year; but he doth not cite this Statute of the 23d of Henry VI. at all. Nor doth he, or any other of the Judges, nor the Court, ground their Opinion upon any Non-objicients expressed in the said Acts; for if you please to confute them, you will find there is no Clause of Non-objinance in any of them, before the 23d of Henry VI. which is not made above two hundred years ago: therefore I wonder how, without Aberration, comes to vary so far from the Year-Book, from whence he must have took it, as to make the Judgment to have been grounded upon the Non-objinance in that Statute of Henry VI. for none but Radcliff speaks any thing of the Patent's being good with a Non-objance to those Statutes; and the Court, in all the rest of the Case, agree the Patent to be good, by reason of the said Prevoj in an Act of Resumption, and then fall into Debates concerning the other Point, how this Statute was to be understood.

M. I must confess if he be fo, it seems to be prima facie. I wonder my Lord Coke, and other learned Lawyers, have laid so great a stress upon, and drawn so many Arguments from this Judgment of the Judges; tho' I must needs also tell you, that the only Radcliff inflicts upon the Non-objances, yet since the rest of the Judges did not contradict him, it seems to me that they all concurred with him; since, according to the Proverb, Silence often gives Consent.

But this much I suppose you cannot deny, that ever since Henry VIIIth's time at least, Sheriffs have been frequently continued for above a year, and the Judges have been also dispensed with to go to the Circuit in their own Counties; and Welfordmen have been commonly made Judges and other Officers in Wales, by virtue of the King's Dispensations, notwithstanding the particular Clauses of Non-objinance, in the Statutes of Richard II. Henry IV. and Henry VI. by which they are expressly prohibited.

And I do not deny what you have now said as to matter of Fact, only let me tell you, I conceive that the Reason why the King has taken upon him to dispense with those Statutes you mention, was, because the Counties for which they were first made, have long since ceased. For when those Statutes against Judges going the Circuit in their own Counties, and Sheriffs holding for above a year were made, both the Judges and Sheriffs were found (the one by going their Circuits in their own Counties, where they had great Interest and Authority) and the other (by their great Bainties and Commands in the Country) to have made partial Returns of Juries, and also by their long Continuance in their Office, to have learnt a Trade of oppressing the People. So when by the Statute which was put to those Abuses by these Statutes (you have mentioned) there was no need of a strict Observation of these Laws; and also when after the Civil Wars between York and Lancaster, and all things became settled under King Henry VII. (who was a hundred years only) there was then no more need of observing the Statute of Henry IV. against Welfordmen bearing Offices; especially after the Statute of the 27th of Henry VIII. when Wales became incorporated with England, and had by that Statute a Right conferred upon it, of sending Members.
to Parliament, tho' the Parliament might not think it, or at least forgot to re-
peal them: and yet finding that the Kingdom receiv'd no Prejudice, but rather
Benefit by such Dispensations; and not caring to quarrel with their Kings,
for sometimes using a Prerogative by which they were rather benefited, than
gried; tho' Dispensations have ever since past, without any complaint in
Parliament: which would certainly have been before this time, had they found
the same Grievances and Reasons to have still continued for the strict obser-
vation of those Laws, as there were at first for the making of them. Tho' if they will
have my private Opinion, I think it had been much better, for avoiding all Dis-
pates between the King and Parliament, as also for preventing the evil use that
has been made of those Precedents, to advance the King's Prerogative to what
height he pleased; rather to have repeal'd all those obloque Statutes, than to
have suffer'd them still to continue.

But to let you see that the distinction of mala in se, and mala prohibita,
often fails, I think I can prove it to you by divers undeniable Instances:
for there are divers things which are not mala in se; that is, neither Na-
tural nor Moral Evils, either by Common or Statute Law; and yet being
declâ'd common Nuisances, are only mala politica & intrudita, which the
King cannot dispense with the least Nuisance to the High-ways, as by laying
Dung in them, or the like; tho' Men may very well pass through them for all
that. So likewise by the Statute of the 18th of King Charles II. the bringing
over of Irish Cattel, is declar'd a publick Nuisance, and therefore the King
cannot dispense with it; yet no Man will say it was so before that Statute was
made: and therefore it was well observ'd by the late Chief Justice Vaughan,
in that black Tomes and Serrett I now mention'd: that those Laws, which are
not mala in se, but mala politica & intrudita. And when a thing is said to be
prohibited by the Common-Law, the meaning is no more, but that the antient
Record of such a Prohibition is not to be found.

Mr. I grant indeed the Author you have now cited in that Cafe, very well
restrains the King's Prerogative, as to things that concern the Right or Property
of others; and therefore the King cannot pardon the Damage done to particu-
lar Persons, where the Suit is only the King's: but for the Benefit and Safety
of a third Person, if he dispenses with the Suit, it must be by the consent and
agreement of the Party concern'd. And again, penal Laws, the Breach whereof
is to any Man's particular Damage, cannot be dispensed with; and the
Chief Justice Herbert himself owns, that the King cannot dispense with Laws
which well the least Right of Property in any of his Subjects.

F. Very well then, we see the Prerogative is bounded where the Interest
of particular Persons is concern'd: But doth the Law take more care of them, than
of the publick Interest, and the Concernment of the whole Nation? And this
Act against Papists holding Employments was certainly made pro bene publico,
to prevent the danger that may happen from Papist Recullants, who were before
prohibited by divers Statutes to hold any Offices or Employments, before they
had taken the Oaths of Supremacy and Allegiance. Therefore I cannot see
how such a Dispensation can be good, the Breach whereof mult tend so much to
the danger of the Commonwealth; if, according to the Rule you have laid
down above, the Breach can be dispensed withal, that is for the Benefit and
Safety of a third Person, or where the Breach thereof is to other Men's
particular Damage. Now certainly whatsoever is prejudicial to the publick
safety of the Commonwealth, must be also prejudicial to the safety of every
private Person; and the Breach thereof does tend to each Man's particular
Damage in the Nation, if they are once generally dispensed with.

Mr. I grant this is the most natural Objection you have made, against the
King's power of dispensing in this Cafe: but my Lord Chief Justice Vaughan
in the Cafe already cited, answers this Objection very well. No objection, lays
he, against a penal Law could be dispensed with, if the reason of not dispensing
were because the Offence is contra communem publicum; for all Offences against penal
Laws are such: and the such Laws are pro bene publico, they are not Laws pro
bene singulorum populi (which are the Laws which the King cannot dispense
with) but pro bene populi compiscat, as the King in his discretion shall think
fit to order them for the good of the whole. In this Nation the Estate of
every
Dialogue the Eleventh.

Every Peter-familia may be said to be pro bono communis of his Family, which yet is only at his discretion and management; and they have no Property in it, tho' they have Benefit by it. And therefore it is but reasonable, that as to the domum publicam singularum the King should not dispence, because every Man hath a particular Interest in it, and they are Judges of it themselves; whereas in those Acts that are pro bono populi complicata, as these Acts of Sheriffs, and for taking the Oaths and Test are, the King is the sole Judge in what Cases they concern the publick good of the Commonwealth, and where they do not.

F. I confess this is a subtle piece of Learning; but pray let us take it a little J. E. C. p.41, out of these Latin Terms, and then the meaning of it is no more than this, Terms the King can do nothing to the prejudice of the whole People in their private Capacities, but he can do what he will with the Publick. I thought indeed a Prince had been in the first place bound to regard the Good of the Publick, and to take care of the falsus populi complicata (as you call it) that is, as they are imbodied together, above the private Good or Interest of particular Men, which you call bonum singularum populi; which can never be preferred, but where the Laws and Statutes ordain'd for the publick benefit and security of the Commonwealth have been generally broken and violated by common and easy Dispensions, and have been allowed to that degree, that we lately saw a Popish Lawyer, who was thought any thing fit to be a Judge, might sit upon the Bench, upon the Lives and Estates of Protestants; every Deputy Lieutenant, Justice of Peace, or other Officer, either Civil or Military, might be sure of being prefer'd, if he either was a Papist or Fanatick; every Minister or Parson of a Parish, who would renounce the Orders of the Church of England, might hold his Living without doing any of the Spiritual Functions; and many the Virtue of the Dispositions, founded upon the distinction of the publick Good of the whole People taken together, as different from that of the publick Good of each particular Person.

But it seems strange to me that our Ancestors should take such care of the J. E. C. p.42, Laws concerning the Measures of Bread, Drink and Flea, as that the King cannot dispence with them, because they respect the common Good of the whole People, and of every particular Person; but as to the Laws which concern the Oaths of the whole Nation in general, and in consequence to leave them to the sole Will and Pleasure of their Prince. No one that reads the History of our Ancestors, and the Contests they had with their Kings to obtain their publick Liberties, could ever entertain such a thought concerning them. But that the Laws concerning the Oaths and Test, are not only for the publick Good of the Commonwealth, and that the King is not the sole Judge when they may be dispenced with, appears plainly by this, that the Law for taking the Oaths and Test, had given every particular Person a Right to prosecute any one that hath acted contrary to it, and the Penalty of 500 l. is given wholly to the Prosecutors: which shews plainly, that the Intent of the Law was to make it every Man's particular care as well as benefit to see it observed; and consequently since every particular Person has an Interest in it, it cannot be dispenced with by the King.

M. Since it grows late, I shall not further dispute this Point with you, of the King's Dispersive Power, tho' I had a great deal more to say about it, for notwithstanding all you have said against it, it is now counted so inherent a Prerogative, and in many cases so necessary for the Benefit of the Subjects, that the Convention it self, after a great deal of dispute about it, tho' they had condemn'd the King for abusing and exercising a Power of dispensing with, and suspending of Laws without consent of Parliament; yet in this very Declaration, when they affer their ancient Rights and Liberties, they only declare, 'That the pretended Power of dispensing with Laws, or the Execu-

F. You very much mistake me if you say so: for tho' I maintain that at

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often tend not only to the Benefit of the King, but also of the Subject, I do no ways condemn them, provided they are refrain'd within those due Limits prescribed by the late Chief Justice Faukham in the case above-mentioned; and that they do not tend to the common Milk and Rain of the Protestant Religion established by Law, and the Rights and Liberties of the Subject. Nay, I grant in times of necessity, as in the coming over of the Duke of Monmouth (for example) the King might perhaps justify the granting Commitments to Popish Officers, as the Parliament did with well to offer the King to prepare an Act to indemnify them from the Penalties they had incurred by acting without taking the Tect: So that when the King utterly refus'd this reasonable Proposition, and chose to dissolve the Parliament, rather than he would permit them in the least to question this usurped Power, what could be farther expected, than that he was resolv'd to execute, as well as all other Difpenations, whether the Parliament would or not, as we afterwards found he did?

But admitting he really had been eneund with this Prerogative, yet was it still under a Truth not to abuse it so notoriously as he did, by granting it to every Apostate Person, Officer, or Judge, that required it; and I doubt not but if he had govern'd a little longer, we might have found it granted to Bishops likewise, as soon as he had thought fit to make them of his own Religion: for tho the King (for example) has an undoubted Prerogative of pardoning Robbers and Highwaymen, yet if he should so far abuse his Prerogative as to pardon every Robber, that was too bad, and I leave it to you to consider, whether such a Government could long subsist. I shall not apply this Case to the Difpenations, because they say Comparisons are odious.

These things being apparent, I think it would be very easy to vindicate that Clause in the Declaration concerning the Bishops, if the King's Declaration was unlawful (as certainly it was) not only by reason of the Difpening Power (we have been now disputing about) but also for one main Claue in it, which I have therefore the Parliament did with well to offer to the King: 44 wife declare, it is our Royal Will and Pleasure, that from henceforth the "Execution of all, and all manner of Penal Laws in matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion establlish'd, or for, or by reason of the Exercise of Religion, in any manner whatsoever, be immediately suspend'd, and the farther Execution of the said Penal Laws, and every of them is hereby suspend'd. So that this Clause in the Declaration, not only the Laws of our Reformation, but all the Laws for the Preservation of the Christian Religion in general were suspend'd, and become of no force; since every Man might not only chuse whether he would come to Church or not, but also all Priests and Ministers were hereby indemnify'd from either praying or preaching in the Churches, as well as their Parishioners freed from hearing them: So that not only all the Laws of our Reformation were at once suspend'd, but that of Chrestianity, as it was to be thrashed, and with how few this is of any weight, you understand so well, I need not tell you.

But perhaps it may be urged, that the Execution of the Law is only hereby suspend'd, and not the Law itself. But this is a mere Evasion; for what is the external Obligation of any Law, but its Execution in order to Obedience? which if it be once taken off, there can only then remain the naked internal Obligation in fere conscientia; and with how few this is of any weight, you understand so well, I need not tell you.

So that by this Declaration the King took upon him to suspend above forty Statutes at once concerning our Religion; and if he could do so, I desire to know whether he might not the next Week have suspend'd forty more, even concerning our Civil Properties likewise; and so might have proceeded till he had suspend'd all the Laws in the Statute Book. Nor are those Laws suspend'd for any limitation during the continuance of the King's Pleasure; and though the suspension for a time, but in effect a downright Abrogation of them: For what is an Abrogation of a Law, but the taking away the Force of these Statutes, without any time limited? And if this be not to usurp the sole Legislative Power,
Power, I know not what is; and if this were once commonly put in practice in effect in all Cafes, Acts of Parliament would signify nothing, and the Legislature would be wholly in the King: this was to evident, that it was granted by one of the judges at the Trial of these Bishops.  

This being the Truth of the Case, I cannot see wherein the Bishops that presented this Petition to his Majesty acted at all undutifully towards him, as you suppose; for being by the King's Order in Council commanded to distribute this Declaration to their inferior Clergy, which they knew to be self to be unlawful, their Distribution of it would not only have been looked upon as the owning of an unlawful thing, but would also have drawn the inferior Clergy into the same Snare; who if it were unlawful, ought not to have published to their Parishes a Licence to act directly contrary to Law: and therefore the Bishops were not only under the Obligation of that dreadful Charge and Imprecation, express'd in the Statute of Uniformity, in the first Chap. 2. of Queen Elizabeth, if they did not endeavour the utmost execution thereof through all their Dioceses and Charges; but being also pressed upon to distribute it contrary to their Consciences, what could they do less in order to excuse themselves from this unlawful Command, than privately to tell the King the reason of their Disobedience; and also humbly to petition him not farther.  

And now you know that it was allow'd by your Civil Law for any Judge, or Praes, versuslibre Principi, if he were by him commanded to act contrary to any former Law or Edict of the Emperor.  

At. I will not deny that, but yet methinks the Bishops in this case would have acted more respectfully and discreetly, if they had forbore petitioning; and though they had refused to obey the King's Declaration, yet needed they not to be the relieved against it till the Parliament met, when I grant they might freely and safely have done it: or else if they would have petition'd at all, it should have been in more dutiful and respectful Terms, than by telling the King that his Declaration was illegal, and that they could not in Prudence, Honour or Conscience, so far make themselves Parties to it, as to distribute it: and it was this alone which was looked upon as sedition, and for which his Majesty thought fit to have them indicted in the King's Bench, as a matter of his Majesties Pleasure.  

F. I confess you have said in short the Sum of what was urged against them by the King's Council at their Tryal, but all this was very well answer'd by one of the Judges themselves; first, That it would have been too late to have stayed for a Parliament, because the Declaration was to have been distributed by such a time; neither could they have acquiesced under it and submitted, for that would have been to run into a contempt of the King's Command, unless they had also shown the Reasons why they could not obey him, and that this could be done no other way than by Address or Petition, what other Reasons could they give, but that they thought it had been more than once declared illegal in Parliament; and therefore that they could not in Prudence, Honour and Conscience obey it? Not in Prudence, because they were liable to answer in Parliament; not in Honour, because it is unworthy the Character of Bishops and Lords of Parliament to act any thing that may make them look like Flirtetors, Time-servers, not in Conscience, because others in the same way they lay under by the Act of Queen Elizabeth; as also because no Man can with a safe Conscience give his Approbation to that which is contrary to Law.  

And therefore I must needs tell you, that it was very severely and unjustly done in the King to give up this Petition (which was deliver'd him with all the Privacy imaginable) to the Privy Council, in order to have the Bishops prosecuted for it; but which made a great deal more noise and heart-burning against his Government, to commit them Prisoners to the Tower, and then to bring them to their Tryal, and prosecute them with the utmost rigor; whereas though they escaped Punishment, yet was it no thanks to the Prosecutors, but to the Directions of the Judges, two of whom (for their Honour) differ'd from the late Lord Chief Justice and his Popish Companion; as also to the Honesty of the Jury, who found them not guilty.  

At. I cannot deny but you have given a pretty fair account of this matter; and I cannot but own, that it was one of the world-advis'd things that happen'd under
BIBLIO THECA POLITICA.

under the King's Government; but I cannot impute this to his Majesty's innate Disposition, which was wont to act with greater Temper and Moderation towards those who differed from him in judgment, and therefore must impute it wholly to the wicked Injunctions of Father Petre, and the other Popish Ministers.

But as for divers other Articles mentioned in the Convention's Declaration; such as the infliting out, and causing to be executed a Commission under the Act for creating a Court, call'd 'The Court of Commission for Ecclesiasti cal Affairs,' and levying Money for, and to the use of the Crown, by prerogative, for other time, and in other manner than the same was granted by Parliament; and the levying of Civil Affairs; since they are to be looked upon as the sole Acts of the Judges, and not of the King, they, and not he, ought to suffer for the illegality of them; since, as you yourself have owned, the King in his judicial Capacity can do no wrong, that Power being wholly committed to his Judges; and therefore it was very hardly, nay unjustly done, to lay this to his charge, which he is not to answer for; so that if any thing has been done amiss in this kind, they are to answer for it, and not to run such things up to a Forfeiture or an Abdicatation, as your Convention have done.

I say much more to this Objection, because I have in great part answer'd it already, and prov'd that most of the things found fault with, were the King's own Acts, as well as those of his Ministers and Judges; for as to the Commission for Ecclesiastical Affairs, which is directly contrary to the Statute of King Charles I., which took away the Court of High Commission, as also to a Clause inferred in the Act of the 13th of Charles II. wherein the alio to a Case is expressly forbid. This being the case, the fault of the infliting out of this Commission cannot be laid upon the Judges; who though some of them acted in it, yet was it never formally brought before them to determine whether it was illegal or not; and no Man can imagine, that unless the King had a passionate Desire for this Power, that he might thereby be able to subdue, deprive, and turn out upon whom he pleased of the Bishops and inferior Clergy, with the Heads and Fellows of Colleges, whom he should find the most irreconcilable Enemies to his Religion, or oblige in refusing to obey his illegal Commands, as too plainly appeared by the Suffension of the Bishop of London, the turning out of the President and Fellows of Alden-College, and that Proclamation that was lately order'd against all those Bishops and inferior Clergy who had refused to distribute or read the King's Declaration; though I confess there was a flow of it to this, upon recal ling this Commission, immediately before the Prince's Arrival.

So likewise for the other Article, of levying Money contrary to Law, that was done also without any Opinion of the Judges at all demanded about it; for the illegal Collection of Chimney-Money, by making Cottages and Ovens pay, that were expressly exempted by the Acts coering it; and also the illegal Sale of Excise, by making Small Beer pay the Duties of Strong; were all of them act'd and done by particular Directions from the Treasury, or by the private Abuse of the Farmers of the Excise, without any Opinion of the Judges: and of these Orders his Majesty could not chuse but be the Author, or Approver at least, since it was very well known he constantly gave there when any great Business was to be transacted; and the Lord Treasurer, or Commissioners of the Treasury, would certainly never have presumed to have lifted out their Orders in a Case of so great moment, if they had not been very well satisfied that it was his Majesty's express Will and Pleasure to have it so.

And I say with as much now by mee a Copy of the Earl of A, then Lord Treasurer, his Directions to the Officers appointed for the levying of Chimney-Money, commanding them to levy it upon all Cottages and Ovens whatsoever, which was done accordingly with the utmost Rigour: which though it was a very great Oppression, yet it chiefly concerned the poor and ordinary Sort of People, who had not Pursue to go to law with the King; or else such Gentlemen and others, who though they were forced to pay for their poor Tenants, yet lay not think it worth their while to bring it before the Judges of the Exchequer, where, as things then went, they could not expect to find any redress.
Dialogue the Eleventh.

I shall not ingraft upon the King's taking the additional Cautions contrary to the Act of Parliament, by which they were granted to the late King Charles only for Life: and though in his last Sickness there was a Contract for the new farming of them, by virtue of which, I grant the King might have justified the taking of them till the end of the Farm; yet since that Contract never passed the King's life-time, it was certain against Law for the King to take them before they were re-granted by Act of Parliament. I say, I shall not ingraft upon this, since the Parliament were so easy as to pass it by without declaring it to have been illegal; only it sufficiently shows, that from the very beginning of the King's Reign, he was resolv'd to govern arbitrarily, and to levy Mony upon the Subject, whether the Law gave him any Authority to do it or not.

But as to what you say concerning the Judges being wholly in fault, for all the unfit and illegal Proceedings exercised in their Courts, and that the King was wholly faultless; I should be of your mind, had I not seen that all those Judges who would not agree to the dispensing Power (and other illegal Judgments I could name) were turned out, and others, either Papists, or of less Consciences than Papists, were put in their places, which were not confeder'd for any longer time, than duarum beneficiorum: and therefore no wonder if such Men were absolute Slaves to the King's Will and Pleasure.

M. I had much more to say in defence of the King on this head and keeping up a Standing Army, and his disarming Protestants in, and after the Duke of Monmouth's Rebellion, which are laid to his charge, as Endeavours to destroy the Rights and Liberties of the Kingdom.

But since it grows late, I shall only now take notice of something which I forgot to ingraft upon, concerning your Notion of the King's abdicating the Crown by a wilful Breach of the Laws, which is quite different from the Sense in which this is taken in Roman Authors, as in our Civil Laws; for when Cicero uses the Expression, Iaque turrita me abdicare cogitit, Plutarch tells us his meaning was, se note esse suorem. But Pomponius, in his Book de Orig., Juris, 5 1, gives us the true Sense of this Phrase; Abdicare se Magistratum, est antem tempus Magistratum deponere: which plainly shows the Romans had no notion of a tacit or implied Abdication of a Charge or Magistracy without a Man's express Consent. And therefore if the King's bare Detention of the Kingdom was not an Abdication of the Throne (as you your self are forced to grant) I cannot imagine the King's Violation of the Laws, or endeavouring to subvert the Government (both which you lay to his charge) can properly be call'd an Abdication of it. So that indeed the King hath not abdicated the Government, but your Convention hath abdicated him: and tho we oft read in our Civil Law, That a Father may abdicare filium; yet I never read, or can you shew me any Example, that a Son might abdicate a Father, or Subjects their Prince.

F. You discourse upon a wrong ground; for I never affirm'd, That Subjects have any Authority to abdicate or depose their Prince; nor hath the Convention ass'md any such Power to themselves: what they have done in this Affair hath not been authoritative, or as taking upon them to call the King to an account for his Actions, or to depose him for his Misgovernment; but only declarative, to pronounce and declare as the Representatives of the whole Nation, that by his endeavouring to extirpate the Protestant Religion, and to subvert the Fundamental Laws and Liberties of the Kingdom, he had willfully (I do not say willingly) abdicated the Government, that is, renounced to govern this Kingdom any longer as a lawful King; which I take to be a tacit or implied Abdication of it, as I have already shew'd. And I can shew you farther, that even Tully himself allows our Sense of an implied Abdication, in his third Philippick, when he says thus concerning Mark Antony, that by his offering a Crown to Cæsar, Es ein non modo consulatus, sed etiam libertates se abdicavit, &c. where you see Mark Antony is laid to have abdicated the Consulship without any express Renunciation of it; for Cæsar might have continued him in it after he had been declared Dictator.

M. I grant your Authority to be good, yet even in this Sense this Abdication of the Consulship could only take its effect from Antony's own Will; for offering a Crown to Cæsar, if he did not expressly, yet he effectually renounced his Consulship: for had Cæsar accepted it, he could no longer have been the Consul. H h h
of a Popular State, but much thenceforth have acted by Authority from Cæsar, or not at all: But then this would not have agreed with your Dissent of, a Perjury, which always supposes a Crime, and a depriving the Party offending from his Office or Dignity, whether he will or not. So that if the Convention have adjudged the King to have, abdicated; they must suppose it to have; been by his own Content, or not at all; but if they supposed him to have forfeited, why did they not downright declare so, as well as the Scotch Convention; had done? and then I could have told the better what to have said to them, and, have proved that only Subjects and not Kings, are liable to Forfeiture.

F. I will not deny, but that the word "forfeiture" had been more proper than *abdicated* in this Vote of the Convention; but yet I think I have sufficiently proved, that there is no great difference between a Man's abdicating an Estate by a willful disposing of it, otherwise than the Law requires, and a forfeiture of it: for as I shew'd you, a Tenure for Life alienating in her, doth not only forfeit his Estate to him in reversion, but is also an Abidication of it, though perhaps, he had referred to himself a Lease of the Estate for Years; this is called in your terms of abidication, though he committed no other Crime, than the wrongful done to him in reversion; and therefore (as I said before) this forfeiture doth not always supposes any Crime for which the Party may be punished, otherwise than by the loss of the Estate; nor yet doth it suppose any superior Power in the Party that takes it.

But your Exception against my Authority from *Tales* of *Mark Anthony* is only an Abidication of the Commissions without any express renunciation of them, very frivolous; for you your self own, that Anthony did not expressly, but in effect renounced the Commissions, when he offered Cæsar the Crown: and if he did not do it expressly, then it seems Anthony could renounce the Commissions without ever intending it, by doing an Act that in effect abrogated his own Power; and why King James might not do too much with his Crown, I desire you would shew me any sufficient reason. But that the Convention did also look upon this Abidication of King James as a forfeiture, appears plainly by their declaring the Throne vacant, without troubling themselves to find out who was the new King, the same as Cæsar, or any other.

But to conclude: There might be a very good reason why the Convention did not think fit to make use of the word *forfeiture*, as the Parliament of Scotland have done in the like case; for some of the most wary and prudent Members of the House of Commons, considering that this word *forfeiture* might prove of very hard digestion to a great part of the House, and also might give great offense to divers of the Bishops and Lords in the House of Peers, they found out this new word of *abdication*, though they committed no other Crime, and which might not only express the King's willful Delegation of the Government by his first Departure, but also his renunciation of it, upon whose legal Conditions he was to hold it; since, as I have already observ'd, the word *abdication* in their Vote refers not only to his having withdrawn himself out of the Kingdom, but to all the rest of the Clauses foregoing, or else they would signify nothing in that place, both the Abidication and the Vacancy of the Throne being grounded upon it is the same. I should now proceed to your last Exception against this Vote of the Convention, viz. That the Throne is thereby vacated, but I see it is now very late, and therefore it is best to defer the farther disquisition of that matter till another opportunity, which I desire I may have sooner as you please.

M. Yes, and then we will also consider that part of the Convention's Declaration, whereby they resolve that the Prince and Princelets of Orange be declared King and Queen of England, &c. which if you can prove to me to be according to the Laws of England, I will then acknowledge them to be lawful King and Queen of England; but till I am convinced of it, I must beg their pardons.

F. Well, I will wait on you again two or three days hence, and then I hope I shall make out those Points as well or better than any I have done hitherto; and in the mean time I am your humble Servant.

M. I pray do it better if you can, or else you will not very much edify me; but however I wish you good-night.

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DIALOGUE XII.

I. Whether the Vote of the late Convention, wherein they declared the Throne to be vacant, can be justified from the ancient Constitution, and Customs of this Kingdom.

II. Whether the said Convention, declaring King William and Queen Mary to be lawful and rightful King and Queen of England, may be justified by the said Constitution.

III. Whether the Act passed in the said Convention, after it became a Parliament, whereby Roman Catholick Princes are debarred from succeeding to the Crown, was according to Law.

Mr

Am glad, Sir, you are come, for I was willing for you; pray sit down, and let us begin where we left off. You may remember you promised me, when we last parted, that the next time I saw you, you would make out to me from undeniable Proofs and Precedents from our ancient Histories and Laws, that the present Convention had done nothing in voting the Throne vacant, and then placing the Prince and Princess of Orange thereon, but what may be justified by the fundamental Laws and Constitutions of the Kingdom; for I must still believe (till I am better informed) that there can be no Interregnum in England, but that it hath been from the first Institution of the Government an Hereditary Monarchy, where the next Heir by Right of Blood (unless in some manifest usurpation) has always succeeded to the last Predecessor: As also our best Lawyers with one Consent maintain in their Books of Reports, and the learned Finch, in his Description of the Common Law, lays it down as an undoubted Maxim, That the King never dies; and therefore it seems altogether new and unheard of before, for the Convention thus to declare the Throne vacant; for admitting that King James had never so justly forfeited or abdicated the Kingdom (term it which you please) yet certainly there could be no Vacancy of the Throne, since the next Heir by Blood ought immediately to have been declared King, or Queen, and so placed therein; whereas we heard in the Country, that there was almost ten days time before the Lords and Commons could agree whether the Crown should be declared vacant, or not; and when it was so declared, it took up almost a Week's time more before they could agree who should be placed therein. Whereas it was a difficulty only of their own making: for sure the Prince of Wales (tho' it is true
true he is carried out of England ought to have been immediately declared King, as was done in the Case of Edward III. who was so declared upon the Deposition of King Edward II.

F. Tho I grant, ever since the Crown has been claimed by Descent, the Law has gone as you have cited it, and that Finch's Law lays it down for a Maxim, I do not think it true from the Beginning or Original of Kingly Government, (whether we look before or after your Conquest) it will appear that the Throne was ever vacant, till such time as the Great Council of the Kingdom had agreed who should fill it. And to shew you I do not speak without good Authority, pray tell me (if this Maxim had then obtained) why after the Death of William I. his eldest Son Robert Duke of Normandy did not immediately take upon him the Title of King of England, or at least have done it after the Death of William Rufus who, you know, was placed on the Throne, not by Right of Inheritance, but by his Father's Testament confirmed and approved of (according to the antient English-Saxon Custom of Succession) by the common Consent of the great Council of the whole Kingdom; and yet notwithstanding, after the Death of this William, Henry his younger Brother succeeded him by the free Election and Consent of the same Council, and yet that Duke Robert should never in all his Life-time take upon him the Title of King.

Pray tell me likewise (if this Maxim had been then known) why Maud the Empress, immediately upon the Death of her Father King Henry I. did not take (nor yet her Husband the Duke of Anjou in her Right) the Title of King and Queen of England, tho she had had Homage paid her, and Fealty sworn to her in the Life-time of her Father, as the immediate Successor to the Crown; and yet notwithstanding, the utmost Title she could assume was that of Domina Anglorum, Lady or Mistress (not Queen) of the English; whilst Stephen, who had no other Title but the Election of the great Council of the Nation, held both the Crown and Title of King as long as he lived? At all why Arthur Duke of Brittany, who, according to the now received Rules of Succession, was the next Heir to the Crown upon the Death of King Richard II. never took upon him the Title of King, unless it were that he very well knew that his Uncle King John had been placed in the Throne by the common Consent and Election of the Great Council of the Kingdom? So likewise after the Death of King John, why Henry his Son was not immediately proclaimed King, till such time as the great Council of the Clergy, Nobility, and People, had met and agreed to send back Prince Louis, whom they had chosen for their King (theo not being crowned, he never took upon himself that Title) and to chose Henry III. (then an Infant) for their King?Lastly, Why all other Princes of Edward II. Richard I. and Henry III. who according to your Notions were undoubted Heirs of the Crown, never took upon them the Title of Kings of England, nor are so filied by any of our Historians, till after their Elections and Coronations, if it had not then been received for Law, that it was the Right of the People, and Coronation subsequent thereto, that made them Kings; and till this was performed (theo they might look upon themselves as ever so lawful Successors) the Throne was notwithstanding elected in Law vacant?

Therefore as for your Instance of King Edward III.'s immediately succeeding upon the Deposition of his Father (if you please better to consider of it) that makes against you, for it isplain from Th. Walfingham, and H. de Knytson, that Prince Edward succeeded not to the Crown by Succession, but the Election of the great Council or Parliament: the words are exact, 

Hoc ille vis us mmworosoph Papae et consens. And this was also owned by Edward II. himself, who when the Commissioners of all the Estates of Parliament came in all their Names to renounce their Homage to him, yet in the midst of all his Sorrows he gave them Thanks, Quod ille vis us mmworosoph Papae et consens. which plainly shews, that the Parliament had then then a Notion of a Perpetual proceeding from his Deposition, for violating the fundamental Laws of the Kingdom, that the eldest Son and Successor could pretend no other Right to it (even in the Judgment of the late King himself) but what proceeded from their Election.

M. I cannot deny but what you have now urged from matter of fact, may appear very plausible to your self, and those of your Notions; yet if it be looked
Dialogue the Twelfth.

looked closer into, I doubt not the known Laws then received, and the
Notions the People had then of a lineal Succession by Right of Inheritance,
will prove directly contrary to the matter of Fact: For you know very well,
a factum non vetet consequentia; but that all the Princes you mentioned,
except the three last, were really Usurpers, and not lawful Kings, I shall let
you see by evident Authorities from the Historians of those times. For, in
the first place, tho I grant *William Rufus* succeeded to the Crown by his Father's
last will, which was certainly unlawful (as being contrary to the received
Laws of Succession in Normandy as well as England) yet it was not by Election
of the People, as you suppose, but by the Kindness of Archbishop *Lanfranc*
his Godfather, and the Favour of the greater part of the Norman Barons, who
came over with his Father, as well as out of Hatred to Duke *Robert* his elder
Brother, that he was thus made King. So that *William Rufus* claimed as a telign-
mentary Heir, and by reason of that Claim was advanced to the Throne by 366.
the Alliance of Lanfranc and the Bishop's Faction, who then swayed the No-
ibility and People, but yet never owned any Election from them; so that if
you rightly consider this Story, you cannot call it an Election, but a Designa-
tion or Nomination by his Father *William the Conqueror*, and confounded to
by the major part of the Bishops and Lords of the Kingdom, but not by their
Election or Decree as a Common Council, as you suppose.

But that for all this, Duke *Robert* his Brother, being asliffed by *Odo* Bishop
of *Bayeux*, and a great friend of *Henry* his Uncle, as also diverse other Norman Lords,
who, being satisfied of his Right, raised a War in England against *William*
and great mischief was done on both sides, till at last a Peace was made be-
tween them upon these Conditions, among others (as *Matthew Welfynsiris* re-
lates it) That because of the manifest Right *Duke Robert* had to the Crown, F. 236.
he should have a yearly Pension of three thousand Marks out of the Revenue of
England; and he, of the two Brothers, that survived the other, if he died
without Children, should be Heir to the Deceased. And so far were they from
the having been in need of the Ratification of a great Council, that there were but twelve of the principal Men on each side sworn to see it
duly observed.

But if we come to consider the next putting by of the Duke *Robert* from his
Right to the Crown, you will find it to have been done with a far less colour
of Right than the former; for he being then absent in the *Holy Land*, at the
time of *Rufus's* Death, *Henry* his younger Brother laid hold of the Opportu-
nity, and among others of the great Men of the Kingdom, to make them to make a full Restitution of all their antient Laws and Liberties, and
confirm them by his Charter, and abrogate such severe ones as his Father had
made; thereupon they did unanimously consent to crown him King. Now I
cannot see how this (managed with so much Artifice) Corruption can proper-
ly be called an Election, since that ought to be a deliberate federate Action, and
at which all the Persons concerned ought to be present. But this could not
possibly have been done unless *Saxon* was killed on the 20th the day, and the
next day; and the day after, being Sunday, this pretended Election was
made: And the *Saxon Chronicle* tells us, “That those great Men, who
were near at hand, chose his Brother Henry King.” So that this looks more
like the Combination of a Faction of some Bishops, Lords, and great Men,
than the free Election of a King; since it was impossible for all that were, or
ought to be present from all Parts of the Kingdom, to have notice to assemble
and deliberate till that great Business in two days time.

But to let you see that Duke *Robert* did not sit down contented with this Up-
surpation upon his Right; as soon as ever he came from the *Holy Land*, he
frailt made war upon his Brother, and many great Men of the *Norman* took
his part. And this War was eagerly carried on for some time, and Duke
*Robert* landing in England with an Army, King *Henry* marched against him
with all his Forces; but (as the *Saxon Chronicle* also tells us) some principal bid
Men going between them, brought them to an Agreement, upon condition
that Duke *Robert* three thousand Marks, and that he of the Brothers who survived the other, should be Heir of all
England and Normandy, unless the Party deceased should have Children of his
that he was crowned King by the Common Council of the Barons of England; yet his saying so could give him no Right, and he must say this or nothing, for which Title he could neither have the Under Userper in his Circumstances, but must say that, or some such thing, to make out a Title: and therefore to answer your Question, why Duke Robert took not upon himself the Title of King, neither upon the Death of his Father, nor after that of his elder Brother; I think this may serve for an Answer, that he parting with his Right to both his Brothers successively, he then looked upon it as needless to take the Title of King upon him, as not looking upon him then to be so.

F. I confes you have from your Doctor, together with some Assillance of your own, made a very cunning Gloss upon these two great Influences of Vacancy and Election, to evade, if it were possible, that Right which the great Council of the Kingdom then challenged to themselves; and therefore I shall make bold strictly to examine what you have now said. In the first place, as to the Title of King William Rufus, tho' I grant it was founded upon his Father's Testament, yet you see that this was not good alone, without the Consent and Approbation of the Common Council of the Kingdom. I think I have sufficiently proved at our last Meeting but one, when we discoursed of the force of the like Testament made by King Edward the Confessor to King William I., which according to the English-Saxon Law (that was still observed) was never valid, until confirmed by the Consent of the Witenagemot, or Council of the Wilemen; that he had both these, whether next Heir by Blood or not, was always esteemed as lawful King, as I have also proved from the Testament of King Alfred. And you still ill-advisedly say, that yet was this Testament of King William I. then produced and read in the Common Council of the Bishops, Earls, and Barons of the Kingdom, as appears by all the ancient Historians who treat of this matter. I shall only give you a taste of them: Matthew Paris expressly relates the Circumstances of it, in these words: Optimates frequentes ad Witenagemotum in Concilium convenere, sub loco posse longam consilii aetatem Gulielmum Rufum Regem seceru. And Abbot Brampton, that it was done in a full Council, conveniensi terrae Magnae; to the end here was nothing wanting to a full Election or Confirmation at least of King William's Title, and till this was done, it is plain the Throne was vacant.

But as for the Claim that Duke Robert made to the Crown, tho' I do not deny but he might think himself to have a just Title to it, by a received Custom among divers Nations, by which the eldest Son is looked upon to have a Right before the younger; yet that this is no Law of Nature, and consequently not Divine, I think I have sufficiently proved at our second Meeting. But that this Right of Succession of the eldest Son was no fundamental Law of this Kingdom, I think I can sufficiently prove from our English-Saxon Histories, as well as Laws. And as for what you say concerning those Norman Lords and Bishops who joined with Duke Robert, after his Brother was crown'd King, it is called no better than Treason by all the Writers of those times; for Florence of Worcesters, and Sim. ofDurham, both tell us, that the King thereupon called together the English, and opened unto them the Treacon of the time, compares the Treacon of Bishop Odo to that of Judas Iscariot against our Lord. And thou I grant King William might make such an Agreement with his Brother Duke Roberts, as you mention; yet as for the three thousand Marks Pension, which you say he was to pay him, I very much doubt it; since no Historian but Matthew of Westminster, who lived between two and three hundred years after, makes mention of it: and therefore I think it is not to be referred to the following Agreement betwixt this Duke and his Brother King Henry, which the Saxon Chronicle expressly mentions.

Having now examined and cleared the Title of King William Rufus, I come next to justify that of King Henry I. to the Crown, notwithstanding all you have alleged against it, which yet is no more than what you said before, that Duke Roberts had an Hereditary Right, and therefore he could not be put by, which is to beg the Question: for you cannot prove to me that he had this Right, either by the Law of Nature, the Law of England, or the Law of Normandy; not by the two former, as I have already proved: for your Conqueror himself
himself being a Suffolk, had no better Title to the Duchy of Normandy than his Brother's left Will, before he went to the Holy Land; which was not good withont the Consent of the Nobility of that Duchy, as appears by the Historians of that time. So that the greatest Objection you have to make against King Henry's being elected in a true Common Council of all England, is this, that the time was too short between the Death of William Rufus and his Election, that was impossible for all the Parties that had Votes to be there present, which was very bold Assertion: for how can you or your Doctor tell, that at the time when King William was kill'd, he might not then have held a great Council at Winchester (where he then lay) who might immediately upon his Death, choose his Brother Henry for their King? for it is certain the Election was there the Day before his Coronation at London; and therefore it was very easily done to assert that this Election was not in a Common Council of the Kingdom, when all the Historians, and particularly W. Malmesbury tells us the L. V. p. 175. himself of it, and the Suffolk's were about there, with it, that Henry was chose King as soon as King William's FUNERAL were done, in which sense many Contemporary Historians give it also. And Ja de Knyghton relating the Cause why Duke Robert was set at first, says, because he had been always contrary and insensible to the Rights of England; therefore quod plenario consilio & consilii Col. 224. terius Comunitatis Regni, Deus praemium conferatur, & Heiemsurium & fretum in Regio & armatum: which plainly shows, that it was the Opinion of all the ancient Writers, but of whom Regni took this Passage, that the Crown was to be made by the Free-Council, and not by the King alone, but by the whole Community of the Kingdom; Nee does the After-claim of Duke Robert to the Crown at all after the Time, for the Reasons already given, as also because the Agreement that was made between them, that he that survived should succeed the other, was never confirmed or agreed to by the great Council of the Kingdom; and therefore those Normans Lords that joined with Duke Robert here in England, and justly taxed by William Malmesbury, and the Saxo-Juno 1184. Chronicle, with Indulgence and Rebellion. And that great that Malmesbury (or rather Roger of Wendover, whom he transferred) seems to condemn King Henry's taking the Crown as unjust, and contrary to Right, and that he therefore feared the Justice of God to quod factae suae primitae, cujus Regni maius nisi consequeri, sedem usque ad perpetuum, nisi deus discesserit: yet this Author writing about the middle of the Reign of King Henry III., who had succeeded his Father by a pretend Right of Inheritance, as well as Election, it is no wonder if he, who write near a hundred years after this Vulgar Fiction, should give his Head to this Vulgar Accusation to the Commandment of the Commandment of that Age, and must certainly Speak by guess; for how could he otherwise affirm (unless he had been acquainted with those King's Thoughts) as he doth in the same place, that the Reformation of the Reign consecutio: since no other Writer, either at that time, or after, it does thus blame King Henry for taking the Crown. But as for the Account you give why Duke Robert never took upon him the Title of King, if the Truth had not been kept secret, as was very possible and likely, be- cause of the Agreement which he made with his Brothers, by which he parted with his Right for a Pension during his Life, it is not at all satisfactory: for, in the first place, neither of their Agreements were made till above a year after his pretended Title did accorne to him by the Death of his Father and Brother; and therefore he ought, if he had looked upon himself as true King, to have immediately taken the Title upon him, which he never did. So likewise the Agreement it self makes wholly against your Notion of any Hieratical Succession to the Crown, to be then settled, since the main Clause in both their Agreements is, that the Survivor should be Heir to him that died first, unless he left Children of his own to succeed him: which plainly shows, that in the Opinion of both those Princes, and of the great Men that sware: on either side to se it observed, they knew of no such settled Right of Succession in their Heirs, which they themselves could not part with: or else this Clause had been wholly in vain; since both King William and King Henry's Children were to have succeeded to the Crown of England, by virtue of both those Agreements, before the Son of Duke Robert, had his Son William (who was only Earl of Flanders) survived him.
BIBLIOTHECA POLITICA.

But now, if you please, you may proceed with your other Exceptions against the rest of the Inflances I have here given you of the Vacancy of the Throne, till such time as the Common Council of the Kingdom had agreed whom to place therein.

M. As to what you have said in defence of the Vacancy of the Throne, after the Death of King Henry I., it carries left shew of Reason than what you urged in the former Cases; since all Writyes agree that this was a manifest Ulteration in Stephen, who could pretend no fort of Title to the Crown himself, as well as Perjury in the Bishops, Lords, and great Men of England, who having sworn Fealty to King Henry's Daughter Maud in his Life-time, made Stephen Earl of Blois their King: therefore William of Malmsbury, and all the Writyes of those times, accuse Stephen of downright Perjury and Ulteration; and it is manifest, that he was advanced to the Crown without the power of the Lords and Citizens of Winchester. But yet all these Bodeours had been in vain, unless he had been allituted by his Brother Henry Bishop of that City, and then the Pope's Legate in England, and favoured by the Archbishops of Canterbury, who crowned him; and yet for all this there was but a very small Faction of the Bishops and Lords who were for his Corona- nation; for W. Malmsbury tells us, Coraunnax est erro in Regno Anglia Stephano, tribus Episcopis praebentibus, nullis Abbatibus, passim enim Optimum habere. And many of the Nobility and great Men of England were so feasible of this, that being headed by Rufus Earl of Gloucester (the Emprefs's base Brother) they raised a War against Stephen, which after her coming over hither was carried on with great Vigour. And tho I grant, that after divers Changes of Fortune the Empress was at last forced to quit the Kingdom, yet her Son Duke Henry did not fail to continue his Claim to the Crown in right of his Mother; and coming over into England, renewed the War against King Stephen, which was in great measure compiled by an Agreement between them, which was such as became so 

Matthew Paris and Matthew Wijtenscher relate it, was thus: "That King Ste-

phen acknowledged, in an Assembly of Bishops and other great Men of the

Kingdom, that Duke Henry had an Hereditary Right to the Crown; and the Duke thereupon as kindly granted, that King Stephen should peaceably accept the same during his Life." So that it is certain, till this Agreement (even by his own Acknowledgement) he had no Right to it: and tho I grant that the Empress, like her late late Son Reasawn we are not able to move upon her the Title of Queen; yet it is very certain that she acted as such during all the time she was in England, receiving Homage and Fealty from those Lords and others who came over to her side, and also granting Charters and conferring Honours by the Title of Anglerum Dominæ, which shows, she looked upon her self to be the supreme Governors of the Kingdom, tho not under the Title of Queen. So that I think you can find nothing in this Transfaction that can support your Notion of Vacancy.

Thus Pray give me leave to answer what you have now said before you pro-
cceed farther: First, I cannot excuse either King Stephen for taking the Crown, or the Bishops and great Men that set it on his Head, from Perjury and Injustice; since the Empress Maud had been before, in a Common Council of the whole Kingdom, declared the lawful Successor, and that Fealty had been sworn to her as such. All that I insist upon in this Affair, is this, that Quad fiere non debet, salem rules: And tho this ought not to have been done, yet when once done it did stand good; and if whilst the Throne was vacant, King Stephen, by the Election and Consent of the Bishops and great Men of England, was placed therein, he was therefore looked upon as true and lawful King as long as he lived. And this was indeed the Reason why the Empress never took upon her the Title of Queen of England, no not when he had taken King Stephen Prisoner, and one would have thought might have justly done it as a Conqueror: But yet the forbore it, because that Title was not then to be taken without the Consent of the great Council of the Kingdom, which I cannot find the ever held, her Party being not great enough to make one. And tho I cannot deny but that the might in some Particulars exercise some Prerogatives of Royal Power, yet was this only upon a pretence of her being elected and filed by this Title of Lady of the English, in a Synod of the Clergy at Winchester, by the Procurement of Henry the then Bishop of that See, and the
Diddley the Twelve.

The Pope's Legate, who was now turned against his Brother King Stephen: For he was never generally received nor owned as Queen, nor did he ever exercise that great Prerogative of Sovereign Power, viz. calling of great Councils, raising of Levies, raising of Taxes, or coinage Money.

But what should you represent King Stephen to have been elected but by a very small Party of the Bishops and Noblemen of England, yet it is very much to be feared, whether William of Malmsbury, (who dedicated his History to Robert Earl of Gloucester, King Stephen's greatest Enemy, being no Friend to his Title) be to be altogether credited in this matter. For Henry of Huntingdon, in his History, Pag. 386, (who lived not long after) tells us expressly, that Omissis qui Sacramentum jurisurgens, non posse quin Castitas & Principes, intelligentia Stephani praebentur, & dominum jurisurgens profecerint. And it is also as certain that the Earl of Gloucester and Chief of the greatest Men of England, did likewise swear Allegiance to his own Title, till they afterwards revolted from him again; yet they do nothing considerable against him, till his own Brother the Bishop of Winchester revolted also from him, upon pretence that the King had violated the Rights of the Church. And that it is true that after the Empress's departure out of England, Duke Henry her Son came over and prosecuted the same against her Father, yet could it not be in his own, but his Mother's Name, and then alone. Nor should the Agreement you mention be made mention of, till the King and the Duke, as having then a Right to the Crown in his own Person, after the death of the Empress, the Son of King Stephen, and therefore, he said, being deceased, his Brother should have enjoyed the Crown, for the grounds of it. Which Agreement was solemnly confirmed and ratified, that by oath, in a full Assembly of all the Bishops, Lords, and great Men of England, For, Ordinatio Jusitiae, in his Annals, Pag. 589, &c. and after, to be sworn to, by the King himself, Pag. 595, Vid. Hen. Hum. P. 395; and that, which I am not able to express in the manner of a great Translation, in these words: Sic enim proscriptum summe fuit & consentantem, Sacramentum firmamentum quoddam. In bravior, &c. in Tempo, even Supersedeurs. etc. and about 400 lines, therefore, as long as the Empress lived, (who died after her Son King Henry's coming to the Crown) 'tis plain she could have no Heir, till a Right to it, notwithstanding what Matthew Paris and Matthew Welf, their Chief, who lived long after these Transactions, have said to the contrary, which are to be looked upon by Authors that speak their own fables, rather than that of the Writers of those times.

I confess what you have urged; in this matter, concerning Duke Henry's being admitted as King of the Kingdom during the Life of his Mother, the Empress, and coming to the possession of the Empress, all the chief men, of which I said there could be nothing laid against it, but that this was done by the Consent of the Empresses, her self, who furnished them with pretensions to her Son: the. we have no particular account of what happened at that time, (which is more likely to be supposing) that the Government of the Women being then unknown in England, and Normandy, and consequently dangerous to the English and Norman Nobility, and for which reason Chiefly they had before set this Empress aside, they thought they did in effect perform their Oath to her, when they acknowledged her Son, Duke Henry, who is said, by the Historians, of those times, to have succeed Stephen, burnt hereafter, which could not at all agree with your Notion of his receiving his Title from the Conquest or Election of the great Council.

But I shall pass over this, and come to your next Instance of the Vacancy of the Throne, which you pretend to have been upon the Death of King Henry, the Second. Now your only Argument to prove this is, that King Richard, his eldest Son alive, was only called Duke of Normandy, and never King of England, till after his Coronation, who would but consider the Circumstances of his matter, will find that he was indeed owned for King of England before his pretended Election or Coronation. For before his coming into England to be Crowned, Roger Howden tells us, "That every Freeman Patris Regis Pulchris Richardo Regis Hen. filio," which plainly shows, that he was then by common Intention looked upon as King before his Coronation: The Confession that this very Author also relates, that all
all the Estates of the Kingdom were assembled at London, by whole Council and Affent the said Duke was consecrated and crowned King of England, and tho' Ralph de Diceto, then Dean of St. Paul's (who in the Vacancy of that Church then supplied the Office of the Bishop at King Richard's Coronation) hath this Passage: Comes in seque Pilgrimam Richardus Hereditario Jure promovendus in Regem, pot tamen cleri quae pulsil folemiae & debita electionis & latus eft triplices Sacramente, &c. Now what can this solemn and due Election here signify? Or what can it mean farther, than that Richard, being King by Hereditary Right, was so owned and recognized by the Clergy and Laity?

F. I desire I may reply to this before you proceed farther. I confess what you say about the Empress Matilda's Surrender of her Right to her Son Duke Henry would be considerable, if you had any Authorities from our ancient Historians to support it; but since you have not been able to produce any better than a mere Surnishe of those of your opinion, that the Crown was then enjoyed by an Hereditary Right, without any Consent or Election of the People. And so likewise is your other fancy, that because Women were then looked upon as incapable of govern, therefore the Bishops and great Men of the Kingdom suppos'd they had sufficiently performed their Oath of Allegiance to her, by acknowledging her Son Duke Henry for the Right Heir of the Crown. Wherefore if, in the next Quotation from Ralph de Diceto, the Duke is said, Hereditario Jure promovendus in Regem; 'which words being in the Future Tense, shew he was not then, but was to be promoted to that Dignity. Now if his had been so, present me to what purpose King Henry I. (Father to the Empress) should have made all the Estates of England swear Fealty to his Son, if a Woman had been then looked upon as incapable to govern? Or to what purpose should the Clergy, in the Council at Winchester, chuse this Empress, as the King's Daughter, Lady both of England and Normandy, as William of Malmsbury tells us expressly that they did and that he was present at it? Or how could the great Council of the Kingdom believe that they had sufficiently satisfied their Oath as the Daughters, in conferring the Allegiance that was due to her upon her Son? I am sure the Heirs of the Crown would look upon that as a good Performance of their Oath at this day. When you can answer me these Queries, I shall be of your Opinion in this Point, but till then I beg your pardon.

But as to what you say against the Vacancy of the Throne upon the Death of King Henry II. till King Richard was elected and crowned, I desire no better Authority to the contrary than those very Authors you have now cited, for your Historians to support you in your pretended idea of the Vacancy of the Throne. In the next Quotation from Ralph de Diceto, the Duke is said, Hereditario Jure promovendus in Regem; 'which words being in the Future Tense, shew he was not then, but was to be promoted to that Dignity. Now if he had been so, present me to what purpose it, then to what purpose are all these words foregoing? So that the this Right gave him a fair Pretence to succed to the Crown, yet it is plain from both the Authors you have quoted, that he did not till after the due Consent and Election of the Clergy and People: So that after all, your Questions (what can this solemn and due Election signify? or what can it mean farther, than that Richard being King by an Hereditary Right, was so owned and recognized by the Clergy and Laity?) will receive a very easy Answ'r from what has been already said, till you can shew me one of any Dictionaries, that Conflitum and Assentum (which are the words of Howden) and the words folemnia & debita Electione, ever signified an Owning or Recognition of an Hereditary Right.

I confess the only colour you have for your Interpretation of those words in Howden, which you have now cited, is Queen Eleanor's making every Freeman of the Kingdom swear Fealty to Richard King of England, as to their Liege Lord: from whence you would infer, that by common Intendment of Law he was looked upon King of England before he was crowned, and consequently there could be no Vacancy of the Throne. Now I admit that he was commonly called King before he was crowned, or that the Queen his Mother would make the People swear to him as such; yet that could not make him so, since the same Hilarians also tell us, that Hubert Archb. of Canterbury, and William Earl Marshal, made the People of England take a like Oath to Earl
John as their Lord (not King) immediately after the Death of King Richard his Brother; and yet I suppose you will not affirm, that their swearing Fealty to him as their superior Lord, made him King, or gave him a just Title to the Crown. And I desire you, or any indifferent Man, to tell me which was Erasmi's Opinion, whether this swearing Fealty was a sufficient Declaration of his being King, or all the rest that was expressive which entitled him to the Crown, when immediately before his Coronation he only calls it Ducem Richardum, qui coronandus erat in Regem, which I think is, as plain a Diffinition of his being a Duke before he was crowned, and a King afterwards, as words can make.

M. I see it is in vain to urge this Point any longer, and therefore I shall proceed to your next Inference of the Vacancy of the Throne, after the Death of King Richard, until King John was placed therein. Now tho' it is certain that this Prince was an heir upon his Nephew Duke Arthur, yet whether he was ever elected in a Common Council of the Bishops, Earls, and Barons of the Kingdom, is very doubtful; but suppose he were, it was done wrongfully, and to the prejudice of Arthur Duke of Brittany, the right Heir to the Crown, who being young and a Stranger, it is no wonder if he were put by, and his Uncle, who was a Man, and better acquainted with England, having the Interest of the Archbishops of Canterbury, and most of the great Men, got the Crown from him; and yet for all that Hoveden, who was alive at this time, speaks not a word of his being elected, but only that upon his coming into England he was received by the Nobility, and crowned by Hubert Archbishop of Canterbury. So that there is not one word there of any Election by, but only a Submission from the Lords Spiritual and Temporal to King John, and a Recognition that he was their King. Nor indeed could it be needful, if it be true what the same Author tells us, That when King Richard despaired of Life, Hor. s. 449.

he deified to John his Brother the Kingdom of England, and all hit other Laws, and it is certain that there is no Office of the Crown in England, neither is it so much as spoken of, or related by Henry, in all probability an Eye-witness of these Transactions.

So that the first Author we find to mention any thing of the Particulars of this pretended Election, is Mathew Paris, who has given us the Speech which Man. Paul, the Archbishop made at this supposed Election, and also recites the Arch. 5. 157; Bishops, Earls, and Barons, and all others who ought to be at his Coronation. The Archbishop standing in the middle of them, said thus: 44 It was your own Discretion shall know, that we have "succeeded in this Kingdom, unless, after seeking God, he be unanimously chosen by the University of the Kingdom:" (that is, those who are here said to meet at London.) The rest of the Speech needs no repeating, only he lays it down for Law (which I think was never heard of before) that if any of the Progeny of the dead King did excel others, they ought more readily to content to the Election of him." And so upon this Speech made in behalf of Earl John, and that of a great deal of plausible Flattery, he was declared King.

But to let you see what a sort of Man this Archbishop Hubert was, take what the same Author tells us in the same place; that being asked afterward why he said these things, he answered, That he guessed, and was ascertained by certain Prophecies, that John would bring the Kingdom and Crown into great Heat and Confusion; and therefore left he might have too much liberty in doing it, he affirmed, he ought to come in by Election, and not by Hereditary Excel
gion. Now tho' this learned Doctrine of the Archbishop affords a Right of Election in the Convention of Bishops, Earl, Barons, &c. yet by his own Answer, when he was asked why he said these things, it clearly discovers it to be only a Design and Artifice in the Archbishop, to cause them to set up and make John King, and in which also he denies any such Right of Election. But since Hoveden, nor any other of our ancient Historians make mention of this Election, but only of his Coronation, and the Bishops, Earls, and Barons having their Confutes to it, it may well be that that Story of an Election, and this Speech of Archbishop Hubert, might be only an Invention of Mathew Paris, or rather of Roger of Wendover, from whom he took most of his History: but that this Doctrine of the Archbishop, concerning the Election of our Kings, if meant according to the modern understanding of it, was then new, Gertrude, a Monk of Canterbury in the year 1122.
who also speaks of the Coronation of Henry I. says, it was manifest; and known almost to all Men, that the Kings of England were only obliged and bound to God for the Possession of the Kingdom, and not to the Church of Canterbury for their Coronation; *Manifestum de ovano et onere terrae normannicae. But that King John was looked upon as an Usurper, is very certain, since besides some of the beset English Nobility that took Duke Arthur's part, the King of France did also make war upon King John on his Nephew's accotum, because he looked upon him as true Heir to the Crown; and therefore when King of France did summon him, as Duke of Normandy, and Peers of France, to appear for the Murder in an Assembly of the Peers of France at Paris; where, for his refusing to appear, he was condemned to death, and his Dukedom of Normandy declared forfeited to the King of France.

F. I confess you have said as much as can be, to prove that King John had his Hereditary Right to the Crown, nor was so solemnly elected to it (as Matthew Paris relates;) but yet for all this, I think there may very justly oppose all that you have now said upon this Head: for in the first place, it was then very little disputed (as it hath been afore since that time,) if an elder Brother died, and left a Son a Minor, whether his younger Brothe or his woe should succeed. For to the People of Anjou, and those of Southern, own'd Duke Arthur for their Prince, yet the States of Normandy were of another mind, and by virtue of King Richard's Testament, he was immediately after his Death invested with that Dukedom: nor was he then at all opposed in it by the King of France, which was the end His Brother had Testament, whereby he left him Heir of all his Territories, it was also then generally held in England as most consonant to the antient English-Saxon Law of Sucception, that the Uncle should succeed to the Crown before the Nephew. Therefore it is no wonder if Duke Arthur found so small a Party here, nor any Bishop, Earl or Baron (as I read off) owning his Title: and as for the King of France, it is also as certain, that he did at first own King John for Lawful King of England, and King of England, and made a League with him as such; the it is true that afterwards, when he had a mind to pick a quarrel with that King, he then set up Duke Arthur's Title. And tho' this Duke was made away in the beginning of King John's Reign, yet did not the King or Peers of France ever take any notice of it, till about twelve or thirteen Years after, when he had now unjustly conquered Normandy, and almost all that King's other Territories in France; and then writing a Testament to keep them, he began this Preoccupation you mention against him, and upon whose Non-appearance he was condemned next adhered. But that the King of England himself, and all the great Men of that Kingdom, did look upon him to have been lawful King of England, appears by that Speech which Matthew Paris relates to have been made after King John's Deposition, by the Bishops of England, by a Knight whom Prince Lewis of France had made his Procure for the Pope, and treat with the Pope's Legate about his coming over hither: "where, when he had recited that King John had been condemn'd by his Peers for the Death of his Nephew Arthur, and that he had been also for his great Offences, and other Wickednesses depos'd by the Bishops of England, and further reciting that the said King, without the Assent of his Nobility, had resign'd his Kingdom to the Pope to hold it of him at an annual Tribute of a thousand Marks; (the rest I will give you in Latin, because you your self may translate it:) Exellentiam Angliae sine Barumnum Abolsi dare non poximus, potueritiam dimissit et dimissit quam statum cum regnaruerit, Sen ols defijs, & Regnum sine Regis vestro, undeque Regnum sine Barumnum ordinem debuerit, &c. So that you may see that by the Order of Prince Lewis, and the Allowance of the Pope himself, every one of our Opinions are maintain'd for good: First, That King John was, before the Resignation of his Crown to the Pope, true and lawful King. Secondly, That by that Resignation to the Pope, he did dismiss or abdicate his Right to it; (for so I suppose the word dimissit Regnum is here to be render'd;) Thirdly, That upon this Dimission of the Crown, the Throne became vacant. Fourthly, That upon this Vacancy the Kingdom could not
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not be confer'd without the Content of the Baronet, that is, the great Council of the Kingdom.

But let King John's Right to the Crown have been what it would, it is certain, that he could not take it upon him, until such time as this Great Council had both heard, and allow'd his Title: and that this was in the nature of an Election, notwithstanding his Brother's Will, appears by that Account which Roger W Amph; and Matthew Paris have given us of it; which the Hereford and other Western have omitted; yet doth it not therefore follow, that this was all the pure invention of Roger of Wendover, or Matthew Paris, since the former, living so far that time, might write from the Relation of some that were then present; and as for the latter, I look upon him, the monk, as a man of too great integrity to invent any thing of his own head. And I confess the Account that Archbishop Hubert gives, why he put King John's Title rather upon Election than Succession, looks very fulsome; since the Archbishop must thereby have made himself a Rogue and a Hypocrite, and seems also to confound what Matthew Paris has before said, viz. "That all those that heard of his Speech, dared not to doubt of these things, knowing that the "Archbishop had not then judged of this matter without cause." And therefore I grant that this part of the Relation, concerning the Archbishop's vindication of himself for thus giving his Judgment, might be a Story commonly taken up, and being told to this Author, was by him inferred in his History at a time, when great the Crown of England began to be thought successful, by reason that King Henry II. had succeeded as the eldest Son of his Father, the he was not for all that then-admitted without Election, as I shall prove by and by. This he that was made King by Election, that he claim'd it from his Brother by Succession, Hubert appears from his own Charter (for he was sent as that day in the Archbishop's Archives at Lambeth, wherein he re- cites, that he came to the Crown, "jure hereditatis, & mediante Christo quasi Papæ unum et unicum universa Christi possessionem," where you see plainly that he derives his Title from this Content and Favour of the Clergy and People, as well as his own Hereditary Right.

M. Notwithstanding what you have now said, I cannot agree with you, that by being cited from this Charter, is to be understood any formal Election of the Clergy and People; but that this unanimous Consent mentioned in it, was rather their Acknowledgment of his Title, and Submission to him, than any thing else: for according to Hereford's Relation of his coming to the Crown (which I think the most exact extant) the whole Nation submitted, and swore Fealty to him against all Men, before he came over into England.

But as for his Son Henry III. he is much more plain that he succeeded by Succession, and not by Election, as being the eldest Son of the late King his Father, as appears by the Relation of his Coronation in Matthew W. in his Historie, who tells us thus: ' Monarchus Johanne primogenitum in Regnum invenit & Faciliter coronavit Vol. 577.' And tho' from the Speech which was made to the Clergy and Nobility, that were then at Gloucester by the Earl Marshall, "as pretended, that Henry S.D. p. 13. was elected; yet I dare say, if any one do but impartially consider the Tenour of it, he will find that the Design of it was rather to persuade all those then present to return to their Duty, and acknowledge him for their King, whom God and Nature had design'd for this great Office: for the Earl begins his Discourse to them thus, (as it is in Khiston) "rex Rex offerat!" (which certainly could not then be true, if an Election was necessary to make him such) but amongst the rest of his Arguments, he urges this; "Hunc igiur illius Regnum Col. 2426. dominum, cum apsine Regnum debetis; Poenae offerat eum, quam, in quem Kingdom is (which surely it can be so none, if it be not Hereditary.) And what puts an end to this, that the Kingdom was not then (if it were not, I am sure never since) Election, but the Anwser of Hubert de Burg to Lewes, when he sumnond him to deliver up Devon-Castle to him, since his Muster, for whose wife and service he held it, was dead; but for his Answer, "If my old Master, 44 says he, be dead, he had left behind him Sons and Daughters to succeed him." As, that he never would have assented, had he not thought there had been a Divine Right somewhere else than in the People."

* Before
BIBLIOTHECA POLITICA.

F. Before I speak any thing to King Henry the Third's Election, give me leave to reply to what you have said against the express Words of King John's Character; for if Fever and Conquering do not signify somewhat more than a bare Acknowledgment and Submission, I understand neither English nor Latin. Nor is this any Answer to the express Testimony of Roger of Wendover and Matens Paris to the contrary. And as for Roger of Wendover, he does not say he was not elected, but only omits the manner of it, as divers other Historians do: So that (at the best) this is but a negative Argument: and yet that Historical himself did not look upon him as King even after the whole Nation had made Fealty to him before he was Coronated: many appear from this Passage a little before his coming over: Willemi Regis Secundus, utis nuntiis et Johannis Docii Normandiae, &c. where you see he calls him no more than Duke of Normandy.

But to come to the Election of his Son Prince Henry; if this be all you have to prove a Divine Right of Succession in Henry III. I doubt it will do you little service; for according to your own Principles it must have been helped somewhere else than in this Prince: for when King John his Father died, Black nor, the Sister of Duke Arthur, was alive, and died not till the 7th Year later. So that it is apparent he could have no such Divine Hereditary Right as you suppose; and therefore perhaps his Father, to strengthen his Right, and to recommend him the more to the Peoples Favor, inspired him his successor by his last Testament, and Methuen Paris, and another Westerner tells us, that when King John died, Henricum Primogenitum, &c. so far and so hard. So that it seems there was then no such plain Hereditary Right; but if it had, what need had they been of this Testament?

But for all this Right, I do not find that this poor Princek Blacknor had any of the Bishops or great Lords to take her part; but all the Bishop then was at this great Convention at Gloucester, whether they should abdicate Prince Lewes, whom most of them had before chosen for their Lord; and through no Choice the Bishops, and Methuen Paris tells us that several Bishops inter Optimates Anglici sufficienter maxime, et quae Regiæ Hereditatem juveneribus Henricis, duci Ludovicis p. So that it seems, by the Relation of the Historians give us of this Matter, it was not from any Choice of the Bishops that the Clergy and Nobility had of the Justness of Prince Henry's Title; that made them agree to chuse him King, but the Hated they then here to Prince Lewis, when they found he had broken his Contract with them, and put all the strong places of the Kingdom into the hands of his Enemies, and made the English Nobility with Scorn and Contempt; and therefore no wonder if they preferred an innocent young Prince of their own Familion, who had never been guilty of his Father's Faults, before a Stranger; whose falsehood dealing with them they had found not to answer their Expecations. And therefore also Wolfingham tells us, that comes Nobilem Terra in brevi negotio, Regem, Assuramque quos quisque super in esse mercatus, sed super horrendum, &c. But to prove farther, that this King came in by Election, and not by Succession, appears by what our Historians relate concerning the manner of it. Henry de Kingham, in his Chronicle, tells us, that on the Day of St. Sampson and Stowe, Henry, Son of King John, in Regem reginarur mundum, et subdissur Castellam Papa Legati; which plainly shows that he was not King before: and I choose no better an Authority than your own Author, Methuen Wolfingham, who says, that he was in Regem inuocaret, destined to be King; which shows that he thought him not so before his Coronation. And the Grant Methuen Paris makes the Earl Marshal to begin his Speech with these words, Exce Rex unconfer as you relate them; yet this was no more than an Allusion to that place in St. John, Chap. 19. Behold your King it being usual in those days so begin their Speeches with the Text of Scripture. So that the Earl did not intend to be understood literally, for thea he should have in this Speech contradicted what he had said before: for the to prepossess their Minds, he says of the young Prince there present, Behold your King! yet it is plain that how much sooner he thought the King his Right, yet that, it could not be conferred upon him without their choice; as appears by these words, which you your Self have made use of, etc. You ought to chuse him, when the Kingdom is due. And it is evident by the
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Against which the whole Assembly gave to the Reasons declared by him in this Speech, that it was their Cioice alone that made him King, their Votes being given in these words, *Hoc Rex,* which had been altogether needleless, had they looked upon him as King already. And therefore the Speech of Hubert de Burgh, which you mention, may very well be reconciled to this Hypothesis, of supposing a Necessity of an Election and Coronation to confer a full and legal Right in those times: for when he said, *That the King, of dead, had yet left behind in his Children the surest to succeed him,* this, if strictly taken, is altogether false: for Eleanor, the true Heires of the Crown (according to your Rule of Succession) was then alive: but, if taken in a limited sense, is true, that is, the Children ought to succeed if the great Council of the Nation thought fit; without whole Consent, tho' they might have *Jum ad rever*, yet had they not *Jum in vet*; this Election and Coronation being then looked upon, as Livery and Seisin at this day is to an Estate in fee, without which, tho' the Writings are sealed and confirmed, the Land will not pass.

To conclude: I pray answer me that Question I have so long put, the without any Reply, viz. Why, before this Election and Coronation was perform'd, none of those Princes that came to the Crown by your supposed Right of Succession, are call'd by any higher Title than Dukes of Normandy, or Earls of Pembroke? So that from what has been here said, I think it plainly appears, that by less than seven of the eight Princes from your William the Conqueror (reckoning him for one) to King Henry III. have owed their Title to the Crown, but to any Right of Succession; but either to the Election of the People alone, or else to the Will or Designation of the last King, confirm'd by the general Consent of the People given therunto; and without which it would not have been good, according to the antient Custom of the English Saxons before your Conquest: where, besides the Testament of the King deceased, there was also required the Consent or Election of the great Council. So that you see here was no alteration made in the Form of our chasing our Kings after your Conquest, for no less than seven of our Princes; And when you can answer this, I shall then come over to your Opinion.

M. In answer to your Question, I shall not deny but that our Historians give all the Kings you mention no higher Titles than Dukes of Normandy, or Earls of Pembroke, before their Coronations: which tho' I suppose they might do from a foolish Superstition of that Age, which made them fancy that none were properly to be called Kings until they had been anointed, and solemnly crowned by a Bishop; yet that they looked upon them as Kings indeed, appears in that they ordered and dispofed of all publick Affairs, conferred Offices and Benefices, as if they were lawful Kins in your pretended Election, or the Ceremony of their Coronation; and also had Ambassadors sent to them from foreign Princes, as appears from your own Quotation out of *Hoveden,* of those that were sent by the King of Scots to King John before he was crowned; tho' it is true he there fills him no more than Duke of Normandy. And this also may further appear by that Passage I have cited out of the same Author, that King Richard had Peity sworn to him to be an King of England by all the freemen of England before he was crowned, and you your self acknowledge the same Oath to be taken by the same Persons to King John before he came over to take the Crown.

And lastly, to make it yet plainer that there was no Vacancy or Interregnum in all these Successions you have mention'd, consult what Chronologer you please, or look into the most antient Tables of the Succession of our Kings of England, or into our old printed Statutes or Law-Books, and you will find the Reign of the succeeding Prince to commence from the Death of his next Predecessor, without any Vacancy or Interregnum between. And these I think to be a great deal more Marks of their succeeding to their Royal Dignity, by a pretence at least of a Right of Inheritance from the Father or Brother, rather than this Fancy of yours that you lay so much stress upon, That because of their not being fill'd Kings by our Historians till their pretended Election and Coronation was over, they were no indeed. And I hope this may serve to satisfy this mighty Objection.

F. I must beg your pardon if I still declare my self not Satisfied with your Answers: for tho' I grant, that if this Argument of the Historians not fill their
them Kings, had stood single, without any thing else to support it, your Answers might have signified something; yet if you please to consider it, you will find that none of these Princes (taking in William your Conqueror) claimed, as your self must acknowledge, by any Hereditary Right, but by the Testament of the deceased Predecessor; and if so, where was your settled Right of Succession by Right of Blood? Secondly, it is likewise as plain, that those four were never admitted to act in England as lawful Kings, till those Testaments were confirm'd by the Election of the great Council, before whom they declared their Rights: and till this was done, how the Throne could be otherwise than vacant. I cannot conceive. But as for two of them (whom you call downright Uharpers) viz. Henry I. and King Stephen, it is certain, they could have no colour of a Title till their Elections, and if not till then, and that neither your next Heir of the Crown, nor yet they themselves took upon them the Title of Kings, was not this a Vacancy of the Throne in the mean time? suppute that time to have been, but for the Place of three or four days, as it was after the Death of King William Raffa.

In the next place pray consider, that upon the Death of every one of those Princes, we do not find the great Council of the Kingdom, which in our days, and our times, to elect the Successor, was ever called in their Names, but by their own inherent Authority; for how could they be bound by the King before he took that Title upon him, which, as your self are forced to acknowledge, he never did till after his Coronation?

Lastly, pray remember farther, that whoever was that closed and mightly by the great Council, whether he was one of the Kings, was always looked upon as lawful King, and has always been looked upon as King, without our own prudish Laws and Laws, and nor those that claimed the right from the Kings up to your time. And if this be not sufficient to prove that those Princes had no right and compleat Right to the Crown till this Election was past, I desire you would shew me my Mistake.

The things premis'd, I think it will be very easy to reply to, every one of those Answers you pretend to have made to me. Therefore as to your first, that they were really Kings before their Election or Coronation, if they ordered and disposed of all publick Affairs, I do not deny, but that some of them, who succeeded either as Heirs by Testament, or by Right of Blood, might do many publick Acts, by reason that they looked upon themselves as Heirs apparent to the Kingdom, and whom the great Council, I grant, could not without high Injustice let sile; and upon this account, they might also receive Ambassadors from foreign Princes, in Affairs relating to Peace or War, that they might know how to deal with them, or what to expect from them after they were settled in the Throne: yet that they went not, do them by the Title of Kings, appears by that Passage I cited out of historical, but I defy you to shew me any one Instance that any of these Princes above-mentioned ever took upon them to exercise any of those prerogatives of Sovereign Power, such as making War or Peace, enacting Laws, calling of Mony, before their Election and Coronation; which the six of them was done both at once, yet in others it appears plainly to have been at different times, and not upon the same day, as it happened in the case of Henry I. whose Election was at Winchester on Saturday, and his Coronation was not till the next day, as also that of Henry III. whose Election was upon (Simon and Jude's day) but

But as for your next Reply, which I grant to have been the strongest you have made, that King Richard I. and King John had both of them Homeland and Fealty sworn to them as Kings, by all the Subjects of England, before they were crowned: This were a material Argument, if it were made out, as I think it cannot be: for in the first place, the bare swearing of Homeland and Fealty to a Prince doth not make him immediately King, tho' I grant it might give him in that Age a Right to be looked upon as Heir apparent to the Crown. Thus Henry I. made all the Lords and great Men of England to swear Homeland and Fealty to Prince William, his Son; and so after his being drowned, to the Emprefs Matilda, his Daughter, which was the true reason why she looked upon her self afterwards as Heiress to the Crown. So likewise King Stephen, a little before his Death (at the great Council I have mention'd) cau'd all the great Men
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Men of the Kingdom to swear Homage and Fealty to Henry Duke of Anjou, as his immediate Successor. So that you see this Swearing of Fealty was in those days often perform'd before the Person that received it were Kings indeed; and fo I believe it was done in both those Influences you now give me: for the Grace that Hesdons (as you cite him) relates that Homage was made, and Fealty sworn to Richard I. by the Title of King, yet it is very much to be doubted whether this was not only by a Prelate, or perhaps a Bishop of the Pen in this Author, since he write this History long after King Richard's Death; and therefore unless we had the very words of this Oath, there is no certain Conclusion to be drawn from thence. And I think we may as well credit the Chronicle of Abbot Strogonum, who likewise lived about the same time, and notices all this Affair almost in the same words with those in Hesdons; but there the Oath doth not run exactly in the same words as in this Author, but thus: "Quod unusquisque liberorum hominem timui Regni quosque quidque I敢cussens Domino Richards, Domino Anglia, ficio Domino Regis Henrici, &c. fice leges, habeas &c." Where you see the Oath is not made to King Richard as King, but only as Lord of England; and that there is a great deal of difference between those two Titles, not only in Name, but in Substance, have already proved, when I spoke of the Empresse Matilda's filling her self Damois, and not Regina Anglorum: tho he had Homage render'd, and Fealty sworn to her, not only in her Father's life-time, but also after her coming over again into England, in the Reign of King Stephen, by all that owed her Title. And that Hesdons himself meant no more than this, appears by that Passage I have already taken notice of, viz. That Abbot, Archbish of Canterbury, and Will: issuam, the Earl Mansfeld, being sent over to keep the Peace, made all the Men of the Kingdom, as well of Cities as Boroughs, with the Earl, Baron and Freetholders, Swear fealty &c. Proclaiming: "I name Normannorum duci, ficio Henrico Regis, ficio Mastikst Imperatrixis, contra omnes homines: where you see the Oath is taken to him only as Duke of Normandy, and not as King at all: and therefore you are mistaken to say that the Oath mentions the like Oath to be taken to Duke John, as was before to King Richard:

But I come now to answer your last Argument, whereby you would prove that there was no Vacancy or Interregnum in this Age; which is, because that our Chronicles and Tables of Succession do Bill begin the Reign of each King from the day of the Decree of his Predecessor, without any Vacancy or Interregnum between them. To which I reply, That none of our ancient Chronicles or Historians reckon thus, as I know of, but rather acknowledge a Vacancy of the Throne to have been between each Succession; and as for the Tables of the Succession of our Kings, when you can shew me one more antient than the time from which I grant the Crown of England began to be looked upon as a Successive, and not an Eleventh Kingdom, I shall be of your opinion. But add it were so, since the Succession to the Crown had been for the most part mixed, partly Eleventh, and partly Hereditary, our Kings might, to maintain the Honour of their Title, still reckon their coming to the Crown immediately from the Death of the last Predecessor, tho there have been oftentimes some Days and Weeks between the one and the other, as I have now proved, and shall prove further by and by; which being but small Fractions of Time, are not taken notice of in the whole Account, which may be notwithstanding very agreeable to Law; for both my Lords Dyer and Andrews in their Reports do agree, 4 That the King, who is Heir or Successor, may write and begin his Reign the same "day that his Predecessor or Predecessor dies."

M. It will be to no purpose to dispute this Point with you any longer, since I must confess that there were so many Usurpations in the Succession of those first Kings after the Conquest, that it is a difficult matter to prove any settled Rule of Succession to have been then observed in England; and therefore I only desire you to take notice, that the it is true, King Henry III. was an Usurer for the first twenty five Years of his Reign, yet for all the time, it was near thirty more, he was a true and lawful Prince: for Elsewyr his Cousin being dead in Prinith without Life, and there being no more of that Line left, her Right wholly devoted upon King Henry, and his Children are to be from henceforth reckon'd to have a true Hereditary Right to the Crown without any Competitors. K k k k And
And that this was so, will plainly appear from the Testament of King Henry III. (a Copy of which I have by me) where, tho' he bequeathed a great many of his jewels to the Queen, and a great deal of Mony to charitable Uses, yet for this Kingdom, and other Territories in France and Ireland, he makes no Bequest of them at all, either to Prince Edward his eldest, or to Edmund his youngest Son, tho' his Father King John had bequeathed the Kingdom to him by his Will (as you have already heard:) and what could be the reason of this? but that there being now no Title left to contest with his Son, there was no need of it. And therefore the Prince Edward was absent in the Holy Land when his Prince died, yet the Great Council being call'd in his Name at London, he was there only recognized and acknowledged to be their natural Liege Lord, and lawful Successor to his Father's Throne. Pray read the words as they are in Walsingham's Life of this King; Edwardus absens Dominum suum Legiun recognoverat, paternique successorem honore ordinaverat. We meet not here with anything like Election, which no doubt we should not fail to do, if there had been any such thing practised.

So how upon this King's Death, his Son King Edward II. by the like Right succeeded as heir to his Father; and tho' this Prince, by suffering himself to be too much guided by his Missions, fell at length into such irregular Courses, as procured him the Hatred and Ill-will of his Subjects to that degree that, by the diabolical and ambitious Practises of his infamous Queen, he being made a Prisoner, a Parliament was call'd in his Name, who took upon them to depose him for his Misgovernment, contrary to all Law and Right: and tho' his Son Prince Edward was of a more sedate and upright Life than his Mother; yet is it by no means so far to be recommended, that tho' the Crowns was offered him by Election of the Great Council, yet the same Author tells us, he was wont to do otherwise, that with-out his Father's Consent he would never accept it. Whereupon divers Missengers or Delegates being dispatched from the Parliament to the King, then Prisoner at Kenilworth-Castle, who telling him what had been done and concluded at London, required him to reign his Crown, and permit his Son to reign in his stead; which with some reluctance he at last agreed to: and thereupon the Prince was crowned, not by Election, as you may infer, but by the Cession and Resignation of his Father, as appears by the account which this King gave of it to the Sheriffs of all the Counties of England within a few days after his taking upon him the Crowns; which Writ or Letter is still to be seen among the Rolls in the Tower, and is also published in Walsingham as a Proclamation; which because it will give very great light in this matter, I pray you now read it at length: Rex, Viscount, Ebor. Saltem; Quia Dominus Edwardus nuper Rex Anglie non habet consilii communis confilii & affinitis Prelatuum, Com. Baron. & alior. Magnat. necem Communicat. totius Regni prodid. spontanea voluntate se a movit a Regimine dills Regni volens & concedens, quod nes tanquam ipsius primogenitus & heres Regni gubernementum & regimen affiniatos, nosque ipsius partis noni beneficio in hac parte de consiglio & avitamentum Prelat. Com. Baron. Magnat. & Communicat. prodid. amnentes gubernacula suferipsum dills Regni; & sibilantes & Honorem sfirmum Prelat. & Magnat. recognizium, ut et mari, testa Rege quod Walsingham. 29 Jan. So that you here see this King takes not possession of the Dis- position of his Father, or the Election of himself, but only that by the common Counsel and Assent of the Prelates, Earls, Barons, &c. the King his Father had, by his own free Will, removed himself from the Government of the Kingdom, and that therefore he had, by the Good-will of his said Father, and by the Counsel and Advice of the said Prelates, Earls, &c. taken the Government of the said Kingdom upon him.

But King Edward III. being dead, his Grandson Richard II. succeeded him, having been before recognized by Act of Parliament, as Heir apparent to the Crown in his Grandfather's life-time, immediately upon the Death of his Father Edward the Black Prince; so that he succeeded to the Crown, tho' an In- fant, and had great and powerful Uncles then alive: but by his ruling too arbitrarily, and being too much governed by Flatterers, he became hated of his Subjects, and thereupon gave occasion to Henry Duke of Lancaster (whom he had before banished) to come over and take the Kingdom from him without striking a Stroke; who having taken the King Prisoner, called a Parliament in his Name, who took upon them most unjustly to depose King Richard,
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... the false made a solemn Renunciation of it by his own Sealing-Confent: but it is certain it was forced from him, for fear of worse Usgage if he refused it.

First, you must answer what you have now told, before you proceed further in this History of the Succession. In the first place, I shall not deny that King Edward I. claimed the Crown has been always humanly or humanly enjoyed by Right of Blood; yet that the Crown was otherwise before, I think the Insubances I have given from the time of your Conquest, are more than sufficient: it is likewise as certain that the Succession by Right of Blood, was never settled by any particular Law, and therefore must be purely derived from that tacit Consent of the People called Coflons. Secondly, That the two Houses of Parliament have often, notwithstanding this Claim, placed or fixed the Crown upon the Heads of these Princes, when they were very well known could have no Hereditary Right to it. Thirdly, That each Prince has been always obey'd, and taken for lawful Kings, all their Laws standing good at this day, without any Confirmation by their Successors, to the contrary: I think the cafe will be very plain, that tho' the Crown has been claimed and often enjoyed by Right of Blood, yet hath it been held near as often otherwise since that time: so that the Succession to it hath been still declared to be under the Direction and Limitation of the present King and Parliament.

This being premised, I shall proceed, in the next place, to answer what you have said concerning King Edward the Fifth's being only recognized, and not elected King by the Parliament. It is plain from this History, that the Great Council still maintain'd their ancient Right of assembling upon the Death of the King, and of judging who should be his Successor, and that without any Summons from him: which will serve to justify (as do all the other Insubances aforesaid) the late Convention meeting, and setting the Crown without any Writs or Authority derived from King James, was no new thing; but that they have therein done no more than what hath been antiently practiced in like cases: and tho' (the true) the word in Walsingham is recognizance, yet there are also other words which seem to intimate, that it was then in the power of the Great Council whom to declare for lawful Successor. The words are, Prospectus Successorum honorum et insigniorum; that is, they ordained or declared him Successor of his Father's Dignity: which is somewhat more than a bare Declaration of an不限不的 precedent Right. And what Power the Great Council was then looked upon to have in the ordering of this Kingdom, appears by that Writ of Dedimus, for all Mens taking the Oaths of Allegiance to the Country; which is still to be seen in the close Rolls, and begins thus: Quia definitum fum celebris memoria Domino Henrico pare nostro, ad nos Regni Guibernaculis successione Hereditatis Prœpulsa Regi voceque et statuta nobis præstissa in devoimento, &c. Where, besides the Hereditary Succession, the Goodness and Elegancy of the Great Men is reckon'd as one of the means by which the Kingdom came to him. And that this Querie was also obtained upon the Accession of his Son Edward II. to the Crown, seems likewise as evident from the same Author, who tells us in the beginning of the Life of this Prince, that he succeeded his Father King Edward, &c. &c. His Hereditarius, quam unam conuersa Prœquis et Magistraturis: Which Observation had altogether needless, had an unalterable Hereditary Right to the Crown been then settled.

But as to what you say of King Edward the Third's Rights, which his Father was living, that it was wholly due to his Renunciation, the place I cited out of Walsingham be express in this point, yet against this you urge a Writ or Declaration, as also a Proclamation of this King's, wherein he thus sets forth his Title, &c. "That by the voluntary Renunciation of King Edward, and his Father, and by the Consent and Advice of the Prelates, Earls, and Barons, &c. he had taken upon him the Government of the Kingdom, and consequently that succeeding immediately upon his elder Father's Renunciation, there could be no Vacancy of the Throne. To which I answer, that I do not admit that after this King was once settled in the Throne, he might think it meet to his Honour, and the Independence of his Title, to rely wholly upon his Right of Succession as eldest Son and Heir, without taking..."
any notice of the Parliament's Election of him; tho this be also covertly expressed in these words, which are in this Wit and Proclamation, viz. "That confessing to his said Father's pleasure, he had taken the Government de confusis & adivojamentis Prelater. Com. Baron. Magnatis. & Communis. priditi," which tho you translate by the Counsel and Advice of the Prelates, Earls, Barons, and Commonalty, yet I do suppose that by Confisio he meaneth not Counsel, but Consent, as I have already proved the word Confisio often signifies in our ancient Statutes; for otherwise if this word must here signify Counsel, it would be a plain Tautology, for Advice and Counsel are the same thing.

But to shew you also that there must needs have been a Vacancy of the Throne, either upon the Deposition or Refignation of Edward II. (take it which way you will,) it appears from matter of Fact; for it is plain, that when Prince Edward was with the Crown upon the Parliament's Roll, his Father would willingly resign it, he did at their Request resign his Title to it, by certain Commissioners sent down to him to Kenilworth-Castle to take it. Now that Place being at least two days Journey from London, it is certain there must be as many days Vacancy of the Throne, if not more; before the said Commissioners could get to London, and that Prince Edward had agreed to take the Crown upon his Father's Refignation; for till then the Throne was vacate, since till the Prince had declared his Assent to take it, he might have chosen whether he would have accepted it or not, as not being satisfied whether his Father's Refignation was voluntary, and not by constraint. Now if there were a Vacancy of the Throne in this case, tho but for two or three days, it serves to prove the matter in question, as well as if it had been for two years.

So likewise let the Reign of King Henry IV. begin either from the Refignation or Deposition of King Richard II. (take it which way you please,) there must have been a Vacancy of the Throne, as appears by the Parliament's Roll still extant: for it is there plain, that after the Intrusions of King Richard's Refignation and Deposition were solemnly read, the Throne continued void for some space, till such time as Henry Duke of Lancaster stood up and made his Claim to it, in that form of words which stands to this day to be seen upon the Parliament-Roll; and that the Archbishops of Canterbury, taking the Duke by the hand, had led him to the Throne, and placed him thereon.

M. I cannot believe as you have said, that the Party in Fact, have let forth the matter of Fact, unless there had been a Vacancy of the Throne in these two Cafes; but since the Depositions of both these Kings were contrary to Law, and their Refignations extorted from them by constraint whilst they were in Prifon, they are neither of them looked upon as valid, or to be urged as Precedents in future times; but however the Throne might seem then to be vacant in point of Fact, yet in Law it was otherwise; for Edmund Earl of March ought to have immediately succeeded upon the Death or Refignation of King Richard, as being lineally descended from Philip, only Daughter and Heir to Lionel Duke of Clarence, third Son of King Edward III.

But to let you see that Henry Duke of Lancaster (as much an Usurper as he was) was feasible that the Crown could not be then enjoyed by Election, but by Right of Blood; and that the Parliament also thought themselves in Duty bound to submit to him, to whom by Right of Blood the Crown did belong, will appear from this Duke's manner of laying Claim thereunto; which since you have not particularly mentioned, I will. For no sooner was the Throne vacant, by the pretended voluntary Refignation of King Richard, but Duke Henry, having fortified himself with the sign of the Crois, stood up, and made his Demand of the Crown in his Mother-Tongue, in this form of words (as I have extraced them out of the Parliament-Roll."

In the Name of the Father, Son, and Holy Ghost.

Henry of Lancaster challenge this Assize of Inglonde, and the One, with all the Members and Appurtenances; also that I am descende by Right Line of the Blood, coming for the gude Ld. John King Henry the Third: And though that Right, that God of his Space hath lent me, with the help of my
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And after which Challenge and Claim (says the Record, which I render out of Latin) as well the Lords Spiritual as Temporal, and all the States there present, being all severally interrogated, what they thought of the aforesaid Challenge and Claim, the above-named States, with all the Commons, as well, upon any Difficulty or Delay, unanimously agreed, that the aforesaid Duke should reign over them. Where you may see, that this whole Parliament admits the Duke's Claim for good, without proceeding to any formal Election of him.

And by virtue of this same Title, and claiming as Heir of Earl Edmund, (the named Crouch-back) Brother to King Edward I. (whom he falsely pretended to have been the eldest Son to King Henry III. and put by for his Deformity) not only Henry IV. but also his Son Henry V. and his Grandson Henry VI. (the Usurpers) did succeed as right Heirs to the Crown, till the third year of Henry VI., when Richard Duke of York did in a full Parliament lay Claim thereunto in right of his Mother, being only Siller and Heir of Edmund Earl of March. And because the Judgment of the Parliament in this Case is very remarkable, pray read this part of it, as it stands recorded in the Parliament-Roll:

Whereupon consideration of the Answer, and Claim of the Duke of York, it was concluded and agreed by all the Lords, that his Title could not be defeated; and therefore for eschewing the great inconveniences that may ensue, a Man was found to save the King's Honour and Estate, and to appease the said Duke if he would; which was, that the King (viz. Henry IV.) should enjoy the Crown during Life, the Duke to be declared the true Heir, and to polish it after his Death, &c. And note, that all this was done after a solemn Hearing of all that could be said on both sides.

F. I confess the matter of Fact, concerning King Henry the IVth's coming to the Crown, is truly recited by you from the Parliament-Roll; yet for all that, it doth not follow, that the Parliament allowed this King's claimed and false Claim to be good, by their not contradicting it. For the Record says, That upon the hearing of this Challenge or Claim, all the Estates of the Kingdom being then asked their Judgments severally, declared, without any Difficulty or Delay, and unanimously agreed that the said Duke should reign over them: Yet considering the Duke's great Power, it was not safe telling him to his face, that he had no true Right by Inheritance; therefore they only declared in general words, without expressly denying or affirming his said Claim, That he should reign over them: which words do rather amount to an Election of him to be King, without declaring what Title he had to be so. And this they thought they might very well justify, not only for his having delivered them from the Tyranny of King Richard, but also because they then looked upon it as their Right, not only to depose the King in case of an apparent Violation of the fundamental Laws of the Kingdom, but also to place in his stead one of the Blood Royal; tho' not next Heir by Blood; according to the Metaille the whole Parliament had formerly sent to King Richard, in the beginning of his Reign, by the Archbishop of York, and his Uncle the Duke of Gloucester, which I gave you at our last Meeting (as I remember.) And pray take notice the words were, Et proponoorem ducem de foro Regis, loco ejus in Regnus falsi Johannis; where observe, that the words were not the next of Blood, but none near Kindman of the Blood Royal.

And tho' it is true, that King Henry V. and VI. both might seem to succeed to the Crown by Right of Blood, yet I do rather attribute their Right of SucceSSION to an Act of Parliament made in the seventh, and confirmed in the eighth year of Henry IV., whereby the Crown was entailed upon all his Sons &c. by name, and the right Heirs of their Bodies; by virtue of which Settlement, both Henry V. and VI. succeeded thereunto. For if he had thought his own claimed Hereditary Title to have been sufficient, he would never have troubled himself to have procured the Crown to be settled upon himself and his Children by Act of Parliament.

M. All
BIBLIOTHECA POLITICA.

M. All this signifies nothing; for I have already sufficiently proved, that in the thirty-ninth year of Henry VI. upon a solemn hearing before the Parliament of the Claim of Richard Duke of York to the Crown, the said Act was set aside; and it was there expressly declared, that the said Duke's Title could no ways be defeated. And this Agreement is still on Record, between Henry, the present Possessor of the Crown, and the said Duke (whom the Act and the Judgment of the Parliament was then given in behalf of Proximity of Blood, as to have always been the Foundation and Ground of Succession to the Crown of England, and of taking it from the Son of Henry VI. and refusing it to the Duke of York and his Illegitimate Heirs thereof, as appears by the Title and Pedegree of the said Duke, set down at large in the first Article of this Agreement confirmed by Parliament, that is, by King Henry VI. himself, who was then King of England, tho' not of France. And I will not deny the matter of Fact as you have set forth; yet if you will but please to consider the time when this Declaration and Agreement was obtained, and the manner how it was done, you will quickly find, that it was rather got by Force and Constraint upon that poor Prince Henry VI. than by any real Right. The Duke of York held to the Crown, after its being settled for three Decents in the House of Lancaster.

For the proof of which I desire you, in the first place, to take notice, that at this time the whole Kingdom was under general Decent, not only for the loss of all our Conquests in France, but also for the great Mismanagement of Affairs at home, by reason of the exorbitant power of the Queen, and her two Favourites, the Dukes of Somerset and Suffolk, who made the King a mere Cypher, and had, without his Consent, made away Humphrey Duke of Gloucester (the King's only Uncle then living) contrary to Law. So that Affairs being in this ill Prospect, it was very easy for the Duke of York and the Earl of Warwick, the most powerful and most active Men of the Kingdom, to raise an Army, on pretence of it being only in reforming the Grievances of the Kingdom, and bringing the said Dukes to Justice; the issue of which War was, that the Duke not being strong enough at first to oppose the King's Forces, was forced to surrender himself; and to obtain his Pardon, took a Solemn Oath never to rebel against the King again. But being afterwards attended at a Parliament held at Coventry for new Conspiracies, he then again rebelled, together with the Earl of Warwick; and then King Henry being crowned, he was taken Prisoner in the Baye near Northampton, and being thence by him brought up to London, a Parliament was called in the King's Name (the without his Consent) wherein the Duke of York had the Confidence to seat himself in the Royal Throne, and to make that Challenge of the Crown you have recited. And under how great a Terror all the Friends and Servants of this poor Prince were at that time, appears plainly from this, that neither the King's Attorney, nor any of his Counsellors undertake to plead his Cause before the Parliament, nor yet would the Judges give their Opinions in a matter of such great moment; but they all answered, that this Matter passed the Learning of the Judges, and also that they dare not enter into any Communication concerning this Matter, and befoulged all the Lords to have them excused for giving any Advice or Counsel therein; but the Lords would not excuse them: and therefore, by their Advice and Affassance, it was concluded by all the Lords, that the Acts following should be objected against the Claim and Title of the Duke. So that you see from the Record it fell, that the Judges were with much ado prevailed with to object any thing against the Duke's Title.

Therefore considering the Contempt the King's Person was then under by reason of his Weakness, and the great Hatred and Weariness the Nation had then of the evil Government of the Queen and her Favourites, it was no more difficult for the Duke of York to procure this Judgment in Parliament in favour of his Title, than that Henry IV. should, after he had put Richard II. in Prison, get him deposited, and make his own Title to be allowed for good. And certainly if it were Rebellion for the Duke of Lancaster to take up Arms against King Richard II. and to depose him, I cannot see why (according to your own Principles) it should not be the same Crime in the Duke of York to take up Arms against King Henry VI. to whom he had more than once sworn Faith and
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and Allegiance; and having taken him Prisoner, to call a Parliament without his Consent, whereby himself was declared Protector of the Kingdom, and the Duke of York dispossessed after a quiet Revolution in King's Favor, during the space of above sixty years: which if it will not give a thorough Settlement, after two Acts of Parliament to confirm it, I know not what can.

M. I confess you have given me a more exact account of this Transaction than ever I yet had; and I should very much incline to be of your Opinion, were it not that I am satisfied that our Kings have a Right to the Crown by God's Law as well as Man's, as also by the Law of Nature. And that more than one Parliament have been of my Opinion in this Matter, I shall shew you from several Statutes and Declarations of Parliament; which tho' not printed, are yet to be seen at this day upon the Parliament-Rolls. For after that Henry VI. or rather his Queen for him, had broken the aforesaid solemn Agreement made between this King and Duke in Parliament, whereby it was accorded, that if King Henry made war again upon the Duke of York, he should then forfeit his present Right to the Kingdom during Life; Queen Margaret, and her Vid. Gestion; Son Prince Edward, who would not submit to this Agreement, renewed the War, and fighting another Battle at Wakefield, the said Duke was slain. But tho' he did not live to enjoy his Right, yet his Son Edward Earl of March again recovered it; and having in the second Battle of St. Albans taken King Henry Prisoner, triumphantly marching to London, he there declared himself King. And having immediately called a Parliament, it was therein declared, 44 That all the Proceedings against King Richard II. are repealed, and the tak- Parl. Rolls, Ing him Prisoner by Henry Earl of Derby was declared against his Faith; Edw. 4, n. 8, 45 And that he had broken his former fealty he had sworn to him 10o. 11, 12, 46 and Dignity, &c. and that he had by cruel Tyranny murdered and destroyed 13 L.H.S. p. 320. the said King Richard, his Liege and Sovereign-Lord, against God's Law, 47 and his own Oath of Allegiance.

And then they proceed further to declare in these words: "That the Com- ibid. mons of this present Parliament having sufficient and evident Knowledge of the said unrightful Uprising and Intrusion by the said Henry, late Earl of Derby, upon the said Crown of England; knowing all certainly, without Doubt and Ambiguity, the Right and Title of our said Sovereign Lord (viz. King Edward IV.)thereunto true, and that by God's Law, Man's Law, and the Law of Nature, he, and none other, is and ought to be their true, rightwifely, and natural Liege and Sovereign Lord, and that he was in Right from the Death of the said noble and famous Prince his Father, very justly King of the said Realm of England, and will for ever take, and repu- pate the said King Edward IV. their Sovereign and Liege Lord, and him and his Heirs to be Kings of England, and none other, according to the said Right and Title.

And that the same Henry unrightwifely, against Law, Confidence, and the ibid. p. 320. Customs of the said Realm of England, usurped upon the said Crown; and that he, and also Henry, late called King Henry V. his Son, and Henry, late called Henry VI., his Son, occupied the Realm of England and Lordship of Ireland, and exercised the Governance thereof by Unrightwifery, Intrusion, Right and Ambiguity; and the other Wife: That the Amsterdam, date the King Henry VI. from the Exercice, Occupation, Usurpation, Intrusion, Reign and Government of the said Realm and Lordship, done by our Sover- reign Lord King Edward IV. was and is rightwifely, lawful, according to the Laws and Customs of the said Realm, and so ought to be taken, held, reputed and accepted."

I have been the larger on this Point, because it is a full and free Declaration of the whole Parliament, not only against all past as well as future Parliaments having any thing to do in the Disposition of the Crown, but is also as express a Declaration as words can make, against any Vacancy of the Throne upon the Death of the Predecessor; and therefore I hope you will pardon me, if I have been a little too tedious in reciting these Records.

F. I cannot blame you for being very exact in this Point, because the whole strength of your Cause depends upon it: But yet I doubt not but to shew you, that this Parliament was as much awed by King Edward's Power, being now Conqueror, as ever those Parliaments were that deposed Edward and Richard the
the Second; for you your self have sufficiently set forth the manner of it, that it was not till after a great Victory obtained against King Henry VI. And I never found, in all my reading, that a victorious Prince ever wanted power enough to get a Parliament called to settle himself in the Throne, and declare his Competitor an Ufurer, as I shall shew you more fully by and by. But this Act of Parliament, which thus positively declares Edward IV. to be their Sovereign Lord, of God's Law, Man's Law, and the Law of Nature, I think can no ways consist either with Scripture, Reason, or Matter of Fact. For, in the first place, I think I have sufficiently proved, that there is no Divine Right of Succession for the Heirs of Crowns, any more than of other Inheritances, either by the Law of God, or that of Nature: and as for Man's Law, I think I have here also proved, that the Succession to the Crown, by Right of Blood alone, was never established by any positive Law, nor yet fettle by any voluntary Act of an uninterrupted Councill; when this Declaration was made, for the Crown had then never defended from Father to Son for above two Defects without a Deposition, or poissled by those who claimed by Right of Blood, without any other Title. For as for the three Kings of the House of Lancaster, I have already proved (and you your self must also own it) that they could have no Title to the Crown, but from the Acts of Entail of the 7th and 8th of Henry IV. above-mentioned; so that according to Man's Law (that is Custom) and also the Statute-Law of this Kingdom, the House of Lancaster had all that time the better Title.

But to shew you what uncertain things Parliaments are, when King Edward IV. had reigned ten years, he was driven out of the Kingdom by the Earl of Warwick's turning suddenly against him, and in his absence he replaced King Henry VI. upon the Throne, who had been all this while kept in Prifon. And the first Act this King did, after his Restoration, was to call a Parliament, which revoked all the former Statutes and Declarations of the 39th of Henry VI. and then entailed the Crown anew the whole as it was under King Henry, the remainder to the Duke of Clarence, who then took part with King Henry against his own Brother.

'Tis true indeed, that King Edward IV. returning again not long after into England, and regaining the Crown from King Henry VI. the faith King was not only murdered, together with his Son Prince Henry, but in the next Parliament was also attain'd of Trea'fon, with all others of his Party. And to let you see the Act is now null and void against Prince Edward, see an Act of Parliament of the 1st of Henry VII. (not printed) which because it is not commonly known, I will read it almost verbatim: The King, our Sovereign, remembering how against all Rightwifnes, Honour, Nature, and Duty, an inordinate, sedition, and fadorsers Act was made, against the most famous Prince of blest Memory, King Henry VI. his Uncle, contrary to the due Allegiance and due Order, was attain'd of High Treason; wherefore our same Sovereign Lord, by the Advice and Affent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by Authoritie of the same, ordained, enaecheth, and enablitheth, that the same Act, and all Acts of Attainer, Forfaiture, or Disablement made or had in the said Parliament, or else in any other Parliament, of the said late King Edward against the said late noble Prince, King Henry, or against the right famous Prince of England, late Queen of England, his Wife, or the right victorious Prince Edward, late Prince of Wales, Son of the same blest Prince Henry, and Margaret, &c. are void, annulled, and repealed, and of no force nor effect. So that by virtue of this Act, the Title of the House of Lancaster was again declared to be good.

But to conclude; I cannot but take notice of one Mistake you have fallen into, by saying, that all Proceedings against King Richard II. are repealed by that Parliament of the 1st of Edward IV. which is not so: for tho I grant that the Dealings of Henry Earl of Derby. (as he is there called) in imprisoning the said King, and usurping the Royal Power, is there expressly condemned, and his murdering of him made to be against God's Law, and his own Oath of Allegiance
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Allegiance (as certainly it was:) yet the Deposition of the said King Richard by Parliament is no ways repeated by this Act, for then all the Records thereof would have been quite cancelled and taken off the Rolls, whereas they still remain to be seen at this day. And you see by this Act I have now recited,

"That the Attainder of King Henry VI. is declared incapable and all due Order, and all Forfeitures and Disfabilities of the said King and Prince are quite annulled and made void."

At. I must confess you have so flatter'd me with this Act, that I know not what to say to it, but that it was made in the first Parliament of King Henry VII. and before he had married the Princess Elizabeth, and consequently had no good Title to the Crown himself; therefore till then I look upon him as an Usurper. But I shall proceed to shew you, that he did not plot to defeat him of it; knowing well that he had no way to bring it about, but by inciting a corrupt Party of the Bishops and Lords, together with the Lord Mayor of London, and some of his Party in the City, to set forth by way of Petition to the Duke, then Protector of the King and Realm, "That all the Children of King Edward IV. were Baffards, superseding that King to have been contracted with a certain Lady called Eleanor Bohun, before he married Queen Elizabeth; moreover, that the Blood of his elder Brother George Duke of Clarence deceased was attainted, so that none of the lineal Blood of Richard Duke of York could be found uncorrupt but in himself." And there was, at the Conclusion of that Roll, an Address to him from the Lords and Commons of the Kingdom, that he would take the Government upon himself. This fine Artifice, allied with his feigned Excesses, which induced the lefthinking sort of People to believe he desireth not the Royalty; and prompted on the other side with the fear of his power, procured his Accession to the Throne: and so that at last he and his Wife Anne were solemnly crowned King and Queen at Westminster; and by these steps did that inhuman Prince, who had no Title to the Crown either by Deed or by Merit, ascend the English Throne. Now you see that not by Election, but by pretence of Blood, and by baffardizing and attainting his Nephews, he set himself up for the true Heir of the Crown; and therefore in the Parliament he called immediately after his Coronation, when they had declared almost the very same things as were before in the said Petition, they proceed farther,

"to declare that the Right, Title, and Estate which King Richard III. had to the

things thenceanta, within the said Realm and without it, annexed and appertaining, was just and lawful, as grounded upon the Laws of God and Nature, and also upon the antient Laws and Usages of this Realm, as also taken and reputed by all such Persons as were learned in the abovesaid Laws and Usages. And they proceed farther thus: "There was no such Coarques, and by the Affent of the three Elites of this Realm (that is to say, the Lords Spiritual and Temporal, and Commons of this Land) assembled in this present Parliament, and by the Authority of the same, it is pronounced, decreed, and declared, that our Lad Sovereign Lord the King was and is the very undoubted King of this Realm of England, with all things thenceanta belonging within the said Realm, and without it, united, annexed, and appertaining, as well by Right of Conquernginity, and Inheritance, as by lawful Election, Constitution and Coronation."

So that you see they put in his Election, as also his Coronation, as means of obtaining the Crown; yet the pretended Hereditary Right of Blood was the main ground of his Establishment. But as for King Henry VII. tho' he could claim the Crown by no true Right of Inheritance, yet would he never own it to be so mere a Parliament: for as soon as King Richard was slain in the Battle of Bosworth, the Lord Stanley put his Crown upon Henry's Head; who immediately filing himself King, as well by Right of Coarques, as by being sole Heir Male of the House of Lancaster, he as such, cas'd him self to be crown'd King: and tho' he afterwards call'd a Parliament, in which he procured his

Title LXXXIII. Vid. Lord Bacon's Life of K. Henry VII. vol. 7.
Title to be recogniz'd; yet, as my Lord Bacon well observes, he was afraid to take the Crown (by his only true Title) in "right of the Lady Elizabeth his Queen, for fear he should only be King by Courtly, and must upon the Queen's Death have reneg'd it again; and should he take it by Rain; he knew there was a very great difference between a King that holdeth his Crown by a Civil Act of the Estates, and one (mind that) that holdeth it originally by the Law of Nature, and Descent of Blood: and therefore upon these Considerations, he resolv'd to rest upon the Title of the House of Lancaster as his main Right; and thereupon he caus'd an Act of Parliament to pass, wherein his Title was acknowledg'd (as my Lord Bacon there tells us) "not by way of Declaration, or Recognition of Right, as on the other side, but by a new Law of Ordinance, but chose rather a kind of middle way, by way of Establishment, and that under covert and indiffer-ent words; that the Inheritance of the Crown should rest, remain, and abide in the King, &c." which words might be equally applied, that the Crown should continue to him; but whether as having former Right to it (which was doubtful) or having it then in Fact or Possession (which no Man denies), it was part of interpretation either way not to justify all his Actions, but to let you see that he chiefly insinuated upon his Right of Inheritance, and absolutely disown'd any Title by Election from the People.

F. I cannot deny the matter of Fact concerning King Richard iii's deposing his Nephew, and usurping the Crown, to have been very wicked, and contrary to the receiv'd Law of England concerning the Succession at that time; and likewise that by baffardizing his Brother the late King's issue without due course of Law, and by attainting the Blood of his other Brother, the Blood of his own Clarence, he would have made the World believe that he was lawful Heir by Right of Blood: yet you cannot deny but that for all this, he was so strong in the weaknes of his Title, that tho' (it is true) his Right by Blood is declar'd in the first place in that Act of Recognition, yet it is plain he would not rely upon that alone; and therefore you see the Parliament there all insinu'd upon his Right by Election and Coronation, which they would never have done, had it not been that they look'd upon it for good Law, that whoever was crown'd King of England, and had his Title and his Right his, was thenceforth true and lawful King to all intents and purposes. Therefore tho' you have omitted it, I shall proceed to show you, what this Statute also farther declares: For after they had declar'd the said King's Title, as grounded upon the antient Laws, and laudable Custom of the Realm, according to the Judgment of all such Persons as were learned in them; they proceed thus: "Yet nevertheless, forasmuch as it is consider'd, that the most part of the People are not sufficiently learned in the aforesaid Laws and Customs, whereby Truth and Right in his behalf, of likelihood may be had, and not clearly known to all People, and thereupon put in doubt and question; and over this, how that the Court of Parliament is of such Authority, that a Declaration made by the Three Estates, and by the Authori-ty of the same, maketh before all other things most faithful and certain quieting of Mens Minds, and removeth the occasion of Doubts, and seditions ...

Whence 'tis evident, that the Reason of this Law fappothat the Subjects in general are not capable of understanding the Laws and Customs upon which the Titles of our Kings depend; and that the best Satisfaction that the generality of the People can possibly have in those high Matters, was to rest on the Judgment and Determination of the Kingdom, declar'd by Act and Authority of Parliament, and therein to acquiesce for the preventing Sedition: therefore what I before in the Case of King Stephen, is also true in this part the jure divi-nius, felicem ulterum; and all the Acts made in the Reign of this King Richard, tho' a horrid Usurper, were never repeal'd, but stand good at this day.

As to what you say concerning the manner of King Henry VII's coming to the Crown, it is also true; but as for his Title to it by Right of Succession, that was certainly faile: for his Mother the Countess of Richmond was then alive, by whom he claim'd the Crown, and liv'd divers Years after he was King. So that tho' I grant that it is recited in the Parliament-Roll that he claim'd the Crown in Parliament, tam per justum titulum hereditatis, quam per verum Deus judicium,
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judicium, in triviumus sci viriiriam de Inimice sui in campo. The the latter of these Titles may be true, viz. the Conquest of King Richard, especially when once he was confirmed and recognized in Parliament, yet that the former could not be, is plain from what I have now said: so that it is certain that King Henry the VIIth's Title was neither by Inheritance nor Marriage with the Princess Elizabeth, but by the Act of Parliament, as appears by the unprinted Statute intituled Titulus Regis, and it runs in these words, "To the Pleasure of Almighty God, viz. Bud's, the Wealth, Prosperity, and Surety of this Realm of England, to the End of His Body lawfully coming perpetually, with the Grace of God for to endure, and in none other."

Now this was done some time before he married with the Princess Elizabeth; for as soon as this Act was made, "the Commons requested the King to marry Elizabeth, the Daughter of King Edward the IVth, that by God's Grace there might be issue of the Stock of their Kings," (as their own words were) That this was rather to prefer the Blood-Royal, than to give any new Confirmation to his Title, appears from hence, that there was never any other Act after the Marriage to declare the Right of the Crown in the King and Queen, or so much as to entail it on the issue of their Bodies; so that it is plain he enjoy'd it not in his Wife's, but in his own Right, since he held it after her Death by virtue of this Statute; which plainly shows, that (in the Judgment of that Parliament) the Hoofe of Lancaster was looked upon to have the better Title. And tho' it is true that the King procured the Pope's Bull, now in the Cotton Library, to strengthen his Title, threatening all those in Excommunication that should offer to rebel against him; yet even that Bull (the Act Right by Inheritance and Conquest be first mentioned) concludes with his Title B.H.S. as by the Election of the Prelates, Nobility, and People of England, and the Decree or Statute of the three Estates in their Convocation, called the Parliament, as this Bull it self expresses it.

"If I must confes you have told me more of these matters than I ever heard of before, for I always thought that there had been no Act of Settlement upon King Henry the VIIth, until after his Marriage with the Princess Elizabeth; for till then I look upon him as an Ufficer upon her right, as he was also after her Death upon his Son's successevly: so that if you will have my Opinion, I conceive that this Statute, being made before he had a lawful Right to the Crown, is wholly void, as is also that of the Repeal of the Attainted of King Henry the VIIth, for the same reason."

But let his Title be what it will, it is certain his Son, King Henry the VIIth, succeeded to the Crown, as Heir rather to his Mother than his Father, and so was in by Remitter; but as for King Edward the Vth, he was undoubtedly by Right of Blood, as being the only Heir Male to his Father: and tho' it is true, that King Henry made divers Statutes, whereby he alter'd the Succession of the Crown, as to his two Daughters Mary and Elizabeth, sometimes declaring them both illegitimate, and then again giving them a Right to succeed by Act of Parliament; yet these Acts of Succession were obtained purely by the B.H.S. as King's Solicitation and Command. And tho' at first he got himself impower'd to make a Will, whereby he might fettle and entail the Crown on whom he pleased; yet all these Acts of Parliament, as also this, signified nothing and nothing after his Death: for tho' his said Daughters, Queen Mary and Elizabeth, did one after another succeed his Son, King Edward the VIIth, yet it was not by virtue of any of these Acts of Parliament, or by the more Formal Title by pure Right of Inheritance (or colour of it at least;) and therefore in the first of Queen Mary, there is an Act declaring the Queen's Heiresses to have been Mary, c. 2. born in most just and faithful Maritimy, and also repealing all Acts of Parliament, or Sentence of Divorce, made or had to the contrary.*

L. 11 2 now
Now certainly the Intention of this Act was to declare her Succession to be Inheritance by Right of Blood; so likewise in the first of Elizabeth, the three Spiritual and the Comparal, and the two in Declaration, do declare, and confess that Queen Elizabeth is in very Deed, and of mere Right, by the Laws of God, and by the Laws and Statutes of this Realm, their most rightfull and lawful Sovereign Queen, and that she was rightly, lineally, and lawfully descended, and come of the Blood-Royal of this Realm of England: All which (whether it were true or not in her) yet the lineal and lawful Descendant of Queen Elizabeth, was the ground upon which she was declared to be their rightfull and lawful Queen.

And tho I grant that King Henry the VIIIth had by his last Will and Testament postponed all the title of his Sitter Margaret Queen of Scots, and preferred the Children of his younger Sitter, the Queen Dowager of France (whom she had by Charles Duke of Suffolk) before them; yet was this Will afterward cancelled, and torn off from the Rolls in Chancery, where it was recorded, and that by order of Queen Mary (as is supposed); So that James the Vth, King of Scotland, was by right of Blood declared and proclaimed King of England immediately upon the Death of Queen Elizabeth, as right Heir of the Crowns: And in the first Parliament after his Coronation, his Title is by them particularly recognized in the words, which I desire you to read with me; where after setting forth his Pedegree, as lineally descended from the Lady Margaret, eldest Daughter of King Henry the VIIIth, and Queen Elizabeth his Wife, Daughter of King Edward the IVth, they farther acknowledge King James their Lawfull and Rightful Liege Lord and Sovereign; and farther declare by a preamble both by the Laws of Scotland and of England, do recognize and acknowledge, that immediately upon the Difolution and Decease of Elizabeth, late Queen of England, the Imperial Crown of the Realm of England, and all Kingdoms and Dominions belonging to the same; did by inherent Birthright, and lawful and undoubted Succession, descend and come to his most Excellent Majesty, being lineally, lawfully, and justly next and sole Heir of the Blood Royal of this Realm; and thereunto they do most humbly, and faithfully submit and oblige themselves, their Heirs and Posterities for ever; until the last drop of their Blood be spent.

I have been the more particular in the Recital of this Act, because it stands not only as a perpetual Declaration of the sense of the Representatives of the whole Nation for an Hereditary Succession of the Crown, without any Vacancy or Election, but also because it contains their solemn Engagements for themselves and their Posterities for ever to King James and his Illese, and consequentiely to his right Heirs for ever. So that nothing can be more certainly contrary than this Act to the late Proceedings of the Convention, first in declaring the Throne vacant, and then placing the Prince and Princes of Orange therein.

I will not deny but that King Henry the VIIIth, and Edward the Vth, both succeeded by Right of Inheritance; but whether the former claimed it as Heir to his Mother or his Father, is much to be doubted; since being Heir to both of them, he never declared by what Title he held the Crown: but as for his two Daughters, Queen Mary and Queen Elizabeth, it is certain their birth Titles were from their Acts of Parliament; for as Queen Mary, it is plain, that at her coming to the Crown, the could not be looked upon as Heir by Right of Blood, because by the Statute of the 25th of Henry the VIIIth, his Marriage with Queen Catherine her Mother was declared unlawful, and the Crown settled upon the King, and the Heirs of his Body lawfully begotten on Queen Anne Boleyn: and besides all this, she was but Sitter by the half Blood to King Edward the Vth, and so could not inherit as Heir to him. And tho in the first Year of her Reign, the Parliament (tis true) took off her illegitimation, and repeal'd the Acts of the 25th and 28th of Henry the VIIIth, whereby she was declared illegitimate; yet even in this, the Parliament seems rather to provide for the Honour of her Defendent, than (as you would have it) to declare her Succession to be Inheritance by Right of Blood; because the Statute of the 35th of Henry the VIIIth, whereby the Crown was settled upon Prince Edward and the Heirs of his Body, the remainder upon the Ladies Mary and Elizabeth, and whereby the King had also power given him of disposing the Crown by Letters Patents, or by Will, was not at all repealed: and for which a memorable
Dialogue the Twelfth.

rable Reason is given in both these Acts, 44 that if such Heirs should fail, and 45 no provision made in the King's Life who should rule and govern this Realm 46 of such Heirs, that then this Realm should be governed by the Law and 47 ful Governor." Whereby it seems plain, that the Parliament then e-
stened no Heirs to have a Right by Law farther than had been declared by 48 these Statutes.

So likewise for Queen Elizabeth, her Title was more apparently by Act of 49 Parliament: and that she looked upon her self sufficient to have succeeded by 50 virtue of the Limitation of the Statute of the 35th of Henry the VIIth, last 51 mention'd, appears in that she never procured her Mother's Marriage to be de-
clared good, and consequently her own illegitimation to be taken off. So that 52 make it which way you will, it is certain that either Queen Mary's or Queen 53 Elizabeth's Title must have been only by Act of Parliament, since she was born 54 whilst Queen Catherine, King Henry's first Wife, was living: and therefore 55 when the Parliament you mention, in the first Year of Queen Elizabeth, de-
clared, 44 That she was rightly, lawfully, and lineally descended, and come of 56 the Blood Royal of this Realm," these words can only be understood 57 of such a lineal and lawful Descent as is here declared to be so by virtue of 58 this, as well as the former Statute, and not according to any Hereditary 59 Defect at Common Law, since it is very well known, that as long as 60 the Pope's Dispensation for King Henry's Marriage with the Princess Catherine, his 61 Brother's Wife, was allowed, for good, as it was till the latter end of Henry 62 the VIIth's, and all the first twenty five Years of Henry the VIIth's Reign, the 63 Princess Anne was looked upon as the only presumptive Heiress of the 64 Crown. This I tell you, not to invalidate Queen Elizabeth's Title, but to let 65 you see that Acts of Parliament, if they declare that which is apparently false 66 in matter of Law or Fact, are not to be credited, unless you will give them 67 more power than God himself, who cannot (as all Divines agree) make that to 68 have been done which was never done, or that not to have been done, which 69 hath once come to pass.

I come now, in the last place, to examine the Act of Recognition of King 70 James, the Title to the Crowns, which I will not desire to have by 71 Right of Blood, since none of the Descendants of King Henry the VIIth could 72 have any Title before him: for tho' it is true it was otherwise ordained by 73 King Henry the VIIth's Will, yet that (as you self show) was not only 74 cancelled in Queen Mary's time, but was also void in it self. For whereas by 75 the Statute of the 35th of Henry the VIIth, there was a power given him to 76 dispose of the Crown, either by his Letters Patents, or cife by his last Will 77 signed with his hand; yet was this Power never legally executed, for those 78 that have argued against this Will, have told us, that he never signed it in 79 his life-time, but that a stamp of his Name was put thereunto after his De-
cede; as manifestly appeared by open Declaration made in Parliament of this 80 matter by the Lord Paget, and others, that King Henry did never sign it with 81 his own hand; as was also proved by the Pardon obtain'd for one William Clarke, the History of the Infor-
man, fol. 259.

Vid. Lething-
ton's Letter to 82 Sir William Cecil.

Appendix to 83 the 2d Vol.

for putting the Stamp upon the said Will after the King was departed. 84 So that there was in King James had a very good Title to the English 85 Land by Inheritance, yet whether it was from King Henry the VIIth alone, or 86 from Queen Elizabeth his Wife, is not there declared; only that he was law-
fully descended of Lady Margaret, eldest Daughter to King Henry the VIIth, and 87 Queen Elizabeth his Wife, eldest Daughter of King Edward the IVth; and 88 therefore, 44 that they are bound both by the Laws of God and Man to re-
cognize his Majesty as sole Heir of the Blood Royal of this Realm," All 89 which is so true, if by the Laws of God, and Man's Law, you will thereby 90 understand such Laws as God impowers the King and Parliament to make; for 91 otherwise, there is no more need to be taken of this Declaration, than that 92 which was made before to Richard the Third, which also declared him to have 93 a good Title to the Crown by the Laws of God and Nature; and the Laws and 94 Customs of this Realm. So that I see nothing in all this Act of Recognition 95 that at all contradicts my Notion, that King James's Title is wholly derived 96 from the Act of Settlement made on King Henry the VIIth, from whom he was 97 likely derived, therefore tho' his Pedegree be different, he was deriv'd from Queen E-

lizabeth, eldest Daughter to King Edward the IVth, yet this was only ex abun-
dani,
to show that he had every way a Title to the Crown; and if the her self had any Title, it was wholly by virtue of those Acts of Parliament of the 35th of Edw IV, which declared that the Eldest Son of the Duke of York, Richard Duke of York, and King Edward the IVth, bis Son, and which left Act first declared that the three Henrys of the House of Lancaster were only Kings in Deed, and not of Right; for before that time I defy you to show me in all our Histories or Law-Books any such Distinction. In all foregoing times, he that was solemnly anointed and crowned King in Deed, was also looked upon to be in point of Right: and therefore let those Statutes you so much insist upon, be never so much of any King's being fo, by any inadvertence in Arbitrary Rights, precedent to, and independent from the Power of the two Houses of Parliament; I am very well satisfied that such a Declaration must be void in it self, since I have already proved that there was no such Law of Succession ever settled by any general Custom, or Common Law, and it hath been near as often broken as observed; and as for any positive or Statute-Law, enacting any Hereditary Right of Succession, you do not so much as pretend to shew it. So that I think I have sufficiently proved the three Propositions I laid down, viz. That ever since the time of Edward the First, the Crown has been claimed by Right of Blood, yet has it not been very often enjoyed by Princes who had no just pretence to that Title. Secondly, That the two Houses of Parliament have often, notwithstanding that Claim, placed, or at least fixed the Crown upon the Heads of those Princes, who they very well knew could have no Hereditary Right to it. Thirdly, That such Princes have been always taken for Lawful Kings, all their Laws standing good at this day, without any Confirmation by their Successors. So that the whole Act of this day, that all the Princes that have entailed the Crown, being made and ordained by the Council and Assent of the Lords and Commons, are so many plain Declarations, and evident Recognitions, what the fundamental Constitution of the English Government was in that grand Point.

Mrs. I did not think that you, who were so great an Admire of the two Houses of Parliament, should now be so much against their Power, in joining with the late King in what the Crown Right is, and how it hath ever been from time beyond memory; but I see Acts or Declarations of Parliament signify nothing with you if they are against your Hypothet, or else you would never go about thus to expose those Acts of Parliament of King Edward the IVth, and King James the First, whereby they are declared both by the Laws of God and Man undoubted Heirs of the Crown. And the last Act I cited, viz. that of King James the First, both sufficiently confute your Motion of a Vacancy of the Throne; where it is expressly declared, "That immediately upon the Decease of Queen Elizabeth, the Crown of England, with all the Dominions belonging to the same, did by inherent Birth, and lawful and undoubted Succession, descend and come to his Majesty King James." So that if there then were no Vacancy of the Throne, I cannot see how there could be any such thing now, the next Heir to the Crown (be he who they will) being certainly not so far removed from King James I., as himself was from King Henry VII, under whom he claimed.

F. I must still confess my self to have a great Veneration for the solemn Declarations of Parliament and made, by any Statute; yet not so as to idolize them, or to look upon all their Declarations as infallible. I grant indeed, that whoever is by them declared and recognized for King or Queen of England, is to be acknowledged and obeyed as such by all the Subjects of this Kingdom, without farther questioning his Title. But if not content with this, they will also adopt upon them to declare that such Kings or Queens have an undoubted Hereditary Right, by the Laws of God and Nature, when I plainly find from the Holy Scriptures, as well as from the History of matter of Fact, as well as the Knowledge of our Laws, that they have no other Title than what the Laws of the Land have conferred upon them; they must excuse me, if I do not acquiesce in such Declaration. Nay, you your self cannot deny but that it was grosi Flattery in the two Houses of Parliament to declare, that Richard the Third (for example) had a true and undoubted Right to the Crown, by the Laws of God and Nature, and also by the Laws and Customs of this Realm, when you know he was a notorious Usurper upon the Rights of his Brother.
Dialogue the Twelfth.

Brother, King Edward’s Children. Now how can I be assured that the like Declaration made to King James the First, was not likewise a piece of Courtship of the Representatives of the Kingdom to this King, then newly settled in his Throne? since we find the People of this Nation, when they are in a kind fit, never think they can say or do too much for their Princes: And therefore I must freely tell you, that it is not the bare Declaration of a Parliament that this or that has been always the Law or Custom of this Realm, when we can find from History that it has never been so held for above four hundred Years at least, and therefore not beyond the Memory of Man (as you suppose) since that must be before the Reign of Richard the First, as I have already proved to you at our Eighth Meeting.

But to answer your Objection against the Vacancy of the Throne, I do freely grant, that as often as the Crown defends by lineal Succession, there can be no Vacancy of the Throne, as it did in the Cafe of King James the First; yet doth it not therefore follow, that there can never be any such Vacancy in any Cafe whatsoever, since certainly it may so happen, that all the Heirs Male of the Blood-Royal may fail, as it happen’d in the Cafe of Scotland, when John Baljol and Robert Bruce contended for the Crown, which not being to be decided by the Estates of the Kingdom, they were forced to refer it to our King Edward the First; and as also happened in France, when Philip of Valois, and our Edward the Third, both claimed the Crown, which was decided by a great Assembly of the States of France in the favour of the former, who claimed as Heir of the Male Line, against King Edward, who was defended by a Woman. And if King James’s Abdication or Forfeitance (call it which you will) is good, pray give me a sufficient reason why the Convention of the Estates of England should not have as much Authority as those of France or Scotland; this being as much a limited Kingdom, than either of the others ever were.

M. I do not deny that, but pray shew me any sufficient Reason why the Convention should now vote a Vacancy of the Throne, since there was certainly an Heir apparent not long since in England, and I hope is now safe in France, who ought to fill it; or at least there should have been some sufficient Cause alluded against him, to prove that he was not the true Son either of the King or Queen; and till this was done, they could not with any Right or good Conscience place any other Ruler of the whole of the Throne, since every Person ought to be esteemed the Son of that Father and Mother that publickly own’d him for such: for it is a Maxim in our, as well as your Law, Filia tuo paenit probari.

H. How this could be performed without first declaring the Throne vacant, I cannot apprehend; for you your self must grant, that there have been great Doubts and Suspicions of the Reality of this Prince of Wales: and therefore that being one great reason of the Prince of Orange’s coming over, the Truth of that Story, whether he was really born of the Blood of the Queen, is first to be examined and determined, before he can be declared King of England in the room of his suppos’d Father, whom we will also suppose civilly (the not naturally) dead. And till this be done (unless you would have had him been declared King without ever examining the Truth of the matter) the Throne must have continued vacant till it could be decided, whether he, or his half Sitter the Prince of Orange, were to fill it: and if so, while the Convention remain’d in the same, they could do no other than vote the other Throne vacant, till they were sufficiently satisfied who had the best Right to it.

But to answer your Argument, that unless something could have been presently alluded against this Infant, to have proved him not to have been born of the Body of the Queen, he ought to have been declared King: The Maxim you mention may be well allowed in the cafe of common Inheritances, but not in that of Crowns; for in those we have read, that common and violent Pre-suppositions have been looked upon as sufficient Proofs to set aside a suppos’d Heir of the Crown. For example, something about two hundred Yeares, in the Henry King of Castile, called the Impotent (because he was not able to get his Queen or any other Woman with Child) did out of hatred to his Sister Infanta, permit a Favourite of his to lie with his Queen, and get her with Child; she was brought to bed of a Daughter, but the Estates of the Kingdom would by no means admit her for Legitimate, because the Queen had before declared her Husband to be impotent; and therefore they did not only protest against her
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her Legitimacy in the King's life-time, in an Assembly of the Estates, but also as soon as he died, they set this pretended Prince quite aside, and declared the Siffer of the late King, Queen of Castile, who was married to Ferdinand King of Aragon. Now though I will not say, that either the Supicions or Reofs against the pretended Prince of Wales are as legir as those against that Prince, yet certainly they were sufficiently to debar him from being placed in the Throne, till such time as it shall be made apparent that he is really Son to the Queen.

M. If the Convention had gone this way to work, I grant there might have been some colour for what they have done: but then they ought, before they had placed any body else in the Throne, to have first examined the Truth of the Queen's being with Child, and her being truly delivered; as Prince, before ever they had declared the Prince and Princess of Orange King and Queen; and till this had been done, certainly the Throne should have still continued vacant: therefore I doubt your Convention have made more haste than good speed in this matter, which certainly required much more Deliberation.

F. Come, I will for once admit that they ought, in the first place, to have examined your Prince's Title, but this is still to be understood, as far as it was possible for them to do it, as it ought now to be. Tell me how this could be done, when the Infant was not only carried away into a foreign Kingdom, but also the Midwife, the Nurse, and several other of the Queen's near Servants and Attendants, not used along with him? who if they had been here, to have been cross-examined, might have declared the Impotence (if it be one).

M. But pray, Sir, are there not Protestant Ladies enough left behind, who have already deposed before the Council (as appears by their Depositions published by the King's express Command, and enrolled in Chancery, in perpetuum Rei memoriam) not only that the King of England was with Child, but that also the Queen was really delivered of this Prince? so that the Prince of Orange and the Convention ought to have in the first place summoned those Witnesses you mention to be now in France, to have appeared before them, and if they had not come, then to have proceeded as the matter had required.

F. You must then grant that the Protestant Witnesses alone, who are now in England, were not sufficient; for if they should have deposed that this Child had been an Impotent Child, suppose you, how should they have been satisfied that they had spoke nothing but the Truth, since the Witnesses now in France (who both know the matter of Fact) might have sworn the contrary: but as for sending any Summons for them into France, it was altogether in vain, and that which the Convention were not at all obliged to do, because neither King James nor his Queen did ever own the Power of the Convention to hear or determine this Affair, and therefore would not have let the Witnesses come over. For after the Throne was declared vacant, the King must, by sending those Witnesses, have tacitly owned the Authority of the Convention, in declaring himself to have abdicated the Throne, as also that they might place his Son there in: so that any such Summons would certainly have been only rejected with Scorn, and we should have gained nothing but the loss of so much time, and hindered our present Settlement and Defence. Nor was the Convention obliged to do it, since the Parliament it self is not bound to take cognizance of any Person or Thing that is not within the Kingdome of England, or the Territories belonging to it; and therefore it was not their business to enquire (unless it had been brought before them) what was become of this Infant, whether he was legitimate or not, or whether he was alive, or else had been cast away at Sea, or taken by Pirates: any of which might very well have been. And therefore indeed this business could never have been decided, unless the Infant himself were actually present, and sufficient proof made, not only that this was the same Child that was born of the Queen, but which was also carried away from France, all which could never have been examined as it ought without the Child's personal Presence here, which I suppose you will grant that King James and his Queen would never admit of, as things now stand. Therefore since a thorough Examination into this business was impossible to have been performed, the Convention have done no more than what can be justified, in first declaring the Throne vacant, and then who should fill it.
Dialogue the Twelth.

M. Well, but admit the Cafe were as you have put it, the Kingdom ought however to have remained without a King, till the Succession had been duly settled; since according to the Act of Recognition to King James, "The Nation did not only oblige themselves, but their Posterity (that is, we that are now alive) to that King and his Right Heirs." And therefore till this Prince's Right had been determined, either the Convention should have governed, or else they ought to have made the Prince of Orange only Governor or Regent of the Kingdom, and not to have placed him and his Princes on the Throne, till the young Prince had died, or else had been proved to be an Impostor.

I. Doubt not but I can show you not only the Unreasonable, but also the impracticable benefit of this Supposition. First, its Unreasonable, since you are very much mislaid to allege that the whole Nation, by that Act of Recognition to King James, obliged themselves, and their Posterity, to him and his Right Heirs by Blood. "It is true they there tell him, "That they made that Recognition as the first Fruits of their Loyalty and Faith to him, and his Royal Progeny and Posterity for ever: And also when they have acknowledged him to be justly and lawfully next and sole Heir of the Blood Royal of this Realm, and that they therefore solemnly and oblige themselves, their Heirs and Posterities for ever: So there is no more means of expected in this, than that the whole Nation did by their Representatives in Parliament oblige themselves and their Children to King James and his Posterity for ever. And I think that this part of the Recognition is sufficiently performed, by placing two of his Great Grandchildren in the Throne: as for to the words rightful or lawful Heirs, they are not to be found in all this Statute.

But as for your Notion of a Regency, it is plain it could signify nothing, either for our present Security, or future Settlement; not to the former, since this Regent (be he whom he would) must have governed in the Right of some body or other, since I never read of a Regency in England, during a Vacancy of the Throne; therefore I will at present admit that the Vote for King James's Abdication had never been made, only that the Prince of Orange had been declared Regent of the Kingdom, till such time as King James would have given the Nation sufficient Satisfaction of his reforming all past Miscarriages, and that his future Government should be according to Law. Now I would very plain know how it can be justified, according to your Notion of the King's absolute irresistible Power, to place a Regent over the Kingdom to govern in his stead, whether he will or not, when it is certain he is neither a Minor, an idiot, nor a Lunatic: so that then he must have returned again to the Government whenever he had pleased, or else the Convention must have been Judges whether the Security or Satisfaction he offered was sufficiently satisfactory or not; for if he himself was to be sole Judge in this Cafe, I fappose you will grant this Regency would quickly have been at an end. But on another side, if this Right of judging had been left in the Convention, whether the King's Proposals were satisfactory or not, they might also have voted them not to be so; and till this was done, they might very well have justified their keeping him out of the Kingdom by Force. Now how that could have been done with your Doctrine of the King's irresistible Power, I desire you would satisfy me if you can. So that by this Regency, the King must either have been deposed of his whole Power, or he must not; if the former, that would have been as bad as deposing him from being King, and had left him no more than the bare Title; and whether this had not been a great deal worse (as more hypocrisi(y) than the Convention's declaring him to have abdicated the Government, I leave it to any indifferent Person to judge.

But if you will fappose that this Regent must have governed in the name of your Prince of Wales, as being declared King, that would have been to have granted his Title to be good without hearing of it, and had indeed been to have given up the main Point in dispute.

M. I fe you would fain find out any shifts for this pretended Vacancy, and placing those in the Throne to whom it doth not belong; yet tho' I grant that the word Right Heirs is not expressly recited in this Act of Recognition to King James I, yet for all that, it is implied: for the Oath of Allegiance is enacted by Elizabeth I, to be taken to the Queen, her Heirs, and lawful Successors; and by the Oath of Supremacy (enacted in the 1st of King James) we
are likewise obliged to swear, that we will bear true Allegiance to his Majesty, his Heirs, and Successors. Now who these Heirs are, this very Act of Recognition sufficiently declareth, viz. the next Heir by descent of Blood; for as King James is hereby acknowledg'd to be Heir by inherent Birthright, so when they oblige themselves, and their Posterities to King James, and his Successors, it is to be understood (by parity of Reason) that they oblige themselves and the Nation, for all future Generations, to him and his Life in that sense; so that their Allegiance should be only due to him, or her, who should be lawful Heir to their Father, Brother, or Uncle, according to those Rules of Succession, that had been commonly received for above four hundred Years last past: that is to say, the eldest Son, Brother, or Daughter, being still to be prefer'd before the younger, and Sons before Daughters, and the same Rule must also hold for their Descendants; since upon this ground it was, that the Title of the House of York was prefer'd by Parliament before that of Lancaster; and the Title of the King of Scots, who was defended from the eldest Siter, before that of the House of Suffolk, who came from the younger. And this being never alter'd by any subsequent Statute (or if it had, I think it would not have been good) the Convention ought, to have declare'd the Prince of Wales King immediately, or at least to have continu'd the Throne vacant, to the Difficulties or Inconveniences that you suppose might have follow'd, be ever so great: and therefore it was their Duty to have fought out King James wherever he had been, and to have declare'd him to have left over the Prince, together with the Whole that went away with him. And did this have been absolutely refus'd, or else that upon a fair hearing this Prince had not been an Impostor; I say this cause would have continu'd, the Throne ought still to have been vacant; (if it were so at all) nor till this had been clear'd could they have justify'd the placing any body else upon the Throne, tho' ever so nearly related to the King; whom I will suppose for Discourse sake, to have really abdicated the Kingdom.

F. I will not deny that the legal and common course of Succession ought to be inviolately observ'd, according to the Rules you have now laid down, whenever it may conduce with the publick good and Safety of the Kingdom; and yet for all that I cannot believe, that the King himself, much less any other, than only pretend as next Heir to him, can have such an absolute Right to the Kingdom, as that an Consideration whatsoever cannot make them lose or forfeit their Right thereon: therefore I look upon the Government of a Kingdom not to be like that interest which a private Man hath in an Estate, which is his Right, let him be what he will, or let him manage it how he will. Whereas in the Right to a Kingdom, I see it to be a right Nation. That the Representatives of a Nation (as that Concession was) ought to have more regard to the Happiness, and Safety of the whole People, or Commonwealth, than to the Dignity or Authority of any particular Person whomsoever, or howsoever nearly related to the Crown; when it is evident, the advancement of such a Person to the Throne, will prove destructive to our Religion, Civil Liberties and Properties.

Now give me leave to apply what I have said to the Point in question: Let us therefore as pretend suppose, that your Prince of Wales is come and has made Son to King James and Queen Mary: and let me also further suppose, that in his late Passage over Sea, he had been taken by the Pirates of Algiers, or Tunis, and by them married to one of those Places, and bred up in the Mahometan Religion; and after he had been circumscribed, and fully grounded in that abominable Superstition, the Grand Sigurie, together with the Kings of Algiers and Tunis, should send this Nation word, that if they would not admit him quietly for their King, and allow all those Prizes he should bring with him a free Exercise of their Religion in England, they would then make War upon this Nation with all the Forces they could raise. I ask you what we ought to do in this Case, whether we should receive him for our King, or keep him out?

All must confess it is a nice Question; and since it is a thing that never did yet, nor I hope ever will come to pass, I think I may freely answer you. That supposing this Prince could be proved to be the very same who was carried away so many Years ago, we ought, notwithstanding his false Belief, to receive him; especially
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especially if he would solemnly swear, only to worship God in private after his own way; and that he would swear not to violate our Religion, or invade our Liberties and Properties: and this being done, I think we ought then to admit him for our lawful Sovereign; since, as you your self have already acknowledged at our third Meeting, the supreme Powers are not to be refus'd, because they are of a different Religion from that of the People or Nation they govern.

F. Very well: But let me tell you, in this you are much more kind to Mahometan and Heretical Princes, than the Church of Rome, who have decreed, That no Prince ought to be receiv'd as right Heir to a Crown, who is a Pagan, Turk, or Heretick; and upon this ground it was, that the States of France, during the time of the League, by the Pope's Decree, refus'd to own Henry King of Navarre for their Sovereign; and also, that the Papists of the Nuncio-Party in Ireland during the late Rebellion, refus'd to own the late Duke of Ormond for Lord Lieutenant of that Kingdom, because the King was a Protestant.

But pray answer me a Question or two further: Suppose this Prince refus'd to promise these things, or else if he did promise, and swear them; pray tell me how could we be sur'ted, that according to the Principles of that Religion he had been bred under, and those Arbitrary Notions he had learn'd concerning the absolute Power of Kings in Barbary, and which he would believe due to himself, as being as absolute a Monarch as any of them: I say, how such a Hobby-Prince might be trusted? Since if he had the whole Power of the Religion in his hands, he might bring in such number of Turks or Mohrish Guards he should think fit, who might easily set up that Religion and Government too, in this Nation; since, according to your Principles of Passive Obedience and Non-rebellion, no Man ought to lift up so much as a Finger against him, tho' he went about to make us all Turks and Slaves.

M. Well, supposing all this, as long as it is his Right he ought to have it, let the Consequence be what it will.

F. You have said enough, I desire no more; but I hope every true Protestant and Englishman will be of another mind if ever such a case should happen. But indeed it appears very strange to me, that a natural Disability, such as Idiocy or Lunacy, should be esteem'd sufficient in all Kingdoms to debar the next Heir from the Government, and yet that a Moral or Religious Disability should not have the same effect: and tho' I grant that a King ought not to be rebelled against, or refus'd, merely because he is of a different Religion from that of his Subjects, for I was never for refus'd King James merely upon that score; yet it is another thing when a Prince is not actually possessed of the Throne, but is to be admitted to it upon such Conditions as may appear safe for the Religion and Civil Constitution of a Kingdom. In this Case, if a Prince be certainly infected with such pernicious Principles, either in relation to Religion or Civil Government, it is much otherwise: as for example, that no Faith is to be kept with Hereticks: That his own Religion is to be propagated by Arms, Blood, or Persecution: That no Government can be safe for the Prince, or in which he can appear Great or Glorious, but as an absolute Monarch: let such a Prince be either a Christian or a Mahometan, I think it would be a certain Ruin to a Kingdom to be oblig'd to receive such a Prince, when they were morally sure, that he would not only subvert their Religion, but destroy the very Professors of it; and not only those, but alter the Civil Constitution too, by turning it from a limited Kingdom, into an absolute despoticke Tyranny.

To conclude, I shall only desire you to consider, into what a Country your Prince of Wales is carry'd; and what Infractors he is like to have, and what Principles he will receive from them: and then pray tell me, if he continues there till he is a Man, what difference there will be between this young Prince bred up in such a Religion, and such Principles, and the same, if he had been carried away by Pirates to Algiers, as I at first suppos'd?

M. This is a very invidious Comparison; for tho' I do not approve of the Roman-Catholic Religion, yet sure there is a great deal of difference between that which professes all the Articles of our Creed; and in which we of our Church own Salvation may be obtained, and the Mahometan Superstition, which denies
denies that fundamental Article of our Creed, viz. That Jesus Christ is the Son of God. And as for Civil or Political Principles, I hope the King his Father will take care to have him instructed by some of those English Noblemen or Gentlemen who are now with him, in the Customs and Conformities of the English Government, and wherein it differs from the French; as we read Chancellor Fortescue did Prince Henry, Son to Henry V. and I hope he will come over again to practise them in his own Country before he comes to be infected with the Arbitrary Principles of the French Government. But as for those of not keeping Faith with Heretics, and propagating his Religion by Persecution; I doubt not but the King his Father will take care not to commit his Education to any of those who are infected with such Principles: and I am the more inclin'd to believe it, because it is very well known that his Majesty's Tenderness and Moderation in matters of Religion, and not persecuting any body for the Belief or bare Profession of it, as it was the greatest Caue of his late Declaration of Indulgence, so it was the main Original of all his late Misfortunes. Nor can I see any reason why a King by being a Roman Catholick, must necessarily be a Tyrant and a Persecutor, since you cannot deny but that we have had many good and just Kings of that Religion, and it is from those Princes that professed it that we derive our Magna Charta, and most of the Privileges we now enjoy.

F. Tho I would not be thought to affirm, that the Romish Religion is every way worser than the Mahometan; yet this much I may safely affirm, that there is no Doctrine in all that Superstition, so absurd and contrary to Sense and Reason, as that of Transubstantiation, held by the Church of Rome, in which the Food and Drink part are certainly Idiologies, which cannot be proved by positive Evidence, the Turks: and therefore tho I will not deny but that a Man may be save'd in the Communion of the Romish Church, yet it is not for being a Papist, but only as far as he practises Christ's Precepts, and trusts in his Merits, that he can ever obtain that favour from God.

But as for those evil Principles both in Religion and Civil Government, which you cannot deny but are now commonly believed and practised in France, and which you hope King James will take care that the Prince his Son shall be bred to avoid; I will not prove as you say: but if you will consider the Men that are like to be his Tutors and Instructors in matters of Religion, viz. his Father's and Mother's Confessors the Jesuits; and for Civil Government, those Popish Lords and Gentlemen of notorious Arbitrary Principles and Practices, who are gone over to King James; you will have small reason to believe, that there is ever a Fortescue now to be found among the Engiomen in France, or who is likely to infil into him those true English Principles you mention.

And tho I do not affirm, that every Popish Prince must needs be a Persecutor, yet since that wholly depends upon those Priests that have the management of their Consciences, shew me a Prince in Europe who has a Jesuit for his Confessor, and tell me, if he hath not defend'd that Character.

But tho I am so much of your Opinion, that King James owes the greatest part of his Misfortunes to his Declaration for Liberty of Conscience; yet was it not so much to the thing it self, as to his arbitrary manner of doing it, by allowing a dispensing Power contrary to Law: and you may be very well assured by the little opposition which the late Acts met with for taking off the Penalties against Conventicles, and not coming to Church, in respect of all Diversers, except the Papists, that King James might have as easily obtain'd a like Act to pass in respect of those also, as to the free Professions of their Religion, and having Masts in their Houles; which is more than the Papists will allow the Protestants in any Country in Europe. And therefore I must beg your pardon if I still find great reason to doubt whether King James's Tenderness towards those that differ'd from him in matters of Religion, and the Indulgence he gave them, were purely out of Consideration of tender Consciences, and not rather thereby to defray the Church of England establish'd by Law; since the Dispute began between King James and his Parliament, was not about Liberty of Conscience, but those Offices and Commands which the King was resolves'd to bellow upon the Papists, whether the Parliament would or not. And certainly there is a great deal of difference between a Liberty for a Man to enjoy the free Profission of his own Religion, and the Power and Benefit of having
having all the chief Employments of Honour and Profit in the Commonwealth. But that the Indulgence of Popish Princes towards those that dissent from them in matters of Religion, may not always proceed from pure Tenderness and Compassion, appears from a Manuscript Treatise of E. Porden, (that great Jesuit in Queen Elizabeth's time) which I have been told was found in King James's Closet after his Departure. This (if you can see it) will show you, that the jubilant Jesuit doth there direct his Popish Successor, in order to the more quiet introducing the Roman-Catholic Religion, to grant a general Toleration of all Religions, out of a like design. Thus did Julian the Apostate long ago tolerate all the Sects and Heresies in the Christian Religion, because he thereby hoped utterly to confound and destroy it.

But as to what you allege concerning Magna Charta's being granted by Popish Princes, and that there has been many good Kings of that Persuasion; as I will not deny either the one or the other, so I desire you to remember with what struggle and great difficulties this Charter was at first obtained, and afterwards preserved, tho' it was no more than a Declaration of most of those antient Rights and Liberties which the Nation had always enjoy'd. And you may also remember that they were Popish Princes, who more than once obtain'd the Pope's Dispensation to be disfranchised from those solemn Oaths they had taken to observe those charters; and tho' there have been divers good Princes before the Reformation, yet even the very best of them made the severity Laws against Protestants, and were the most cruel in their Persecutions; witness King Henry IV, Henry V. and Queen Mary. And indeed, it is dangerous to rely upon the Faith of a Prince, who looks upon it as a piece of Merit to destroy all Religions but his own; and when he finds it cannot be done by Law, will not think of any arbitrary means to bring it about. To conclude, pray consider, if obseruing or violating any of the Articles of the Nation-Oath, hath been the cause of King James's Abdication. Pardon this long Difcourse, which your Vindication of the Opinion and Practices of Popish Princes hath drawn from me.

M. Pray, Sir, let us quit these invidious Subjects, which can do no good, since Princes must be owd and submitted to, let their Principles and Practices be ever Tyrannical; and let us return again to the matter in hand. I will therefore at present suppose the Prince of Wales to have been either dead, or justly laid aside. Now make it out to me how you can justify the placing the Prince and Princess of Orange in the Throne, when the Crown is really her Right after the Prince of Wales, and not her Husband's; as also the putting the Government solely into his hands; since this can no ways agree with the Act of Recognition to King James I. which you yourself cannot deny but ought to be observed, when it may be done without any apparent hazard or prejudice to the Protestant Religion, and the Constitution of our Government; which I think might have been as well, if not better secured, by letting it have gone in the right Line, than by placing the Crown upon the Head of a Prince, who, of the Blood-Royal by his Mother, yet being a Foreigner, is a mere Stranger to our Government and Laws, and has been bred up in Calvinistical Principles; and upon that score is not like to have any good Intentions towards the Government and Ceremonies of the Church of England, as appears by his late agreeing to abdicate Episcopacy in Scotland, upon his accepting that Crown from the Presbyterian Convention.

F. If these be all the Objections you have to make against placing King William and Queen Mary on the Throne, I hope they will not be of any great moment to your self, or any other considerate Man: for if upon the Abdication of King James, and the impossibility of determining your Prince of Wales's Title (if it be one) a Regency was impracticable and unsafe for the Nation at that Conjunction of time, when we wanted a King to hold a Parliament, as well to raise Money to defend us against the Power of France, as also to make new Laws for the Safety and Reformations of the Kingdom; all which a Regent's acting without Royal Authority could never do, by the Constitution of this Kingdom: then there was a necessity of placing some body in the Throne, for the common Safety and Safety of the whole Commonwealth; and I think you yourself cannot but acknowledge, that the Princess of Orange had an Hereditary Right to the Crown; and if her Hightnes had, the Prince her Husband also ought to govern
govern the Kingdom in her Right during her Life. And those who deny King Henry VII. to be Lawful King before his Marriage with the Princess Elizabeth, will yet grant he was so in her Right after his Marriage: and this has not been only the Custom in England, but also in other Kingdoms of Europe, as I can give you several Instances. For upon this ground it was that Ferdinand King of Aragon, by marrying with Isabella Queen of Castile, governed that Kingdom during his Life: so also Anthony Duke of Bourbon marrying with Jane Queen of Navarre, did in her Right administer the Government of that part of it, which was left unconquered by the Spaniards: and here at home Philip Prince of Spain, by his Marriage with Queen Mary, had certainly in her Right governed this Kingdom, and had enjoyed something more than the bare Title of King, had he not by the Articles of Marriage, confirmed by Act of Parliament, been expressly debarr'd from it.

At all events, it is to be true, yet this was only the Enjoyment of a bare Matrimonial Crown, and held no longer than during the Lives or Marriage with those Queens you mention. But pray tell me, how can the Convention, according to the ancient Constitution of this Kingdom, justify the Settlement of the Crown, not only on King William during the Queen's Life, but for his own Life also, to the prejudice not only of his own Issue (if ever he have any by the Princess) but also of the Princess of Denmark and her Heirs?

F. I don't know but to shew you, that this may be a point justified by the Constitution of the Kingdom, and former Precedents of what hath been done in the like Cases. First, as to the Constitution, I have already prov'd that upon the Deposition of a King (which is all one with a Forfeiture of the Crown) the Great Council or Parliament have taken upon them to elect or admit either the next Heir by Blood, or some Prince (the more remote) of the Royal Family, to the Crown. Thus King Henry IV. upon the Deposition or Restitution of King Richard II. was plac'd in the Throne by the Archbishop of Canterbury, after the two Houses had voted and confratted he should reign over them; the same that by Right of Blood, Edmund Earl of March ought to have succeeded to it; but he being then a Child, was pass'd by unmention'd; Duke Henry being then powerful, and having deliver'd the Kingdom from the Tyranny and evil Government of Richard II. I shall pass by Richard II. because I own his Government to have begun by Usurpation, and to have been establish'd by the Murder of his Nephews. But as for Henry VII. I have already shew'd you, that the Prince Usurp'd before his Marriage with the Princess Elizabeth, settled the Crown upon him, and the Heirs of his Body, by virtue of which he held all his Reigne: whereas there is no such thing done in the present Case of King William, since he hath only the Crown descended upon him during his own Life, with the remainder after his decease, without Issue by the Queen, to her, and not his Right Heirs; and as for such Children as he may have by her, it is agreeable to Reason, that he should hold the Crown by that which we call the Custom of England during his Life, and not from a King become a Subject to his own Children, in case he should desire to live here after her Majesty's decease, which I hope God will prevent.

M. I confess you have drawn out a pretty plausible Title for King William; but yet all that you have said amounts to no more than this. That because other Kings have been Usurpers, he may be so too: for as to all the Inflations you have brought, they have been only from Depositions or manifest Usurpations, both which our Laws have condemn'd as absolutely unlawful; as I have shew'd you hath been declar'd by two Acts of Parliament, against the Title of Henry IV. and his Descendants. But since you will not insist upon the Right of Richard III. I pass to that Act of Henry VII. which, as I told you before, so I must repeat it again, that it was done upon his supposed Right by Blood, as Heir to the House of Lancaster, and upon that pretence he claim'd the Crown as his Right, in his Speech to the first Parliament he call'd: besides, the Princess Elizabeth, the Queen de Jure, made no claim to the Crown, and so did tacitly resign it, which seem'd to make him de jure as well as de facto King; and if it were done otherwise, I look upon that whole Act as void in it self, because made by him before his Marriage with that Princess, and whilst he was an Usurper upon her Right. So that certainly it is no Argument that since Parliaments have acted illegally, therefore your Convention may do so too; for it is a known Maxim.
Maxim in our Civil Law, a faito ad jus non valet consequientia: therefore whatever they have done toward creating a good Title to King William in respect of the Queen his Wife, and his life by her, yet this no way excuses the wrong done to the Princes of Denmark and her life, in calling they survived in life.

F. 'Tis very wonderful to me, to see how ingenious some Men are in finding faults with the present Settlement of things, tho' ever so much for the bett, if not done exactly in suit with their Humour, or Hypothes, when indeed there can no fault be justly found with it: for you agree that if the Queen hath a Right, King William hath so also, during his Life; and whether the Princes of Denmark and her life may survive the King, is yet uncertain: but if either the or they should happen to survive his Majesty, yet since they hath made no Claim or Pretention in the Convention, against the King's holding the Crown after the decease of the Queen, I cannot see why this should not pass for a tacit Relegation of her Right, as well as in the case of the Princess Elizabeth you but now mention'd. But admit his present Majesty, according to the late receiv'd Rules of Succession, hath not a Title by Default; yet according to those Principles I have already laid down, he certainly has a Right to the Crown, from that inalienable Power which I suppose don't remain in the Estates of the kingdom, as Representatives of the whole Nation, to bestow the Crown one very Abomination, or Forfeiture thereof, on such Prince of the Blood Royal, as they think bett to deserve it: and upon this account I conceive there is none of the Blood, that can stand in competition with his present Majesty for Prudence, Valour, Moderation, and all other Royal Virtues; and therefore it is not at all to be wondered at, if the Convention hath in this Case exercised that Original Power, which the People receiv'd to themselves, as the first Instance in Kingsy Government in this Island. Therefore I cannot but here take occasion to vindicate his present Majesty from those Exceptions you have made against his Country, and Civil as well as Religious Principles. First, As to his Country, 'tis true he is a Foreigner; yet that can be no Exception against his admission to the Throne, since it was none against his Great Grandfather King James: and I do not say but his Majesty may understand as much, if not more of the English Constitution and Government, than his said Grandfather did, when he first against the Crown. But as for his Principles in Religion, I cannot see any reason to suspect him more inacclimable to the Church-Government of Holland, than that of England, since he was bred up under a Mother, who was always firm to the Religion and Discipline of our Church; and ever since he was married to the Princess, he hath always showed a very great Respect to its Liturgy and Ceremonies, by his constant frequenting his Princely Chappel. So that besides his Majesty's warmth to maintain the Episcopacy, as most agreeable to the Monarchy and ancient Constitution of this Kingdom; it is likewise (if he were able) not in his power to destroy the Church of England, since the main Body of the Clergy, Nobility, and Genery of this Nation is so zealous for its Preservation; that if he had any such inclinations, it would not be easy for him to effect it, and he is too wise a Prince to let others persuade him to visibly against his own Interests, and having lost an Example before his Eyes, that it was King James's Ruin to attempt it.

As for what you say of Scotland; 'tis true, Presbytery is for the present set up there, but it is uncharitable to impute this to the King's inclinations: for 'tis notorious, that of them who call themselves Episcopal in that Kingdom, the greater number did either out of prejudice to the Prince's Cause, or in contempt of his Power, refuse to be chosen Members of the Convention; or else after they were chosen, did so far adhere to King James's Interest, as to desert it; so did my Lord Dundee, and many others, and by that means gave the Presbyterian Party an advantage to carry all the Confession as they pleased: and this Party finding the King not well settled here, and the drift in Ireland in Arms against him, took hold of that opportunity to put the abolishing of Episcopacy into the very Infrument of Government, and to prefer it upon him at a time when an unwashable necessity and the obserinity of too many of the Episcopal Party forced them to confest to it. Wherefore this no way throws his Majesty's inclinations to set up Presbytery even in Scotland; much less doth it prove he would
would set it up here, where the Circumstances are quite different: for here the main Body of the People hate that Government, and will be so far from desiring it, that they will never endure it. So that as to this, your fears of King William are as vain, as your hopes of King James.

I shall conclude with a few words in answer to your reply against those Examples, wherein I have shewn you that the Crown hath always been under such Disposition as the two Honours of Parliament shall appoint; to which you have nothing else to object, but that their Admission of Henry IV. to the Crown was condemned as unlawful by two Acts of Parliament, which I have already answered, by showing you that those Acts were obtained by Richard Duke of York, and Edward IV. his Son, by actual Rebellion, and by as great a force upon King Henry VI. as ever was used against King Richard II. by Henry IV. And as for the Statute of the first of Henry VII. you have found out a very easy way of annulling it; by affirming that it was done whilst he was an Upright, and before his Marriage, or that he had any right to be King. But by this way of arguing, no Act he ever passed would be good, since it is certain he did never take upon him to govern in right of his Queen, as all those that have written his Life do acknowledge; and therefore if the Parliament would then settle the Crown upon him and his right Heirs, without any respect to his Queen, or her Life or Sisers, in case she should die childless, I cannot see why the Convention may not as well now settle the Crown upon King William and Queen Mary, and their Life, with remainder to himself for Life: especially since he hath also another Title of his own to confirm it, viz. that of a Conqueror over King James, and our Deliverer from his Arbitrary Government.

M. I shall not go about to derogate from King William's personal Virtues, which you so highly extol; only I wish I may not prove too true a Prophet, since that is not the main question between us. I shall only take upon me to answer in the first place what you have urged on the behalf of King William's pretence to the Crown as a Conqueror over King James, and Deliverer of the Nation; for whatever he may pretend to in respect of the latter, I am sure he cannot justly pretend to the former; since he can never have any right by Conquest, he being only left with all his rights by the death of his father, who came to obtain a Free Parliament, and to redress our Grievances. Much less can he be properly call'd a Conqueror, who never overcame his Enemy in any pitch'd Battel, but by false Stories made the King's Army desert him; and then, when this was done, having forc'd the King to leave the Kingdom for fear, he has in the day of his Power by these means obtain'd the Crown: and as for a Deliverer, you must pardon me, if I cannot think him so, since I am not yet satisfied that the worst of King James's Oppressions were not devis'd that the Prince of Orange should take the paint to come over to redress them.

And therefore your parallel between your King's Title, and that of Henry IV. and Henry VII. doth not at all agree, since both of them claim'd not so much by Conquest, or force of Arms, as by a pretended right of Inheritance, as you may see by both their Claims. And as for Henry IV. 'tis plain, he look'd upon his Title by descent of Blood (having been allow'd in Parliament) to be so good, that for the first seven Years of his Reign, he never thought it worth while to pass an Act for the Settlement of the Crown upon himself, and his Life: but for Richard III. and Henry VII. they were so far from owning their Titles to any Act or Declaration of Parliament, that they first clap'd the Crown upon their own Heads, and after they had done it, they immediately call'd their Parliaments; which tho' they recogniz'd their Titles, yet did not make them Kings, but found them so: whereas the Convention has by their sole Authority, made the Prince of Orange, and the Princes, King and Queen of England, to the prejudice of the right Heirs of the Crown.

F. I doubt not, but what I have already said, may very well be defended, notwithstanding the utmost you have now argued against it. In the first place, as to what you say against King William's Title, as a Conqueror over King James, it is very trivial: for tho' it is true, the Prince declar'd before he came over, that his coming was for no other end but to obtain a Free Parliament, redress Grievances, and to remove evil Councillors from King James; yet that is still to be understood, that the King would agree to those reasonable demands the Prince then made: for if by his own obliquity he would bring things to
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that pafs, as that instead of redressing those Violations he had made upon our fundamental Laws, he rais'd an Army to support himself in them; and when he thought this Army would not fight in his to bad a Cause, he then disbanded it, and by that, as well as the Defection of the Throne, owned himself vanquished. Can any body deny the Prince of Orange a Right of making what Advantage he could of his Successes? And therefore I doubt not but that the Prince might, if he pleased, have taken upon him the Title of King immediately upon King James's first Departure, and have summoned a Parliament to recognize his Title, as Henry VII. did after his Victory at Bosworth-Field; nor would this have made him a Conqueror over the Kingdom, since he never made war against it, but came to deliver it from Tyranny and Oppression. Nor did William the Conqueror himself, by his Victory over King Henry II., pretend to a Right by Conquest over the whole Kingdom, but only over the Estates and Persons of those who had fought against him, as I have fully proved at our tenth Meeting. Nor did Henry VII. in the first Speech he made to the Parliament after his taking upon him the Crown, claim a Right to it by Conquest over the Kingdom, as his own words were in that Speech you mention to his first Parliament, but only "by the just judgment of God in giving him the Vic-

ce of the Empire in the Field," Tho' he thought certainly, "all his Subjects, of whatsoever State and Condition, should enjoy their Lands and Goods to them and their Heirs as they did before, except such Persons who were to be attainted by Act of Parliament."

Nor is it any Objection against his Right by Conquest, that he obtained no Victory in a pitch'd Battel; since I never heard or read, that to make a Prince a Conqueror, it is necessary that so many thousand Men should be killed upon the spot; for they admit the adverse Prince against whom he fights will thro' Cowardice defect his Army, or that his Army will defect him, either thro' fear, or a sense of the greater Justice of the adverse Prince's Cause, or an Affection to his Person, so that it never comes to a Battel; yet it has been in all Ages looked upon as all one with a Victory, as I can shew you from several Examples in History; and particularly in Piusarch, concerning Pyrrhus King of Epirus, who making war against Demetrieus then King of Macedon, and both Armies being incamped near each other, the Army of the latter forsook him and went over to the other, as well out of hatred to the Cen-

my: so that Demetrieus being forced to Real away in disgrace, Pyrrhus thereupon was immediately in the field proclaimed King of Macedon. And I doubt not but the Prince of Orange might have done the same, had it not been for his great Moderation, and left it might give his Adverarles occasion to traduce him, that he came over for no other end than to drive the King out of his Kingdom; and therefore he chose rather to owe the Crown to the free Act of the Convention, thro' his Right by Conquest over the Kingdom, do not think he hath at all loft that Right, tho' he doth not think fit (for fear of giving offence) to insist upon it; and therefore certainly the Convention might very well justify the settling the Crown upon his Highnes during his Life, not only as a Conqueror over King James, but a Deliverer of the Nation from his Oppression, tho' the Prince was pleased to accept it upon those Terms express'd in the late Declaration of the Convention, and upon his free Promise to preserve our Religion, Laws, and Liberties, which he has since also confirmed by his Coronation-Oath.

But as to what you say, that the Prince made the King's Army desert him, and wrought the People into Hatred of his Person by lying Stories and mean Arts, it is altogether untrue; since I know of no Reports he made of the King, or his Government, but what are in his first Declaration: and that is certainly true in every part of it, as has been ratified by the express Declaration of the Convention in every Particular, except that concerning the Prince of Wales, which I confess is still left undecided; because (as I have already proved] it is impossible to give any certain judgment in it, unless the Witnesses as well as the Infant himself could be brought over hither. Nor doth the Prince in his said Declaration say any more concerning that Business, than that there are violent Suffizions that the pretended Prince of Wales was not born of the Queen. But for the Report of the secret League with France, for the Extirpation of the Protestant Religion, as there is no such thing...
thing in his Highness's Declaration, so the spreading of it cannot be laid to his charge, since he never gave it out as I know of; yet there are certainly great Presumptions, and too much cause of Suspicion that it may be so, as I proved at our last Meeting. But tho' you will not allow the Prince the Title of our Deliverer, yet I am sure the greatest part both of the Clergy and Laity of the Church of England were once of Opinion, that King James's Violations both upon our Religion and Laws were so great, that nothing could preserve the Kingdom from a total Subversion in its established Religion and Civil Constitution, but his Highness's coming over; and most of the Bishops were of that Opinion, who, now the Government is settled, refuse to take the Oath of Allegiance to their present Majesties.

But as to what you say, that the manner of Henry IV's, and Henry VII's coming to the Crown, doth not at all agree with the Caife of King William, because they claimed by Right of Blood, which you say King William cannot do; that is not so in respect of the Queen, who has certainly a Right to succeed her Father by Right of Blood, in case the Prince of Wales be not the true Son of the Queen; and until he can be proved so, we must at present look upon him as if he were not so at all. So that the Convention hath done no more in settling the Crowns upon the King during his Life, than what the Great Council of the Kingdom have frequently done before upon other Vacancies of the Throne, as I have proved from the Examples of William Rufus and Henry I. King Stephen, King John, and Henry III. And it is very hard to suppose the whole Nation to have been guilty of Perjury and Treason, upon their swearing to, and fighting for those Princes after they were so solemnly elected, crowned, and invested with the Royal Power. But as for Edward III, his first and best Title was from the Election of the Great Council of the Kingdom, where by reason of Folly or Madness, or tyrannical Principles, would have fet him aside, and have made his younger Brother King; a Protector to govern in the King's Name, with Royal Power, having never been known in England till the Reign of Henry VI. But as for Henry IV, notwithstanding his Claim by Right of Blood, I have already proved that the Parliament, by their placing him in the Throne, did not at all allow it; nor is any such Right recited in the Act of Settlement, which, as I have recited, they made of it upon that King and the Heirs of his Body. And therefore I think I may still maintain, that the Convention have done nothing in the present Settlement of the Crown, being the same as formerly done upon every Vacancy of the Throne, either by Deposition or Resignation of the King, or Abdication, or Forfeiture of the Crown; as in the present Caife of King James, in which the Convention have done no more than exercised that Power which has always been supposed to reside in the great Council of the Kingdom, of settling the Crown upon such a Prince of the Blood Royal as they shall think best to defend it.

Thus much I have said to preserve the ancient Right of the Great Council of the Realm. But to put all this out of dispute, I have been fully informed that the Princes of Denmark her self did, by some of her Servants in both Houses, as well of the Lords as Commons, declare, upon a great Debate that arose about securing her Highness's Right to the Crown immediately after her Sister the Queen, that her Highness had defined them to assure the Convention, that she was willing to acquiesce in whatever they should determine concerning the Succession of the Crown, since it might tend to the present Settlement and Safety of the Nation; which I think is a better Definition of her Right to his present Majesty, than any you can prove that the Emperor's Mandate made to her Son Henry II. or than the Countess of Richmond ever made to her Son Henry VII.

M. You have often talked of this Forfeiture, and extravagant Power of your Convention, by which you suppose they are not obliged to place the Crown upon the Head of the next Heir by Blood, which I shall prove to be a vain Notion; for if there be an absolute Forfeiture of the Crown, the Government would
would have been absolutely dissolved: for since there is no legal Government without a King, if the Throne were really vacant, and that the People might place them pleased in it, yet the Convention can have no power to do it as their Representatives; since upon your supposed Dissolution of the original Contract between the King and the People, there was an end of all Convention and Parliaments too. And therefore if a King orald have been chosen at all, it ought to have been by the Votes of the whole Body of the Clergy, Nobility, and Commons, in their own single Persons, and not by any Council or Convention to represent them; since the Laws for restraining the Election of Parliament-men only to Freeholders, are, upon this supposed Dissolution of the Government, altogether void; and if you say such a way of Election is now impossible, I shall do so too: but however, it plainly hews the Absurdity of supposing a King could ever now be fairly elected, were all the Blood Royal totally extinct.

As for what you say concerning that Cession which the Princess of Denmark made of her Right to the Crown, I never heard any thing of it before; but admit it were so, this could only serve in relation to her self, and she could not give up the Right of her Brother the Prince of Wales, so nor that of her own Children, if God should give her any.

F. This Objection concerning the total Dissolution of the Government, proceeds from a want of your Consideration of what the antient Government of England was, not only before, but a good while after your pretended Conquest; which was not a settled hereditary Monarchy, but a testamentary or elective Kingdom, where the Kings, being often recommended by the Testament of the precedent King, were chosen out of the Royal Family, the not according to the Rules of Succession now in use: and therefore in all such Governments, it is very well known, that there was, at the first Institution of Kingly Government among them, a great Council and Assembly of Estates of the whole Kingdom appointed, who upon the Death of the last King and Vacancy of the Throne, were still to meet of course to appoint a Successor, which was commonly one of the Sons of the last King, or at least some other Prince of the Royal Blood. Thus it was till of late years in Denmark and Sweden, and so it was antiently in France during the Succession of the first Race; as also in Spain during the Government of the Vandals and Gothick Princes; and so it liked well enough in England during the whole Succession of our English-Saxon Kings, and so I have also proved it continued till Edward I. And tho' the King hath been claimed by Right of Inheritance, yet in all times precedent it is apparent, that the great Council of the Kingdom, upon the Death of every King, assembled by their own inherent Authority, to consider whom they should place on the Throne, which they then looked upon as vacant. And therefore tho' I grant in the case of Edward I., the Parliament did not only crown him Successor to his Father, but also recognized his Right by Blood, yet for all this they still retained their antient power of meeting without Summons from the King, he being in the Holy Land, and they not knowing whether he was alive or dead. So that it is a false Assertion to affirm, that there can be no Civil Government without a King, since in all those Vacancies of the Throne, it is plain, the Government devolved of course upon the great Council of the Nation. And tho' it is true there can be now no Parliament worthy to compare with the present. Notwithstanding that Term, yet before that word was ever in use (which is no older than about the middle of the Reign of Henry III.) it is plain, that our great Councils often met by their own inherent Authority without any King, and preferred the Peace of the Kingdom till a new King was either chosen or declared. And that the true the Crown hath been long enjoyed by those who have claimed by Inheritance, yet there is no reason for all that, if the like Cases should fall out as have done in former times, why the Government should devolve to the mixed Multitude now, any more than it did then; since it may be as well supposed, that the same tacit Contract still continues of maintaining the original Constitution of our great Councils, which I have proved to be as antient as Kingly Government it self. And tho' perhaps the Form of choosing or sending these Representatives of the Nation may have been altered in divers Particulars by former Laws or received Customs, yet this is nothing to the purpose.
as long as the thing itself remains the same in substance as it was before; for it can never be thought to have been the intent of the People who established this Form of Government, that upon the Extinction of the Royal Family, the Government should be so quite dissolved, as that it should be left to the Multiplicity of what Form of Government they should think fit, or else fall into Anarchy and Confusion.

Therefore to conclude, I wish you would be persuaded to own this Government as it is now established, and to take the Oath of Allegiance which is enjoined by the Declaration of the Convention, who are the only proper and legal Judges we can now have of conferring the Rights of thence to whom our Allegiance is due. And if in case of a Dispute about the right Heir of the Crown, the People of this Nation were not all obliged to stand to the Decision of this Affembly, we must necessarily fall together by the ears, and fight it out as they do in the East Indies; where, upon the Death or Deposition of a King, he has still the Right who can conquer his Competitors in Battle.

Well, I wish there were not something very like it practiced here of late; for I think you will grant, that if the Prince of Orange's Party had not prevailed over the King's, the Convention would never have placed the Crown upon his Head.

But I must beg your pardon if I cannot agree to your Proposals of taking the new Oath of Allegiance to King William and Queen Mary, since I have already taken the Oaths of Supremacy and Allegiance to King James; and I do not believe that any Power on Earth can disengage me from that Oath as long as he and his Son the Prince of Wales are alive: For as to your Doctrine of Abdication or Forfeiture, they are too hard for my Reason to understand, or for my Conscience to comply with; and therefore it is all one to me whom your Convention places on the Throne, since I am very well satisfied that none but the King can have a Right to it.

If I wish I could see some better Reasons for this Opinion of yours, than those you have already given; for if you could convince me that the Nation hath done any thing in this Revolution, which cannot well be justified by the ancient Customs and Constitution of the Kingdom, I should come over to your Opinion. But if King James has truly abdicated or forfeited the Crown (as I hope I have sufficiently made out) and that your supposed Prince of Wales either is not really, or else cannot now be proved to be the true Son of the Queen, by reason of those Obstacles and Impediments I have shown you; I cannot see any thing to the contrary why you should not be wholly free, and discharged from your former Oath of Allegiance to King James: So that King William and Queen Mary being now placed on the Throne, your Allegiance to King James and the supposed Prince of Wales is lawfully determined. Pray tell me therefore why you cannot take this new Oath of Allegiance, since you have the judgment and Declaration of the Convention, which is the Representative of the whole Nation, to justify you in so doing.

I must tell you once again, that I think Allegiance is not only due to the King by the Law of the Land, but also by the Laws of God and Nature, and consequently cannot be dissolved by any subsequent Judgment of a Convention, who are and always ought to be Subjects to him and his right Heirs, as long as they are in being; and therefore I should not allow the Prince and Princes of Orange for himself were the King now actually dead. Nay, if King James himself had laid in England, and had been so over-awed by fear, as to have declared in Parliament, that the Prince of Wales was not his true and lawful Son born of the Queen, and had thereupon settled the Crown upon the Princes of Orange as his Heir apparent; I could never have thought my self obliged to swear Allegiance to her, or to own her for my lawful Sovereign, as long as the Prince of Wales, or the Heirs of his Body, are in being: since I am very well satisfied, and that by unexceptionable Proofs, that he is really the Son of the King and Queen; for I think I have sufficiently made out by several Declarations of Parliament, that the Hereditary Right of the Crown can never be defeated nor altered by any Statute whatsoever, but according to the Act of Recognition of King James I's Title (which I have already urged) the Crown ought to descend to the next Heir by Blood, according to the Rules of Descent I have now laid down.

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F. I cannot but admire your Obstinacy in this matter, which proceeds from your old Error of believing, that there is a Natural or Divine Right of Succession to Crowns different or abstracted from the Civil and Political Laws andConstitutions of particular Kingdoms; which I think I have already confuted, by showing you that there was no such thing in nature as a Patriarchal Right in Adam or Noah, or their Heirs, nor yet to any other King as their A Signors or Representatives. And therefore tho I grant that Allegiance to every lawful King is due by the Laws of God and Nature, yet who that King is, or who is to be his lawful Successor in limited or mixt Monarchies (as ours is) can only be determined by the Assembly of Estates of the whole Nation: for notwithstanding all you have said, there is a very great Difference between the legal Rights of Princes, and the natural Rights of Fathers and Husbands, which yet may cease and be dissolved in some Cases, as I have already sufficiently proved. Yet I think it is evident, that not only a legal Title and legal Authority may be parted from each other, but that legal Titles and legal Authority may be rightfully separated from the Persons to whom they were once due, which natural Rights can never be. A King may cease to be a King, tho a Father can never cease to be a Father; for Laws have not the same force and power that Nature has. Now all Men confest, this Separation may be made by a voluntary Renunciation, as also by Conquest in a just War; both which will divest such a Prince of all Right and Authority to govern; and if it may be done by either of these ways, his Right and Authority is not inseparable from his Person. Since then there is no natural inherent Property in Lands or Kingdoms, but what proceeds from the particular Laws of each Kingdom or Commonwealth; therefore whoever the suprême Power, appointed by the Constitutions of those Kingdoms, shall judge or determine to have a true and legal Right to the same, are to be owned and esteemed as the true legal Owners and Possessors thereof, by all the Subjects: so that if a King can part with his Kingship, it is possible he may lose it too, since there are more ways than one of parting with that which may be parted with. If then a voluntary Renunciation of a Crown, or Conquest in a just War, can give another Prince a just Title to it, I cannot see why a tacit Abdication, or Forfeiture of a Crown, upon a limited King's total Breach of the fundamental Laws and Constitution of the Kingdom, should not as much discharge all the Subjects of his Allegiance to him, and also give the great Council, as the Representative of the Nation, a like Right of ordaining a Successor upon such a Vacancy of the Throne; and who being once placed therein, all the People of the Nation ought to pay the same Allegiance to him, as they did to his Predecessors.

But as for the latter part of your Supposition, that the right Heirs of the Crown by Blood must always necessarily succeed to it; that is likewise founded upon two very fallacious Principles: first, That a lineal hereditary Succession to the Crown is established by the fundamental Laws and Customs of the Kingdom. Secondly, That the Succession to it cannot be limited by the Parliament or great Council of the Nation. The former of which Suppositions I have confuted at our last Meeting, and as for the other, you cannot deny but the Crown has been frequently settled and limited by Act of Parliament, contrary to the common Rule of Succession, as hath been proved by the Statutes above-mentioned of Henry VII.; also by those several Acts concerning the Succession in Henry VIII.'s time; and do it continues at this day by the Statute of the 13th of Queen Elizabeth, whereby it is declared "Treason, during Chap. 1st, the Queen's Life, for any Person to affirm that the Queen and Parliament had not power to make Laws to limit and bind the Descent and Inheritance of the Crown; or that this Act was not of sufficient force to bind, limit, and govern all Persons, their Rights and Titles, that in any way claim any Interest or Right to the Crown of England in Possession. Remember, Succession, Inheritance, or otherwise howsoever, and every Person so holding or affirming, after the Decease of the Queen, shall forfeit all his Goods and Chattels." So that I can see no just reason you can have to refuse swearing Allegiance to their present Majesties and their Successors, according to the Limitation in the said Act.

M. Well, I see it is in vain to argue these Points any longer with you, since it would only force me to repeat the same things over again, which will neither
ther edify you, nor my self: only give me leave to tell you thus much, that the last part of your Argument (which is the only thing that is new in all your Dilcoorie) is founded upon a very wrong ground: for tho I should grant, as I do not (since I think this Act you last mentioned is expired) that the Crown may be limited or intalled by Act of Parliament, contrary to the due Rules of Succession; yet even that will not hold in respect of the present Settlement thereof by the Convention, upon the Prince and Princes of Orange for their two Lives: since you cannot but know that no Parliament yet was ever so presumptuous as to take upon them to settle or limit the Succession of the Crown, without the Consent of the King or Queen then in being. Whereas the present Settlement was first made by the Convention, upon the making of the Prince and Princes King and Queen; tho I grant it was afterwards confirmed by another pretended Act, whereby all Princes that are or shall be Roman Catholicks when the Crown shall descend unto them, are debarred from their Right of Succession. This, tho I grant to be made after the Prince and Princes of Orange took upon them the Title of King and Queen; yet since that Statute was not made in a Parliament called by the King's Writs, but in a Convention, who owe their meeting wholly to the Prince of Orange's Letters, it is not only void in respect of the Subject-matter, but also in the manner of making it; and therefore I cannot believe that the Throne was ever vacant. And I have as little reason to be satisfied that the Prince and Princes could be lawful therein, or that all Roman Catholicks ever were barred from their Right of Succession whenever it may fall to them.

F. If this be all you have farther to object, I think I can easily answer it; for in the first place, I have already told you, that the Convention did not take upon them to create or make any new Form of Succession to the Crown, but only to declare that the Prince and Princes of Orange are rightful and lawful King and Queen of England: for upon Supposition of King James's Abdication of the Crown, and that the Prince of Wales cannot be taken for the lawful Son of the King till he can be brought over, and that his Legitimacy be duly proved, it must till then certainly be their Right, and no others: and as for King William's holding the Crown during his own Life, I have already told you it was not done without the tacit Consent of the Princes of Denmark her self; tho I doubt not but it may also very well be justified upon those Suppositions of the Forfeiture of the Crown by King James, and the Conquest the Prince of Orange made over him; which are sufficient in themselves to bar any legal Claim of those that either are or may pretend to be right Heirs.

But as for the other part of your Objection, whereby you will prove, that Popish Princes cannot be excluded from the Succession, because the Act was made not in a Parliament, but a Convention: This wholly proceeds from your want of Consideration, that at the first Institution of the Government, and long after, whilst the Kingdom continued Elective, there was no difference between a Great Council or Convention, and a Parliament; for pray call to mind the four first Great Councils after your Conquest, (reckoning that for one where-in King William I. was elected or declared King) whether it was possible for those Councils to be summoned in the King's Name, before any body had taken upon themselves the Title of King. The like I may say in the case of King John, and Henry III. and that this continued after the Succession was settled in the next Heir by Blood, appears by that Great Council that was summoned after the Death of Henry III. which recognized or ordained his Son Edward to be his Successor. So likewise the Parliament that deposed King Edward II. sat both before and after his Deposition and Reignation, and elected his Son Edward III. to be King, and appointed his Reign to begin from the time of their Election, and not of his Father's Reignation of the Crown: so also upon the Deposition of King Richard II. the same Parliament that deposed him, placed Henry IV. in the Throne; and tho the Writs of Summons were in the Name of King Richard, and they were never re-summoned or new-elected, in the Name of Henry IV. yet did they still continue the fit, and made divers new Acts, and repealed several old ones; all which hold good to this day.

And that the Parliament are the only proper Judges of the Right of Succession even without the King, you your self must grant, or else how could they declare in 39th of Henry VI. that the Claim which Richard Duke of York made
to the Crown could no way be defeated? And certainly if that unfortunate Prince, King Henry VI. had had sufficient Power or Interest in that Parliament, they might and would have adjudged the Duke of York's Claim to have been groundless, and contrary to Law, and then I believe it would scarce have ever been heard of again.

But to make it out beyond exception, that a Convention may become a Lawful Parliament, tho' never called by the King's Authority and Presence come once to be added to, and joined with it, appears by the first Parliament of King Charles the Second; when the summoned in the Name of the Keepers of the Liberties of England, yet nevertheless continued to sit and make several Acts which held good to this day: and I doubt not but they might have made the like Limitations of the Crown in respect of Roman Catholick Princes, as the Convention have now done, and that it would have held good at this day, since it is so much for the Security of our Religion, Liberties and Properties, that it should be so; since we have found by dearblooded Experience in the Reigns of the four last Kings of the House of Line, that still as they began to favour the Popish Religion and Interest in this Kingdom, so did the Protestant and true English Interest, in respect of our Religion, Liberties and Properties, still decline, till at last they were like to be totally ruined and extirpated: for that relis and dangerous Faction very well know, that there is no means possible for them to re-establish their Superstition among us by due and legal Methods, but only by introducing Arbitrary Power, taking the King's counsels, or else making them what they please upon the King's Will, as we see was laboured, and almost effected in the Reigns of the two last Kings. And therefore I cannot but believe that the present Parliament has not only acted wisely, but also legally, to enact that for the future no Prince, who is actually a Roman Catholick, shall succeed to the Crown, tho' he be next Heir by Blood.

M. I must still tell you, I am as little satisfied with your Supposition of the Forfeiture and the Crown by King James, and the Conquest of the Prince of Orange, as all with your Infantries out of History concerning the Power and sway of the Great Council's meeting and chusing a King by their own inherent Authority; since, besides that it was done by Uprising in those rough and unsettled times, I believe if the antient Writs of Summons were now in being, you would find that they were called by those Uprisers, tho' not by the Title of Kings. But I defy you to show me, since the Reign of Edward the First, any Parliament ever called without the King's Writs of Summons; and tho' upon the Deposition of the First and Richard the Second, the Parliament of the Realm was called Uprisers, yet was it not during a plain Uprising upon those Princes, whom you your self must grant to have been unlawfully deposed: And therefore we find upon the Parliament-Roll of the 21st of Richard the Second, that an Act of the 12th of Edward the Third, confirming the judgment given upon the two Spencers, was not only repealed in Parliament, but declared to be unlawful, because Edward the Second was living, and that this Act was countermanded by his Subjects at the time; which the judgment of the 1 Edward III. But as for your last Infantrie of a Convention's declaring is self a Parliament in the Reign of King Charles the Second, there is a great deal of difference between them and the present Convention, since they did not take upon them to declare or make a King (as this Convention has done) but only to recognize him to be their Lawful Sovereign; which (as I have already told you) being that which was their Duty to do, they might very well have done. But when they were not summoned by law, but however all their Acts were looked upon as made without Legal Authority, and therefore were confirmed in the first Legal Parliament of King Charles's Reign.

But as for the Authority of the Statute of the 13th of Elizabet, whereby you would prove, that the Parliament has at this day power to alter or limit the Succession of the Crown; besides that such an Act being against the fundamental Rules of Succession, was void in itself; yet if you please to look upon the Parliament, you will there find it in a present turn, and to keep the Queen of Scotts and her Party from enterprizing any thing against Queen Elizabet: and therefore it is there only declared to

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be Trea-

ton during the Queen's Life for any Persons to maintain, that the Queen could not, with the Authority of the Parliament, limit the Succession of the Crown; and as for the last Clause, that makes it Forciture of Goods and Charters, and to maintain the contrary after her Decease; this was made to strengthen and confirm the former part of the Statute, which was a Provision and Security against such Pretences and Practices as had been lately made against her by the Papits, on the behalf of the Queen of Scot's Title. And this Clause could not take effect after her Death, but was added to preserve Queen Elizabeth's Memory from being defamed after her Decease, or being slanderously charged with the heinous Crime of usurping the Crown; which must have been the inevitable Consequence of affirming, that she and her Parliament could not limit the Succession. For to confess the truth, I think Queen Elizabeth's best Title was by Act of Parliament, since her Legitimacy might be justly questioned, by reason that her Mother's Marriage was declared unlawful by the 28th of Henry the VIIIth, and she was as good as declared illegitimate by her Father in that very Act that settled the Crown upon her. But that this Statute of the 13th of Queen Elizabeth is now looked upon as expired, appears in Purchas's, and all other late Collections of the Statutes since her time; wherein the Title of the Statute is barely mentioned with E. & P. immediately following it, to shew it is looked upon as expired. So that you are mistaken to affirm that the Convention has done nothing in the late Limitation of the Crown, but what may be justified from that Statute; therefore if it be not Law at this day, I think they had no Authority to alter the Succession of the Crown from the right Line, let them be of what Religion they would.

F. I see you do all you can to evade the Force of my Authorities from History and direct Matter of Fact; and therefore as to what you say, that those were rough and unsettled Times, and therefore no Precedents to be drawn from thence, this is to beg the Question: for what could be the Law concerning the Succession of the Crown for the first hundred and fifty Years after the Conquest, but the constant Usage of the Great Council of the Nation, as low as the Reign of Henry the Third? And it is a bold Assertion to accuse the whole Nation of Perjury, and Rebellion against their Lawful Kings, during all those Successions I have now instanced in: nor have you an Act against those Parliaments that met in the 1st of King Edward III. and Charles II. but that their Meeting was lawful, because it was only to recognize those Kings, and not to make them; which is indeed to beg the Question, since you cannot deny that those Parliaments are held for good, notwithstanding they were not called by the King's Writs. But as for making a King, the present Parliament have not taken upon them to do it, since they do not in the Act for the Succession elect King William and Queen Mary to be our Lawful King and Queen, but only declare or recognize them to be so, upon supposition that the Prince of Wales is either an Impostor, or else his Legitimacy impossible to be tried and determined by them. Nor are your Objections material against the Authority of those Acts of Parliament which were made in the 1st of King Henry IV. and Charles II. which were never summoned by those King's Writs. For the first of those Inclinations, or Statute of Henry IV. stand good at this day, without ever being confirmed by any subsequent Parliaments. And tho' I grant that the publick Acts made in the first of King Charles II. were confirmed in the next Parliament of that King, yet this does not prove that they would have been void without it; since divers private Acts passed in that Parliament, which were never confirmed in any other, and yet are held for good: as particularly an Act of that Parliament for making the Church of St. Paul's Crown-Garden Parochial. And this Act, tho' never confirmed, was yet adjudged to be in force by the Lord Chief Justice Halie, and the Justices of the King's Bench, in a case concerning Rate-Tythes between the Minifter and some of the Parishioners of the said Parish. And that not only all the private Acts of that Parliament, but some publick ones also, tho' never confirmed in the following Parliament of the 13th of King Charles II. are yet held good in Law, appears by these that follow, viz.


By
Dialogue the Twelfth.

By which all Writs, Pleas, Indictments, &c., then depending, were ordered to stand and be proceeded on, notwithstanding want of Authority in the late usurpers. And therein it was further ordained, that Proceedings in Courts of Justice should be in the English Tongue, and the general trial be pleaded, till August 1, 1660. as if the Acts made during the Usurpation, for that purpose, had been good and effectual Laws.

And upon this foot only stand many Fines, Recoveries, Judgments, and other Proceedings at Law had and passed between April 25, 1660. and August 1, 1660.

2. An Act for conforming and restoring of Ministers.

This Act is usually to this day let forth and pleaded in Quaere impedis, tho' it was fain to be refus'd upon an Debate to be confirmed in the House of Commons, 13th of Car. II. when divers other Acts of the same time were confirmed; 12 Car. II. yet both these Acts, having no other Authority but from that Convention (as it is,) and you call it, have been judged and constantly allowed to be good Laws for above these thirty Years.

Nor is what you have now fain to prove, to prove the Statute of the 13th of Queen Elizabeth (whereby the Crown is declared capable of being limited by Act of Parliament) to be now expired; since it is plain, by the purport of the Act, that it was only the Renunciation of the former Laws of England, made in the Reigns of Edward VI and VIIIth, and other Kings Reigns, whereby the Succession of the Crown has been frequently entailed upon those who were not the next Heirs by Blood: and tho' the Queen be highly mentioned in it, yet it certainly as much concerns her Successors and all future Parliaments, as the Oath of Allegiance, in which the Queen is only mentioned, does all future Kings and Queens; and it is not only made Treason during her Life, but also there is a loss of Goods and Charters to be suffered on all those who shall maintain after her Death, that the Queen and Parliament had not power to limit the Succession. And if a Parliament in her Reign could do this, I desire to know whence it is that the present Parliament may not have the like Power?

As to what you allege concerning the Judgment against the two Spencer's being reversed in the 12th of Richard II. because done whilst Edward II. was still alive; I desire you would take notice, that this Parliament of Richard II. was wholly made and put by King Richard after the Death of Edward, and Lancaster and Norfolke; and that as well the Lords as Commons were in such fear of the Arbitrary Power he then exercis'd, that they pass'd whatever he would.

And in this Parliament it was that the Proceedings against the Chief Justice Treffilas and his Fellow Judges, who had been condemned and executed by Judgment in Parliament in the 11th of this King, were re-verted. And to prove the Inlegality of this Parliament, you need but consult the Statute-Book in the 1st of Henry IV. where you will find one of the first Statutes after his coming to the Crown, is to repeal all Acts and Proceedings made in that last Parliament of Richard II.

M. I doubt this will not do the business; for we maintain, that Henry IV. as also his Son and Grandson, were usurpers, and consequently all the Acts made in their Reigns were null and void.

F. I will grant you for once, that Henry IV. was an Usurper, and that Edward III. was also during his Father's life-time, but that it doth not follow, that all the Laws and Statutes made during those times were null and void, since you must needs know the contrary, for even in that Parliament of the 21st of Richard II. tho' it's true that Judgment against the Spencer's was reversed for the reason you have given, yet did that Repeal extend to no other Statutes but that, tho' made in the same Parliament of Edward III. whilst his Father was yet living: But they are all of them held for good at this day, as are also all the Statutes of those three Henrys, whom you appose to be Usurpers; which have not been repealed by any subsequent Act, as I can assure you those of the first of Henry IV. are not, and therefore are good Laws at this day. So that nothing can be a plainer Proof than this, that the King's Title to the Crown have been what it would, yet Allegiance was due to them as long as they continued in the Throne.

Therefore to conclude, let me tell you, I think it behoves you, if you mean to keep that Office you hold under the Government, to take the Oath of Allegiance.
legiance to their present Majesties, since you owe your Protection to their Go-
vernment, which certainly deserves a temporary Allegiance as long as you en-
joy the Benefit of it. And indeed, the Oath it self is so loosely worded, that
methinks any Man may take it without any scruple, since it doth no ways de-
clar, that the present King and Queen have an Hereditary Right to the Crown,
but only the Person swears to bear true Allegiance to their Majesties King
William and Queen Mary; which I think even strangers and Denizens are bound
to take as long as they continue in the Kingdom.

M. I am sorry you should think me, after so long an Acquaintance, capable
doing any thing against my Conscience for any worldly Advantage whatso-
ever; and therefore I must freely tell you, that as for the Employment I hold,
I will rather part with it, if it were ever so great, than do any thing against
my Conscience, and that Reputation I have hitherto maintained in the World
of being an honest Man.

And therefore I cannot take the Oath as a mere Denizen, that owes Pro-
tection to the present Government, not only because this Oath is inconvenient
with that I have already taken, but also there is much more required of those
that owe a Natural Allegiance to their rightful King, than can be required of
Strangers, till they become naturalized by Act of Parliament: And therefore
it is, that when any War breaks out between neighbouring Princes, all such
Denizens, who do not become absolute Subjects of this Kingdom by Naturali-
sation, if they will act like honest Men, must look upon themselves as obliged
either to quit the Kingdom in case a War be declared against their natural
Prince, or at least are obliged not to act any thing to his prejudice, tho' they
may still inhabit and traffick here; which is a quite different case from those
who are not only born the King's Subjects, but have also taken the Oath of
Allegiance to him. And therefore I can by no means think it lawful to take
this new Oath to King William and Queen Mary, tho' it were required in no
higher a sense than as King and Queen de facto, since it can no ways confe-
with that Oath which I have already taken to King James and his right Heirs,
as I shall prove to you another time (since it is now very late) from the true
Sense and Meaning of those words, I will be faithful, and bear true Allegiance,
etc. which can only be sworn to such Kings and Queens, who besides a bare
Patriotism, have also a Legal and Hereditary Right to the Crown.

F. I shall be very glad to hear you farther upon this Question; for if that
can be made out, I fear too many of the Clergy as well as Laity, by mistaking
the true Sense of this Oath, have been forsworn. But pray tell me when I
shall wait on you, and hear what you have further to say upon this important
Subject.

M. Pray let me see you two or three days hence, and then I shall be at
leisure; in the mean time I am your humble Servant.

F. And I am yours.

Bibliotheca Politica.
Bibliotheca Politica.

DIALOGUE XIII.

I. Whether an Oath of Allegiance may be taken to a King or Queen de facto, or for the time being.

II. What is the Obligation of such an Oath, whether to an actual Defence of their Title against all Persons whatsoever, or only to a bare Submission to their Power.

III. Whether the Bishops who refused to take the Oath of Allegiance to their present Majesties, could be lawfully deprived of their Bilshopricks.

FR. I hope I do not interrupt you by coming too soon; for the truth is, since I intend that this shall be the last Dispute I shall ever have with you upon this Subject, I was very desirous to have it dispatched as soon as I could, that when I have once discharged the Duty of an old Friend and Acquaintance, my Mind may be at rest, which side forever you take.

M. Dear Sir, I thank you, and tho' I intended to go abroad this Evening upon an Appointment, yet I will now put it off, that I may enjoy your better Conversation; therefore pray begin where you left off, and prove to me that I may lawfully take this new Oath of Allegiance to King William and Queen Mary.

F. I cannot see any reason why you may not safely do it, since our best Common Lawyers are of this Opinion; for my Lord Coke, in his third Institutes, in his Notes upon the Statute of Treason, the 25th of Edward the IIIrd, gives it for Law, "That this Act is to be understood of a King in pollihelion; for if there be a King Regnant in pollihelion, although he be Rex de Fallo, &c. de Jure, yet is he Scigitor &c. The Roy within the purview of that Statute, and the other that hath Right, and is out of Pollihelion, is not within this Act," &c. And if it be Treason to levy War against him, or to conspire his Death as long as he continues King, it can only be so, because the Subjects Allegiance is then due to him, for that all Men have either taken the Oath of Allegiance, or else are supposed to have done it.

M. I must beg your pardon, if I cannot come over to your Opinion neither in point of Law or Reason, for as long as I am persuaded in my Confidence that King James is King de Jure, so long must the Obligation of my former Oath last; and I suppose you will grant that it is as impossible to owe Allegiance
legiance to two Kings at once, as it is to serve two Masters: and therefore you must pardon me, if I suppose that my Lord Coke, depending too much upon the commonly received Sense of the Statute of the 11th of Henry the seventh, which he quotes in the Margin, may be mistaken in this great point, and may have also given an occasion to divers others of his Profession to fall into the same Error.

F. I doubt not but my Lord Coke, and others of his Profession, who maintain the fame Opinion, may very well be defended; as well from this that Statute as other Authorities; but by such as I am at present but to answer, I shall be fully discomforted with you, Sir Richard, in the Lawfulness of taking this Oath to their present Majesties King William and Queen Mary: and therefore you misunderstand me, if you believe that I think this Oath doth require from me, as a Performance of all those Duties and Submissions which I am obliged to, which is full and entire of their Title, I shall not defend it: and to my Life and Fortune in their Quarrel to the utmost of my power against all Persons whatsoever. But all that I think can be required of you, is, if you conceive that King William and Queen Mary are actually in a position of the Legal Power, so long as they continue in that position of it, you may, I think, swear that you will be so true and faithful to them, as not to enterprize any thing against them, but that you will pay them that Obedience and Submission which may be lawfully paid to an actual Sovereign: not cylinderly hereby to uphold them in the position of the Throne against King James, and without debarring your self from the exercise of that Allegiance: you have sworn to him: upon any emergency false or portunity for the recovery of his Right.

M. I must beg your pardon, if I cannot agree to this Oath in this low version of the words themselves, that I am well satisfied that the proposers of this Oath do intend something more than a bare negative Obedience to the present Power; since it is the only Oath which is required from such as take Employment in publick Business, whether Civil or Military, and from whom certainly, not only a publick Employment either Civil or Military, and from whom certainly, not only a publick Employment either Civil or Military, but also the publick Obedience and Allegiance is required, in defending the Crown and Dignity of the present King and Queen, is to be taken with their Lives and Fortunes against all Persons whatsoever: or else how could the present Government ever trust them? And all this cannot be without the breach of that Oath they had formerly taken to King James; for you will not without a breach of that Oath they had formerly taken to King James, and therefore if I should take it in this sense (as the Oath in its own Terms to imply) I should be perjured. Besides, by their words of being true and faithful, I should look upon my self as obliged to reveal all Plots and Conspiracies which I should discover and accuse such of his good Subjects as endavour to restore him, and should thereby hinder him, as much as in me lies, from being restored again to the Throne.

But if we consider the word Allegiance, it is yet more certain; and if I should perform it to King William and Queen Mary, according to the true intent and legal Sense of that word, I think it could no way consist with that Oath of Allegiance I have already taken; since Allegiance is thus explained in the next following words of the Oath: I have already taken: "...shall be sworn to and kept, as the King and his Heirs, I will defend, &c. &c. &c." I shall be bound against his or their "Conspiracies and Attempts whatsoever that shall be made against him or their Crowns and Dignities." Now what kind of Allegiance is here meant by the word defend, may be understood from all the Writers of our feudal Laws, who exposed the just defection, by telling us what it implies a Necessity of defending, by Arms; as also from the Supreme Lord of Sovereign, and further, that Subjects are in the same Sense reciprocally bound to defend the Honour and Dignity of their Sovereign. And the words Allegiance, and the Defense that follows it, may be likewise referred to our feudal Laws, whereby the Vassals were bound by their Oath of Allegiance, as also by virtue of the "Tenure" of their Lands, to a Military Defence of their Supreme Lord the King, from whom all the Laws of England are held: and this is according to Glanvill, and all our old Lawyers. And tho' I grant that Military Tenures are all now taken away by a late Statute, you are not still obliged
Dialogue the Thirteenth.

11 p. 14

Vid. Lambard

L.L. Edwards & L. L. Will. 

C. 52.

Stat. 51. Ibid,

Calvin's Cate, 

Cowell's Inf. 

L. 2. cap. 5. 14.

This proceeded that the Lord Cate calls Legal Largeness, or the Common-law Oath of Allegiance, which he cites out of Britton (who write under Edward I.) which all the Subjects were obliged to take at twelve Years of Age

at the Sheriff's Court, and at the Leet; in the taking of which, they had no warrant to abide in the Kingdom: and the form of it was to this effect;

You shall swear, that from this day forward you shall be true and faithful to our Sovereign Lord the King and his Heirs, and Truth and Faith shall bear of Life, and Member, and terrane Honour; and you shall neither know nor hear of joy ill or Damage which you shall not offend (that is, oppose) to the utmost of your power.

The late Author also here informs us, that five things were observed by all the Judges from this Oath, in the Debate of Calvin's Cate: First, that for the oath in the Obligating, it is indefinite, nor is it limited. Secondly, that excellent Qualities were required; that is, to be true and faithful. Thirdly, to whom; to our Sovereign Lord the King and his Heirs. Fourthly, in what matter; and Faith and Truth shall bear of Life and Member; that if, until the letting out the last drop of our dearest Blood: Fifthly, where, and in what place; in all places whatsoever; for you shall neither know nor hear of any ill which you shall not offend. Such is the Largeness which the Law has prescribed in this oath, which is still in force; it has not been abrogated, or by Time, nor Place, nor Person: it is not a lazy passive Allegiance, requiring nothing but pure Submission, but an active and vigorous Loyalty, exciting all that is in the sphere of moral Possibility, and engaging us to spend our dearest Blood in the Defence of our Sovereign's Person, and the Preservation of his Crown and Dignity.

For it is to be observed, that by the Law this Allegiance is due to the King's Person; so the same Author says it was then resolved by all the Judges, that that Largeness was due to the natural Person of the King (which is ever accompanied with the politick Capacity, and the politick Capacity as it were appropriated to the natural) and not due to the politick Capacity only.

To conclude, if my former Oath of Allegiance to King James doth still continue (as I am satisfied in my Conscience it doth) I cannot take a new Oath of Allegiance to King William and Queen Mary, since I should thereby be obliged to the four first words in the Oath, and that is the great end and birth of true Allegiance, to yield it as much to those that are not my lawful Sovereigns, as I am to those that are so; which will be contrary to my first Engagement: for tho I grant that there is no express Declaration of the Right of the present Possessors of the Throne, and I have heard that the word rightful (which was at first inserted into this Oath) was struck out, because as many as could be might be drawn in to take it, yet as long as the words that remain import the very same thing, it is all one if the word rightful were there; for tho the deliberate Omision of the word rightful does necessarily infer, that we are not obliged in this Oath to a Recognition of their Right to the Crown, yet does it not infer, that we are not obliged to pay as high a degree of Allegiance as to any rightful King whatsoever. That One indeed is an Argument that the word King in the Oath doth not necessarily signify a King de jure; but it is no Argument that true Allegiance does not signify true Allegiance, that is an Obligation to adhere to the King against all his Enemies: for there was no Debate, that we know of, about the use of the word Allegiance, neither is there the least intimation given that they designed to restrain it to a lower signification, tho it was plainly necessary to do it, if
they intended to alter the commonly receiv'd meaning of it: wherefore, as
the striking out of the word rightful would not have prov'd, that they did not intent
to obligue us to an active aliance of King William, against all Men
living, if it prove that the same Duty is not now requir'd of us, if the word Allegiance
does, as I have prov'd, in terminis import it; and that as fully, as if it had been
in express words requir'd in it.
And that this word Allegiance implies something more than a bare passiv
Submission or Neutrality from all Subjects, as well as Magistrates and Officers,
appears by that Passage in the Statute of the 1st of Henry VII. which you
appear now cited; where 'tis plainly and expressly declar'd, "That every Sub-
ject by the Laws of his Allegiance, is bound to serve and assist his Prince and
Sovereign Lord at all Seasons when need shall require." This is by express
and authentick a Declaration of the true Duty of Allegiance, that no Art or
Sophistry can possibly evade it.
F. 1 could not, you have argued this point of taking this new Oath of Allegiance
not only like a Civilian, but a Common Lawyer also; and I cannot deny the
force of what you have said, that this Oath much extend to an active Obedience,
of the what you have said, that this Oath much extend to an active Obedience,
force of what you have said, that this Oath much extend to an active Obedience,
and Defence of their present Majesties in their Right to the Throne, and not
only to a passive Submission, or a lukewarm Neutrality. And therefore
I cannot say but you are justly formulous in not taking this new Oath, until
you are satisfi'd of their Majesties Right as well as present Power: but if you
now mention'd you will there find it as good as expressly declar'd, that
the King for the time being, there mention'd, must be a King de jure, or at least
Henry VII. will evidently appear from these following Remarks. . . .
Fifth, That all the Kings of the House of Lancaster are declar'd in the Statute
of the Sth of Edward IV. to be Kings in Deed, but not of Rights, and pretend
Kings, and particularly Henry VI. is said to be rightfully amold from the
Government, and his Reign affirm'd to be Interrogative, and himstil
attainted for being in Arms against Edward IV. Secondly, All Patents of Honour, Charters, and Privileges, which were
granted by the House of Lancaster; all Acts of Royal Authority which the Kings
of England have a right to execute by virtue of their sole Administratives (say,
and Acts of Parliament themselves, particularly those relating to Shrewsbury, and
some others, which by parity of Reason supposes the rest in the same Condi-
tion) all Acts of this nature were confirm'd by the Sth of Edward IV. which is
a good Argument that this Parliament believ'd the Authority by which they
were perform'd to be defective and illegal; for we never find any such gene-
ral Confirmation as these past upon the Grants of the King de jure.
Vith Lord
Bacon's
W. III.
Law, we may be sure he would not have had such an infamous Character past upon him after his Death. Brachion, and his High Court of Justice, were the Fruits that were so hardy as to pronounce a King of England guilty of Treason.

Fourthly, If this Notion of a King de jure had been allow'd in the 11th of Henry VII. the principal Assiulants of Richard III. could not have been attain'd: for Richard being actually in the Throne, he was, according to your modern way ibid. p. 4. of arguing, Rightful King; and consequently the People ought to own him as such, and defend him against all Opposers: and if so, certainly they ought not to be condemn'd Traitors for doing their Duty, as we find many of those who were fought for King Richard.

Fifthly, At the end of this Parliament, Henry VII. granted a general Pardon to the common People who had appeared against him in the behalf of Richard III. Now Pardon supposes a Fault, and the Breach of a Law, which they could not have been charg'd with, if the Plea of a King de facto had been warranted by the Constitution.

F. I must freely tell you, that you do not argue so much like a Lawyer in this Argument as you did in your former; and you have in that forgot to what end those Statutes you mention were made, and what is the purport of them, or else some body hath misinform'd you: for the I grant that all those hard Expessions you mention, are given of the Kings of the Lancastrian Line in those Statutes of the 11th of Edward IV. yet do none of those Expessions prove, that they were not true and legal Kings in the Eye of the Law all the while they reign'd; since divers Persons were attain'd for high Treason against them, whose Attainders were rev'd, but stand good to this day: in particular, the Attainer of the Earls of Kent, Salisbury, and of Huntingdon, who were all attain'd by Act of Parliament in the 2d of Henry IV. and also the Earl of Northumberland, and his Son the Lord Percy, attain'd in the 5th of this King; all which Attainers were never rev'd. So likewise Richard Earl of Cambridge was found guilty of Treason by his Peers, and his Attainer confirm'd by Act of Parliament in the second of Henry V. and tho' it is true this Attainder was over, Traitors for the first time, because the said Richard was not only his Grandfather, but was also condemn'd for endeavouring to make Edmund Earl of March his Brother-in-law King of England, from whose Sister King Edward IV. claim'd the Crown; yet the very revering this Attainer by Act of Parliament, declares it to have been good until that Repeal, since it was not declar'd void, all which are plain and evident Proofs, that Treason may be committed against the King de jure, and consequently that Allegiance is also due to him, and not to the King de jure.

I have likewise prov'd that all those Statutes which were made by those Kings, and are not repeal'd, stand good at this day without any Confirmation by King Edward IV. and this you have no way to answer, but by infanting in Patents of Honour, or Charters of Privileges granted by those Kings, and confirm'd by Edward IV. from whence you will infer, that some other Acts of like nature were in the same Condition; which let me tell you is no good Argument against them: for if you please to read that Statute of Edward IV. you see upon, you will there plainly see, that the Grants, Patents, and other things there confirm'd, are either judicial Proceedings in the Courts of Justice, or else such Charters, or Patents, which being thought to the prejudice of the Crown, were ex abundanti capita thought necessary to be confirm'd by those particular Persons, Religious Houses, and Corporations, who thought themselves concern'd; nor were all others of like nature which were not so confirm'd, thereby void, since they hold good at this day: and if you understand any thing of our Law, you cannot but know, that no Grants of the King can be made void by implication. And to thou so further, that the Letters Patent made by Henry VI. were look'd upon as good in the Reign of Edward IV. it appears from Bagot's Case in the Year-Book of the ninth of that King; where a Patent of Naturalization granted by Henry VI. tho' it were not confirm'd by the Statute of Edward IV. was by the greatest part of the Judges held to be good, and the Reasons there given for it are very remarkable; since it was urg'd by the Conseil in behalf of the Plantiff, 44 that King Henry was then King in Possession, and it behoves that the Realm should have a King, and that the 44 Laws
"Laws should be kept and maintain'd; and therefore tho he was in only by usurpation, nevertheless every judicial Act done by him, concerning Royal Jurisdiction, shall hold good, and bind the King de jure when he returns, &c.

So likewise a Charter of Pardon of Felony, and Licences of Mortmain shall be good, and also the King that now is shall have the Advantage of every Forfeiture made to him. Said King Henry, &c."

It there also held, "that a Man shall be arraign'd for Treason done against the said King Henry in compassing his Death; and the Reason is very remarkable, because the said King indeed was not merely an Usurper, for the Crown was intailed upon him by Parliament; and this being not at all contradicted by the Court, is still taken for Law." And upon this Report, and not only upon the Statute of the 11th of Henry VII. did my Lord Coke found his Opinion I now mention'd. That a King de facto was within the Statute of the 1st of Edward III. And tho now it is true, that the farther arguing of this Cafe of Bagot was adjourn'd to a farther day, when the Justices did not argue, but the Serjeants and Apprentices at Law (that is the Barristers, as we now call them) yet it seems to have been allow'd by the whole Court, that if King Edward who was then King, had made his Charter before he was declar'd so, it should be void at that time; for every one who shall make a Charter of Pardon, ought to be the King in Deed, at that time of the making thereof.

M. Pray, Sir, give me leave to reply to what you have now said against my first two Arguments, before you go on to answer the rest; for I confess the Authorities you bring seem to express against me, that if I cannot take them off, there will be no further need for answering the rest. I will not therefore deny, but that all publick Acts and Proceedings at Law, which are for the publick good and safety of the Kingdom, do hold good tho made under Usurpers, and that for this Reason; because such Acts being for the publick Benefit, it is to be presumed made to the King de jure did give his tacit maketh this farther. It is (as it is well obser'd, in the Cafe you have now cited) it behoves the Realm should have a King (that is, some Civil Government) and that the Laws should be kept and maintain'd; but then those Laws can extend only to such things as are for the publick good, and do not tend to the diuheriting the King de jure, or barring him or his Heirs of their Right, as did that Act of the 7th of Henry IV. whereby the Crown was intailed upon himself and his Sons, which was despaired; that the 30th of Henry VI. And also the 1st of Edward VI. So likewise the 1st of Edward IV. or of Edward V. and the same Reason, since it would give a Right to the Subjects to defend the King for the time being, tho an Usurper, against the true and lawful King, who would be thereby not only defeated of his Right himself, but also his Right Heirs would be too; which would be directly contrary not only to the Intent of the said Statutes of the 30th of Hen. VI. and 1st of Edw. IV. just now mention'd, but also to the Act of Recognition of King James's Title.

And the therefore must still maintain that my Lord Coke is mistaken in supposing a King de facto to be within the Intent of the Statute of the 25th of Edw. III. for sure it would seem a very odd question for any one to ask touching the Laws that are made in any settled Monarchy for the defence of the King's Person, Crown and Dignity, who is meant by the King in those Laws; whether the Lawful and Rightful King of that Realm, or any one that gets into the Possession of the Throne, tho he be not a Rightful King but an Usurper.

So likewise as to that Clause in this Statute, which makes it Treason to confound the Death of the King's eldest Son and Heir, it could be never intended for the Son of a King de facto, since that would be to own him for right Heir of the Crown for ever, and thereby intail it upon his Family, to the prejudice of the right Heir of the King de jure; and therefore, tho I grant some of the Judges and Lawyers held the Law to be so as you have cited it in Bagot's Cafe; and that a King de facto may enjoy those Prerogatives in some respects, yet cannot this be extended to the prejudice of the King de jure, and his Right Heirs. And tho I also grant that divers Acts of Parliament made by Kings de facto, have for the most part held good without being confirmed by any subsequent Statute of the King de jure, yet have they been also repeal'd sometimes; merely because made whilst the King de jure was alive, as I shall prove more at large by and by.
Dialogue the Thirteenth.

F. I shall also take the boldness to reply to these Answers of yours, before I proceed to answer the rest of your Arguments. In the first place, let me tell you that this Notion of a tacit Consent in the King de jure, supposed to be given to all matters made for the public good, is to favor no one, when those of your Party cannot tell how or otherwise to answer the Arguments that are brought against them; and you may as well tell me that they do also give their tacit Consents to all other Acts that Usurpers may do: and I may as well suppose that Queen Elizabeth the Wife of Henry VII. the lawful Heirefs of the Crown, did in the Person of her Husband give her tacit Consent that this Act of the 11th of Henry VII. should hold good for ever, since it is so much for the publique Good and safety of the Nation; "for that no Statute declares it should be against Law, Reason, and good Conscience, that Subjectsshould suffer for fighting for the King for the time being." But I very much wonder if this supposed tacit Consent were given to all Acts of Parliament by the Kings de jure, why upon their return to the Government, they did not also express this Consent by confirming all the Acts made by their Predecessors the Kings de facto, or else declare them void: but since they neither did the one nor the other, it is plain it was because they themselves look'd upon it as needless.

Norr is your Reason at all satisfactory, why a King de facto cannot be intended by the Statute of the 34th of Edward III. because that makes it Treaason to conspire the Death of the King's eldest Son and Heir, which say you can only be meant of the eldest Son of a King de jure; which is to beg the Question: for tho' it is true, this Clause in the Act was intended for the preservation of the King's eldest Son, yet it doth no where determine that this must be the eldest Son of a King de jure: for tho I own this Clause was made to preserve the Right Line from Father to Son, yet does it make no difference between the Son and Heir of a King de facto, and one de jure; nor have you yet answer'd the Authorities I have brought from the Acts of Attainder of those Lords, who conspired against the three Kings of the House of Lancaster, which stand unrevoked unto this day; and which also confirm the Opinion given in Bagot's Case, where it is said expressly, That a Man may be arraign'd for Treaason committed against the King de facto, by the King de jure. And therefore if you cannot very well be justified in putting the Question you put, whether the Statute could mean him who is lawful and rightful King, or any other who gets into possession of the Throne. Now this seems to me no such odd Question: for when the Law only mentions the King, and the Law-makers certainly knew that Kings without an Hereditary Right had often ascended the Throne; if they had intended to except all such Usurpers, they should have expressly said so. But indeed that distinction of a King de facto, and a King de jure, was not known till many Years after, being first heard of in the Reign of Edward IV. for a King de c. a. p. 96. Fado (as the late Chief Justice rightly affects) is Signior Le Roy within that Statute, and there is no other King but he which he continues so. For King signifies that Person who has the supreme Government in the Nation; and a King de jure, is he who should have the Government, but has it not; that is, who of right should be King, but is not: and the Statute of Treaason tells us what it means against him who is King, not against he that is against King; and Reason good it should be so; for it is not merely a legal Title by descent, but a legal Inheritance, and recognition by Parliament, that makes a legal King, or a King in Law, as it makes a legal Magistrate; and then all E. L. R. Kings de facto, who are placed in the Throne by a legal Authority, and with all legal and accustomed Ceremonies, are legal Kings; and as such, may require a legal Allegiance: so that all those hard words in the Statute of the first of Edward IV. that all those Kings of the House of Lancaster, Kings in Deed, and not a right, ever professed Kings, mean no more than this, namely: the Kings for the time being, and according to the Laws which had made them so, the not according to that Hereditary Right of Succession which those Statutes require. If you have any thing to reply to this, tell me, or else I will proceed to answer your two other Arguments.

M. I will not at present say more to this, and therefore you may proceed.

F. Your two next Arguments are from the Attainders of Richard III. and his principal Affiliants, which were by Act of Parliament. As to that Prince him-
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self, as also his Adherents; the Attainders of Kings de facto, and their Affiliates. After-Pardonments, do not prove that Subjects cannot be guilty of Treason against a King in possession. Nor does the Statute of Treason relate to a King de jure only, for that Statute was not made to secure Princes Titles, but the Quiet of their Government whilst they sat upon the Throne: for tho’ a King, if he be an Usurper, whenever the rightful King regains the Possession of his Throne, if he were a Subject before, may be attainted of Treason for his Usurpation, as was Richard III. for Treason against his own Nephew King Edward IV. yet this does no way prove that Richard III. was no true King during his Usurpation, but only shews the Parliament’s Abhorrence of his Treason; and to deter others from falling into the like, attainted him and several of his Accomplices who had assisted him in his said Usurpation. For that they were not barely attainted for defending King Richard’s Title, appears from this, that the Earl of Surrey, Son to the Duke of Norfolk, and divers other Noblemen and Gentlemen who fought for King Richard at Bosworth-Field, were never attainted at all. But as for the Pardon that you say paffed in that Parliament of the 1st of Henry VII. you are very much misapprehended in the purport of it; for if you please to look upon it again, you will find that it was not a general Pardon for the common People, who had fought on the behalf of Richard III. but of all those who had come over with Henry VII. himself, or who were with him in the Field against Richard III. for all manner of Murders, Spoils, and Treasons committed by them, in taking part with King Henry against his Enemies.” So that you see the attainting of a King de facto was not only justifiable, but those that had fought against him, thought themselves not safe till they had their Pardon.

Nay, farther, that Attainders paffed in Parliament are no proof that the Princes against whom they were paffed were not lawful King, appears from hence, That when Edward IV. was driven out of the Kingdom, and dispossessed of the Throne, the next Parliament under Henry VI. paffed an Act of Attainder against him and his Adherents. But as for the Attainer of Henry VI. you say, you were very much misapprehended to suppose, that it was for any Treason committed against Edward IV. but it was for Breach of the Agreement made with his Father the Duke of York, and in making war again upon him; for had he not done this, he had continued lawful King during his Life by the Duke of York’s own Conset. For in the Parliament-Roll you yourself have already cited, it is thus expressed: “That considering the Possession of the said Henry VI. and that he had before this time been named, taken, and reproved King of England, and France, and Lord of Ireland; the said Duke is content, agreeeth, and conffenteth, that he be had, reputed, and taken for King of England, and of France, with the Royal Estate, Dignity, and Preeminence belonging therto, and Lord of Ireland, during his Life natural; and for that time the said Duke, without hurt or prejudice of his said Right and Title, shall take, worship, and honour him for his Sovereign Lord.” So that you see that by the Judgment of the Parliament, and by the express Crown, it was not only the right of the Crown was to be Crowned, a King of England, but the Crown was to be owned by this right Heir for his true and lawful Sovereign, and therefore could not be attainted for detaining the Crown from him, or his Son.

M. I will not dispute this Point any farther; but yet, methinks, the Treason might be committed against the King de facto whilst he continues King, yet this is not for any Allegiance due to him, but because such Treason being against the due Order of Government, and the common Peace of the Nation, such Actions are therefore Treason from the prefixed, or tacit Conset of the King de jure.

G. A. p. 58, 59.

F. I grant indeed that such Acts are against the Order of Government, and very destructive to it, which is the only reason why they are made Treason by Law: and this is as good a reason why the Law should make them Treason against a King de facto, as against a King de jure, for they are equally against the Order of Government, and destructive to it, whoever is King; and that is the only reason why they made it Treason for all. Now this presumed or tacit Conset of the King de jure is a very pretty Notion, and serves you for a great many good turns; it makes Laws, and it makes Treason, and gives Authority to the unauthoritative Acts of a King de facto; that is to say (or you say

Vid. 1 H. 7. cap. 6. 


C. A. p. 58, 59.
Dialogue the Thirteenth.

By nothing that the presumed Conten st of a King de jure, invests the King de jure at the time with his Authority: for if he hath no Authority of his own, unless what the presumed Conten st of the King de jure gives him, that cannot make any treasonable Act done against him to be Treason; for it cannot alter the nature of things, nor make a Man guilty of Treason against any Person to whom he owes no Duty of Allegiance. And if the presumed Conten st of the King de jure can invest the King de jure with his Authority, it must transfer the Allegiance of the Subjects too: and then Subjects are as safe in Confiden ce, as if the King de jure were on the Throne, for it seems there is his Authority and tacit Conten st, tho' not his Person.

But indeed this is all mere trifling; the King de jure has Authority, or else none of his Acts of Government can have any; for that which is done by a Person who has no Authority, can lay no Obligation upon us: whence then is his Authority, since he has no Legal Right to the Throne? not from the presumed Conten st of the King de jure, which is Nonsense to suppose; but from the possession of the Throne, to which the Law it self, as well as the Principles of Reason, have annexed the Authority of the Government.

M. I am so far from Bishop Sanderson's Opinion in his Cate concerning taking the Engagement, that when Usurpers or Kings de facto have taken upon them the Government, they are obliged to administer it for the common Good and Safety of the People, and as far as that comes to pass, then it is able to come peaceably under them, and to yield Obedience to them in things absolutely necessary for the upholding Civil Society within the Realm; such as are the Defence of the Nation against Foreigners, the Furtherance of publick Justice, the Maintenance of Trade and Commerce, and the like. But sure this is no Argument for transferring our Allegiance from the lawful King and his Heirs whilst they are alive; and therefore I must still suppose that this Statute of the 11th of Henry VII. can do no Service to the present Government, because it is virtually repealed by several Statutes. As if, By the 28th of Henry VIII. concerning the Suceesion of the Crown, wherein it is expressly provided, that if any of his Children should usurp upon each other, or if any of those to whom he should bequeath the Crown by his last Will, or Letters Patent, should take the Crown in any other manner than what should be thereby limited, such Children or others should be guilty of Treason for so doing. Now it is plain such Treason could only have been committed against the right Heir, and consequently the Person so taking the Crown was not to be looked upon as King de facto. It is also virtually repealed by the Statute of prime Elizabeth, by which we are obliged to swear to be true to the Queen, her Heirs, and lawful Successors (i.e. those who have a Right to the Crown by Proximity of Blood) as also by the Oath of Supremacy, enacted in the 4th of King James, by which we are likewise sworn to bear true Allegiance to his Majestie, his Heirs and Successors. From which I argue that if we are bound by Act of Parliament to pay Allegiance to the Heirs of a King de jure, who never were in possession, then à fortiori to a King de jure, who, besides the Legality of his Title, had been actually recognized as Sovereign, and enjoyed an uncontroverted Administration of the Regal Power. (2.) If our Laws oblige us to swear Subjection to the Heirs, &c. of a rightful Prince, then by undeniable Consequence we are bound not to translate our Allegiance to those who are not such, by the People; for without all question the words Heirs and Lawful Successors were made use of on purpose to secure the Hereditary Rights of the Monarchy, and to prevent all Usurpations upon the direct Line. And since by virtue of that Statute, which framed the Oath of Allegiance and Supremacy, we are not to acknowledge any pretended Governors, to the Prejudice or Definherion of the Heirs of the King de jure, then most certainly we ought not to do this in opposition to the King de jure himself; so that now we cannot have a pretence to make Right the necessary Consequence of mere possession of the Crown, any more than in private Estates.

F. In the first place, I agree with you in what you have said, that Kings de facto are to be obeyed in all things tending to the publick Good of Society; but then it will also follow, that Allegiance is due to them from that great Law of prosecuting the same publick Good: since it were much better that even Kings...
Kings de jure should lose their Right, than that a Nation should be involved in a long and cruel War, to the weakening and impoverishing thereof, and to the destruction of so many thousands of ordinary as well as noble Families; as was seen in the long Civil Wars between the Families of Lancastor and York.

So that I cannot but think it would have been much better for this Nation, if that Family had continued to govern us unto this day, rather than that Edward IV. should have obtained the Crown, with so great a Deceit and Deception of the People of this Nation, and so great Cruelty as was then exercised upon King Henry VI. and the Prince his Son, and so many other Perils besides, as you may read in the History of those times.

But I come now to answer the rest of your Arguments, whereby you will prove this Statute of the 11th of Henry VII. to be virtually repealed. And here by the way I must tell you Gentlemen of this Opinion, that I cannot but admire your wonderful Sagacity in discovering this Act to be repealed, when any Lord Cafes, and ail the rest of our Lawyers, do still suppose it to be in force.

But indeed the reason you give for it is not urged like a Common Lawyer, and therefore I think it will signify little: for the I grant that an Act of Parliament may be virtually repealed by a subsequent Act, yet it is only in such Cafes where they are absolutely contrariatory, and inconsistent with each other; but if they are not so, an Act of Parliament can never be said to be virtually repealed. And therefore I shall now show you, that notwithstanding the Statutes of Henry VIII. and the Oaths of Supremacy and Allegiance you have now mentioned, this Statute may very well continue in force and unrepealed.

First, As to the Statute of Henry VII. whereby it was declared Treason for any one of his Children, upon whom the Crown was set, to usurp upon each other; that part of the Statute, which makes this Treason, was repealed by the 11th of Edward VI. and by the 11th of Queen Mary. For admit it had not been so, yet this Clause in the Statute of Henry VIII. would have been absolutely void in it fell against any such Usher, when actually possessed of the Crown; for it was held by all the Judges in the Case of Henry VIII. who at the time of his coming into England lived attainted by Act of Parliament, that this Attainder need not be revoked, since Possession of the Crown taken away all precedent Defects.

But as to the Statutes of the 11th of Queen Elizabeth, and the 4th of King James, by which the Oaths of Allegiance and Supremacy were enacted; I conceive neither of these Oaths can amount to a virtual Repeal of this Act: for the I grant one end of these Oaths may be to secure the Right of the King's or Queen's Heirs by lawful Heirs, yet it will not therefore follow, that a King de jure, or for the time being, may not be legally defended in the Throne, for as for that part of the Oath which was taken to King James himself, it can hold no longer than whilst he continued King. If therefore the Estates of the Kingdom have adjourned him to have forfeited or abdicated the Crown, the whole Nation ought to take this as to have been legally done, since it was deduced by the judgment of the highest Authority in the Nation, when King James had defected the Throne. The like I may also say for the other part of the Oath of Allegiance, whereby we are obliged to his Heirs and lawful Successors: for since there has been a Dispute concerning the Succession of the Crown, between the Princes of Orange and your Prince of Wales, if the Convention, who are the sole proper Judges in this Case, have thought fit, for the Reasons I have already given you at our last Meeting, to declare King William and Queen Mary the lawful King and Queen of England, all the Nation ought to accept them for such, since it was done by the highest Authority at that time extant in the Nation, and the only proper judges of that Right; and if Disputes about legal Rights (of which certainly that of succeeding to the Crown is of the highest importance) ought to be decided by Law, and not by the Sword (which is not the decision of Civil Authority, but of Force) the Sentence of competent Judges must end the Dispute. And if the Estates of the Realm be not the proper and legal judges of such Disputes that concern the Right to the Crown, there can be none; and if they be, Subjects must acquiesce in their judgements, or it is all one as if there had been none: for if Be a may pretend Coaissiance, and adhere to their own private Opinions as sole Judges, the Dispute must end in Blows; which is contrary to
the Reason and Nature of human Societies, which were instituted to prevent Civil Wars, and to end all Controversies by a legal Judgment without the Sword.

And to let you see farther, that as to the Allegiance of the Subjects it is all one in respect of us who are Subjects, whether the Convention have judged Right or Wrong in this Case: Let us suppose a Person who has only a Fre- tence, but no true Right to an Estate, should commence a Suit of Law for it, and at last obtain a Verdict of the jury, and also a Judgment of the Court of King's Bench for his Title; can any Man deny but that the Sheriff is, by virtue of this Verdict and Judgment, obliged to put the tenant in possession of this Estate, notwithstanding he may know of his own knowledge, that the Person who has obtained this Judgment has no true Right to the Estate? or will any Lawyer doubt whether all the Tenants of the Manor are not obliged to swear Homage and Fealty to this supposed Lord, if they are required by him so to do? Now tho' the true Heir or Owner has the legal Right to the Estate, yet by the supreme Law of all Societies, which refers the Decision of all personal Rights to a legal Authority; he who by a legal Judgment is pos- seded of it, has the legal Right in the Estate against all other Claims, and legal Authority must defend him in it, and all who will submit to Laws and legal Authority, must acquiesce in it.

And thus it must be with respect to the Rights of Princes as well as of Subjects: The Right to the Crown has been often disputed, as we all know; and to say that when such Disputes happen, there is no Authority in the Nation to settle them, is to say that Princes have no Right to their Crowns by the Laws of that Nation; for there can be no Civil Right, nor legal Right, or neither are nor can be any Civil Judges: for no Man, nor a Prince, can be Judge in his own Cause; and if Princes have no legal Rights, they can lose no legal Rights when they lose their Crowns, and I doubt their natural Rights will af- fect the Consequences of very few Subjects. Therefore every independent Civil Society, which is not wholly governed by the Sword, must, from the nature of such Societies, and the reason of their Institution, have Authority within it for the decision of Controversies which may arise within the same. Every Member of that Society, and to preserve it self from falling into a State of War, which is a Dissolution of all Civil Government; and if there ought to be such an Authority in every civilized Nation, when this supreme Authority has given Sentence in such Disputes, this must also determine all the Subjects, and ought likewise to have the same effect upon the contending Princes themselves; and no Right, or pretence of Right, ought to affect the Consequence after such a final Judgment, unless Civil Rights can oblige Subjects to dissolve Civil Governments, and to dispute Civil Rights, not by the Law, but by the Sword; which is to overthrow all Civil Rights, and put an end to the Authority of Laws.

I hope this may serve to shew you how much you are mistaken, to suppose that there can be no King in an Hereditary Monarchy, but the next lineal Heir. And tho' I grant no Allegiance can be due or ought to be paid to him while he is in the minority, and it not follow, that none have till he come of age, he be not the next Heir, for that no Obedience can be due to him who is no King, I readily grant, but yet he may be a legal King in this Kingdom, who is not the next Heir by Blood, as almost half of the Kings of England since the Conquest were not, and yet have been always owned and obeyed as legal Kings.

M. I confess what you say would go a great way to satisfy me, could you prove that there was no Difference between the Succession to Crowns and private Inheritances, where I grant that the Judgment of the Supreme Court of the Nation, is to determine not only the Possession, but the Right too, in re- spect of the Person who loses his Estate by an unjust Verdict, or illegal Judgment; whereas it is otherwise in the Title of Crowns, to which Princes have a Right as well by the Laws of God and Nature, as also by the received settled Laws and Customs of the Kingdom concerning the Succession by Deafent; which is called, in the 5th of Queen Elizabeth, in the Statute we have so much debated at last Meeting, the common Laws of this Realm: and it is there declared, that it ought to direct the Right of the Crown of England, and
and it is there made Trefon, during the Queen's Life, to affirm the contrary. And this Course of lineal Succession at Common Law was also declared by solemn Judgment in Parliament, in the Case (I have so often urged) of the Duke of York's Title to the Crown against Henry VI. that it could no way be defeated by Act of Parliament; and therefore I must still tell you, that you go upon a wrong ground, when you suppose that there can be now any Dilpate who is rightful King of England, since I have often told you, that he can neither abdicate or forfeit his Right to the Crown, and that no Parliament whatever (much less a Convention) could have any power to declare he had abdicated the Government, and that thereby the Throne was become vacant. For tho I grant the Judgment of the Estates of the Kingdom, when legally assembled, ought to be received with great Submission and Respect; yet must it be only in such Matters which they have a legal Cognizance of, and which they are empowered by the Laws and Constitutions of the Kingdom to determine. But their voting him, whom you your self cannot deny to have been their lawful King, to have abdicated the Throne (when indeed he had not) and then not only to declare the Throne vacant, but also to place thole therein whom you your self dare not affirm to be the next Heirs by Blood, are things quite out of their Element, and beyond the Sphere of their Authority. And tho I grant that they may sometimes judge concerning the Succession of the Crown, and who is next Heir to it, yet is this only to be understood as far as they judge according to the common Laws of the Succession already laid down at our last Meeting, and not when they go quite contrary to them: and therefore tho I own the Parliament might justly declare Henry VI. to be an Ufusser, and consequently might be deposed; yet it doth not therefore follow that they had a like Right to declare Edward IV. an Ufusser, and to pass an Act of Attainder against him, as I confess they did after that Prince had held the Crown for ten years together, since that was beyond their power to enact or declare by the fundamental Constitution of the Government.

F. I am forry your Answer can afford nothing new, but only the Repetition of the same false Principles and Arguments that have been already so often answer'd in our former Conversations: for in the first place I have sufficiently proved, that neither the Laws of God nor Nature have ordained any such thing as a lineal Succession of Kings, or any irreducible or unforfeita-
ble Power in them, which they can never fail from, let them act ever so tyrannically. For I think I have sufficiently proved, that not only in absolute Monarchies, but also in limited Kingdoms, where the King has not the whole supreme Power, a King may not only be refil'd, but may also be so declared to have abdicated or forfeited his Right to govern, in case of any apparent obstinate Violations of the fundamental Constitution, in those great Points that make that Government to differ from a despotic Monarchy; and that if they had not this Right, all their Liberties will signify nothing, and their Lives, Liberties, and Estates would lie wholly at the King's mercy, to be invaded and taken away whenever he pleased. I am forced to repeat this, to remind you of the Reasons upon which those Principles are founded; and therefore you do but fall into your old Mistake, when you affirm, that by the fundamental Constitution of the Government, the great Council of the Nation (which is the same with our late Convention) had no Power to declare the King to have broken the original Contract between him and his People.

Therefore what you say concerning the want of Authority in this great Council to declare the Throne vacant, is altogether precarious, unless you could also prove that it is against the fundamental Constitution so to do; whereas I have so far proved the contrary, that the Throne has been declared vacant no less than eight times since the Conquest, which makes up almost a third part of the Successions of all the Kings and Queens that have reigned since that time. So that if the Custom and Practice of great Councils or Conventions (and those not condemned by any unfrequent Statutes) can be the only Rule or Guide for the Conferences of all the Subjects of this Nation, we have certainly had that as solemnly declared now, as in any other great Council or Convention that has been ever held in this Kingdom. But as to what you say concerning the want of Power in those Councils, to declare or recognize who are the right Heirs to the Crown, but not to make them so, is very pleasant; since that
that were all one as if two Men, who contended for an Estate, should bring the matter before the House of Peers, and when that was done, and the Cafe solemnly heard by Counsel on both sides, that Party who had left the Cause, should declare it to the Court (though the highest and most judicious of all power to judge in prejudice of himself, who had an undoubted Right to the Estate, which were to give the Lords a power to give Judgment only for one side; and why the other Party, if the Judgment had been given against him, should not have made the like Plea, I cannot understand: so that such a Judgment would be altogether in vain.

Therefore to apply this to our purpose, tho' the Parliament, being prevailed upon by the Struggle and Faction of the Duke of York, did at a Meeting, declare that his Title could in no wise be defeated; yet Henry the Vth being then in the Throne, they might have certainly given a contrary Judgment if they had pleased, and then I suppose the Title of the House of York might have been so defeated, as that the Nation had never been troubled with it again: and so also, when by the Power of Edward the IVth, a Parliament met, and declared him to be lawful King from the time of his Father's Death, yet when the said King was driven from the Kingdom by the Earl of Warwick, and King Henry the Vth restored to the Throne, a Parliament was summoned in the 49th of this King, wherein Edward the IVth was declared an Usurper, and himself attained; and to which Parliament the Duke of Clarence, Brother to King Edward the IVth, is first summoned, as well as 49 H. 6. m. 6. the Archbishops of Canterbury, with all the other Bishops, Temporal Lords, and Judges (of whom Littleton, the Author of the Book of Tenures, was one:) so likewise upon King Edward's Recovery of the Crown the year following, King Henry was again deposed, and a Parliament called, wherein all the Earls, Barons, and Barons, with the Archbishops of Canterbury and York, and most of the rest of the Bishops, swore to Prince Edward, after called Edward the Vth, as right Heir to the Crown.

Now I desire to know what other Law or Rule there was then for the Subjects Allegiance, but the solemn Judgment or Declaration of the Estates of the Kingdom assembled in Parliament, since their Acts and Judgments were in this Dispute directly contrary and contrary to each other: so that it is evident from the constant Practice of those times, that the King de jure was always owned as lawful Sovereign, and had Allegiance still paid him by all the People of this Kingdom, except those who being the Heads of one or the other Party, were either attainted, or forced to fly the Kingdom.

But as for all others, the different and contrary Oaths of Allegiance were imposed upon the People, sometimes by the one, and sometimes by the other of those Kings, according as they got possession of the Throne; yeath there can be no where find, that ever any body suffered for barely swearing Allegiance to the King then in being: for it was always taken for Law, that Allegiance was due to the King de jure, since ordinary Subjects are not supposed to understand the legal Right or Justice of the King's Title.

M. I must still say, that there was some colour for the Peoples thus acting (as you say they did) during the Contet for the Crown between the two Edmund and Richard, when I grant it was a difficult matter to judge which of the two had the best Right to the Crown, by reason that the House of Lancaster had held it for three Descents; as also from the Speciousness of their Title, since it was founded upon a pretended Claim by Right of Blood, upon supposing that Edmund, named Crouch-back (who was one of the Ancestors of this House of Lancaster) was the eldest Son to Henry the Third; which had it been true, would have given Henry the Fourth a good Right to the Crown, not only against Richard the Second, but his own Grandfather Edward the Third likewise (had he been then alive:) and this Descent falling out long before the Memory of any Man then living, who could confuse the Falacy of this pretended Pedegree? The People of England might very well be excused for owning an Usurper, and paying Allegiance to him, since they did not know but his Claim might have been right, especially since it was approved of in full Parliament without any Contradiction, as I have already shown you at our last Meeting.
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But what is all this to the matter now in Debate between us, when the Lined Succession of the Crown has been so often declared to be the only mean of acquiring a just Title to it, and every one knows very well who was sworn for lawful King of England within these three Months, and also who was prayed for in all our Churches as his Son and Heir apparent, and therefore I must still tell you, that your Parallel between those Kings de facto of the House of Lancaster, and those Princes whom the Convention have now voted to fill the Throne, does not at all agree, since every Subject of this Kingdom, who has but sense enough to go to Market, can very well tell (if he will deal sincerely) to whom his Allegiance is due.

F. As to what you have now said, it is no more than a Repetition of what you have already urged to evade the Force of those clear Authorities; but indeed it was all one, when a Prince had been once recognized for lawful King by Act of Parliament, whether the People knew his Title not to be good by Right of Blood or not:

And this I have plainly proved to you from the Instance of Richard the Third, who both his elder Brother's Children were then alive, and the eldest of them had been proclaimed King, and also owned for such by himself, and whose Title he had also sworn to maintain in his Brother King Edward's life-time, as appears by the Claiter-Roll of the 11th of Edward the Fourth; yet when he had once deposed him, and had called a Parliament which recognized his Title, his Acts and judicial Proceedings stand good at this day: and tho' he himself was attainted, and declared a Tyrant and an Usurper, yet all the Subjects who acted under his Authority, and had taken an Oath of Allegiance to him, never needed an Act of indemnity for so doing; whereas those that came over with Henry the Vth were fain to have an Act of Pardon to indemnify them for fighting against Richard the Illd (as I have now showed you.) And tho this Parliament of the 8th of Henry the VIth agreed to repeal divers Acts which the King found fault with; yet as for all other Statutes, made in the Reign of King Richard the Illd (which have not been since repealed) they are still in force without any Confirmation. Likewise when Henry the Vth had prevailed over Richard the Illd, and that he was slain in the Field, the all the Nation very well knew that Henry the Vth could not be heir of the House of Lancaster, because his Mother was then alive, and had never formally given up her Right, if she had any; as certainly the could have none, as being defended from John Earl of Somerset, who was his own Son to John of Gaunt Duke of Lancaster, by Catherine Stanford, whilk his Wife was alive; and tho I grant after his Marriage with the said Catherine, the Children born of that Bed were made legitimate by Act of Parliament in the 30th of Richard the Second, yet that Legitimation only respects such private Privileges and Inheritances which they might enjoy or succeed to as Subjects, and had no respect to the Crown; the Succession of which they were expressly disclaimed capable of by that very Act of Legitimation which was in Buck's History.

Vid. the Art printed at large in the Johnson's Britannia, concerning the Parliament Roll.

But for all this, when Henry the Seventh had called a Parliament, and was therein recognized for their lawful Sovereign, and that the Crown was setled by Statute on him and the Heirs of his Body (without any mention of the Prince's Elizabeth, who ought to have been Queen by Right of Blood) yet none of the Subjects of this Kingdom (as I can find) ever scrupled to swear Allegiance to him, before ever he married that Princess; tho' they as well knew that he could have no Right by Blood, as you can suppose that the People at this day can know whether King James has abdicated the Crown or not, or whether your Prince of Wales be his true and lawful Son: for since they are both nice and difficult Points, and have been determined by the Convention, the Supreme Judges in this case, in favour of their present Majesties, and that they also recognized their Title after they became a Parliament; I can see no manner of reason why all the Subjects of this Kingdom may not as well justify their taking this new Oath of Allegiance to them, notwithstanding their former Oath of Allegiance to King James and his right Heirs, as well as the People of England could justify their taking an Oath of Allegiance to Henry the Seventh, notwithstanding their former Oath to Edward the Fourth and his right Heirs, before ever Henry the Seventh had married the Prince's Elizabeth, the Heirs of the Crown; especially since this Act of the 11th of Henry the Seventh (which we are now disputing about), was
was made expressly to secure and indemnify all those who should attend upon the King for the time being, and do him true and faithful service of Allegiance, &c. And therefore it lies upon you still to prove, that this Statute is either expired, or else void in it self; or else, (besides the confiant Practice of former times) we have here an express Act of Parliament declaring it every Man's Duty to pay Allegiance to the King for the time being, and then certainly he is as much obliged to swear it too.

M. I doubt not but I shall prove to you, that this Statute expired with Henry the Seventh, from a Clause in the Act itself; for if you please to read immediately after those words you have now cited, "That all those who do the King for the time being true and lawful Allegiance, &c. [It follows thus] shall be secured from all manner of Forfeitures and Molestation relating to their Person or Estates; (but mark) provided always that no Person or Persons shall take any Benefit or Advantage by this Act; which shall hereafter decline from his or their said Allegiance." Now we know a Provisto is an Exception or Refrain upon the Latitude and Comprehensiveness of the Law, and that all Statutes are perfectly null so far as the Provisto reaches. Having premised this, I shall endeavour to prove that this Act was designed only for the Security of that Reign in which it was made, and cannot be stretched any farther. To make this appear, let us now suppose a Competition between the King de jure and the Seventh (that is, one de facto) and that the Succession engages for the latter; in this case, if the King de facto prevail, there is no need of the Affirmance of this Statute: for we cannot imagine any Prince could be so impolitic as to punish those who have ventured their All to maintain him in his Government. This, besides the ingratitude of the Action, would proclaim the injustice of his Cause, and would serve only to ruin his Interest.

F. Notwithstanding this Objection you have now made, I doubt not but this Clause will bear a very fair and legal Interpretation, and that not in respect of the Allegiance that might be due to the King de facto, but to the King de jure; since if it were not for the indemnity provided by this Statute, the King de facto would have been obliged to have punished them for opposing their lawful Prince.

M. This is easily answered, for pray do Kings de facto always perform that which the Law requires? if so, they never would have been Kings de facto, since they could not make themselves Malters of the Sovereign Power without disposing of those who are supposed the right Owners of it. Secondly, the Polemick would not so much as seem obliged to punish his Adherents upon a competition, except he owned himself to be no more than an unjust Usherer: but we have neither example nor reason to expect such singular Concessions as these; for no Usherer will own himself in the wrong, so long as he intends to enjoy the Advantages of his Injustice. Upon supposition therefore, that the Victory had fallen on the side of a King de facto, the Act would be wholly superfluous.

F. But why may we not also suppose that this Clause was inferred, not only to secure those who had assisted the King de facto against your King de jure, but also to debar all those who had fallen from their Allegiance to the King de facto, from receiving any Benefit by this Act, if ever they should plead it in their own Justification, after the King de jure had prevailed, and was again fettered in the Throne?

M. You may take it in this sense if you please, but if you do, it will not at all mend the matter; for tho' those that stood by the King de facto will have great occasion for an Act of Indemnity, yet this Act will be as helpful to them now, as it was needless before; for either they must submit to the King de jure, or not; if they do not submit, it is easy to imagine the Consequences, how a victorious and irresistible Prince will treat the obstinate and rigid; they are at his just Tithe; if they do submit (as of necessity they must) then they can claim no manner of Privilege and Indemnity from this Act: for they cannot come into the Party of the King de jure, without defecting that de facto; i.e. without declining their Allegiance to him, who was King when this Statute was made: by declining which Allegiance, the Provisto expressly excludes them from all manner of Benefit or Advantage by Qqqq this
this Act. In this condition the Law would have left the de facto Party, if the Sovereignty had been disputed between Henry the Seventh and the House of York, and that the Prince de jure of the House of York had been successful; from whence it is undeniably plain, that neither the Deign nor Words of this Statute can be drawn to such a monstrous Contradiction, as to enact bare Poli<no input>tion to be a good Title, and make Might and Right the same thing. The only Design of this Parliament was to continue the Crown to Henry the Seventh during his life-time, which both by the Body and Proviso of the Act was as effectually done as in them lay, for divers Reasons that might then prevail with the two Houses to consent to a temporary Alteration of the Succession to the Crown; such Titles, that the Henry the Seventh had no just Title in his own Right, yet in the Right of his Wife he had, which he did no way disown by this Act. And you must also remember, that at this time Henry the Seventh had several Children by his Queen, viz. Prince Arthur, Henry, &c. So that it could not be extended; that being thus happily united, there was no reason to fear, that a Security (the usual one) to the present Poli<no input>tion, could be prejudicial to the right Line, especially since the Force of that Act was confined to the Reign of that Prince, as has been already proved.

F. You may fancy if you please, that you have proved this Act to be expired, but I think if you better consider of it, you will find your self mistaken; for tho' I may very well suppose that the King and Parliament, to deter Men from falling from their Allegiance to the King for the time being, might insin<no input>ct this Clause, upon a Supposition that the next King, whoever he was, whether by Right of Blood, or only de facto, would, out of a generous Aversion to Traitors and Defectors, hinder them by virtue of this Clause from enjoying any Benefit by this Act, yet I shall not longer insist upon't, whether it be insignificant or not, and therefore will at present grant it to be so: but what then? Will a void Clause vitiate or render expired an Act of Parliament which is made indefinitely, without fixing it to any Time or Person? The words in the Act are, the King for the time being; which must certainly extend to any other King, as well as Henry the Seventh: for I suppose that an Act of Parliament and a Deed agree in this, that an unnecessary Clause can by no means render the whole void.

But as for what you say in relation to this Act's being a Security for the Title of the Queen and her Children (whom you suppose to be the right Heirs of the Crown) this rather serves to strengthen the Act than otherwise; for if this King had a good Title in her Right, then it may be alfo very well supposed that she gave her Assent to this Act in the Person of her Husband, and that not for the benefit, but to the prejudice of her own Issue: since if after her Death (which happened some years before his) her Son Prince Henry of Wales had set up his present Title to the Crown in the Right of his Mother, and so would have dethroned his Father as an Ufurer, I suppose no reasonable Man will deny but that this Act would have indemnified all those who had taken up Arms in defence of Henry the Seventh against his Son, tho' (in your fancie) King de jure: and if it would justify the Subjects then, I cannot see why it may not do the same thing now in their swearing Allegiance, any, fighting for the King in rebellion, against him whom we will for the present suppose to be King de jure. M. Well, however I think I can prove that this Act was no more than temporary, from the Judgment of the Judges in the Case of Lord Duke of Northumberland; who when he was tried for Treason, for leading an Arm against Queen Mary, to settle the Lady Jane Grey in the Throne, desired to be informed by the Judges, whether a Man acting by the Authority of the Great Seal, and the Order of the Privy Council (or Prince's Council, so Shaw and Ho<no input>es word it) could become thereby guilty of Treason: To which all the Judges answered, that the Great Seal of one that was not lawful Queen, could give no Authority or Indemnity to those that acted by such a Warrant; upon which the Duke submitted: tho' without question he did not want Lawyers to en<no input>ce his Pleas with this Statute likewise, if his Cause would have borne it. From whence I infer against Sir Edward Coke, That Treason lies against a King de jure, tho' out of rebellion; for it is plain by all our Historians, that Queen Mary.
Dialogue the Thirteenth.

Mary was so far from being possessed of the Crown when the Duke of Northumberland acted against her, that the Lady Jane was not only proclaimed Queen in London, and most of all the Cities and great Towns in England, but the Tower of London, with all the Forts and Naval Forces, were under her Command; and she had also Allegiance sworn to her by the Privy Council, and by the Lord Mayor and Aldermen: and she had also the Seals in her power, by which all Patents and Commissions were granted and issued in her Name. And if all this be not sufficient to constitute her Queen de facto, according to this Statute of Henry the Seventh, I know not what was.

F. Yet I can tell you what was yet wanting, which because she had not, she was certainly neither Queen de jure, nor de facto, and that was a solemn Coronation and Recognition of her Right by Parliament; which legal right, since the never had, she was not the Queen for the time being, and consequently not intended within this Statute of the 11th of Henry the Seventh: for tho' it is true, she was appointed Successor of the Crown by the Letters Patent of King Edward the Sixth, yet since the could not claim by Right of Blood, there being so far before her, all the Kingdom looked upon it as an Ulfurpation, and an Arthur of the Duke of Northumberland (whose Son she had married) to get the Inheritance of the Kingdom into his sole power: so that it was no wonder if the greater part of the People were so averse to her Title, and that those of the Nobility who took her part, so quickly revolted from her, when once the fear they were in of the Duke of Northumberland's Power was removed; for had this Bequest of the Crown to the Lady Jane held good, this Kingdom, instead of being Hereditary, would have become wholly Testimentary, and disposable by the last Will or Letters Patent of the King or Queen, without the Consent of the Whole of the Nation: which is contrary not only to the then received Laws of Succession, but also to the ancient Constitution of the Kingdom, as well before as after the Conquest.

But notwithstanding all this, I doubt not if the Lady Jane had so far prevailed against Queen Mary, as to have been able to call a Parliament, and to have had her Title owned and recognized therein, as it was in the Case of Richard the Third and Henry the Seventh, but that she would have been true and lawful Queen; according to the Intent of the Statute we are now discouraging of; and then the Duke of Northumberland must likewise (if he had fair play) have been indemnified for taking up Arms in her Defence against Queen Mary, since Queen Jane would have been then within the Letter of this Statute, as much as King Henry the Seventh.

M. You must pardon me if I cannot be of your Opinion in this matter, since the bare Coronation and Recognition by Parliament could confer a legal Right to the Crown upon one who had no Hereditary Right to it before, the Consequence of it would be, that the Crown would be so far from being Elective (as you suppose it to have antiently been) that it would be in the power of every bold Ulfurper or Rebel, who had but the Confidence to call himself King, to gain a legal Title to be so, according to your Principles: and then if Oliver Cromwell could have found a Party strong enough in the Army to have declared him King, and had called a Parliament in his own Name, who had reputand lawd Recognition by their lawful Sovereign, he would have had as much right as King Henry the Seventh, over our Allegiance as King Charles the Second: which certainly was not only contrary to the Settlement of the Crown upon King Henry the Seventh, and the Heirs of his Body, but also to that solemn Recognition of King James the First's Title, as lineally descended as right Heir to the said King Henry, which I insisted on at our last Meeting.

And therefore if you will have my lense of this Act, it is either expired (for the Reasons I have already given) or else was void ab initio; since it is not only contrary to the settled Course of Succession of the Crown according to the Laws of lineal Descent for divers hundred years past, but also to those of Justice and right Reason, for an Ulfurper not only to seize the Throne by force, but if he can once get himself solemnly crowned, and then recognized by an Act of Parliament of his own calling (which you your self cannot deny but to have been ever too obsequious to the Will and Power of Ulfurpers, as appears by those Inustances you have given me in Henry the Fourth, Henry the Sixth, and...
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RICHARD III.) the Consequences will then be, that the whole Nation would not be only bound to swear Allegiance to him, but would be also obli{ed} by this Act to defend him in his Tyranny and Usurpation to the utmost of their Power, and it would also indemnify them for so doing; which would be to establish Iniquity by a Law, and would destroy all the settled Foundations of Right and Wrong, which I affirm God himself is not able to alter, without departing from those great Attributes of immutability and Justice, so essential to his Divine Nature.

F. It will not be very difficult to reply to these Arguments, since they are grounded on such false Principles as are already answer'd. As first, that this Kingdom is by the fundamental Constitution of it an Hereditary Monarchy, and that consequently none but he who has a Right by Inheritance can require our Allegiance. But pray tell me where you can find this fundamental Constitution? For I think I have sufficiently prov'd that there never was any such thing known in England, till between four and five hundred years since, when King Edward I. succeeded to his Father Henry III. without any Bequest of the Crown by his Testament, and before any Election or Coronation, he being then in the Holy-Land. But supposeth it now to be an Hereditary Monarchy, it doth not therefore follow, that the Monarchy should continue always in such a Family, for that may fail, or may be changed by Conquest or Usurpation, as has often been, and the Constitution continue. So that the moi{t} that can be said, is, that when any particular Family, by the Providence of God, and the Consent and Submission of the People, is plac'd in the Throne, of Right the Crown ought to descend to the Heir of that Family: but suppose it does not, must we pay Allegiance to no other Person, the possi{led} of the Throne? Pray, Sir, shew me that fundamental Constitution; for its being an Hereditary Monarchy does not prove it, and according to the Judgment of the best Lawyers, the Laws of the Land require the contrary, viz. that we must pay our Allegiance to him who is actually King, not to him who ought to have been King, but is not: and to think to confute this, by pretending this fundamental Constitution of an Hereditary Monarchy, is to take that for granted, which is still to be prov'd.

And therefore I am not at all frighted at the dreadful Consequences which you suppose must follow if this Statute of Henry VII. should be Law, viz. that it would be in the power of every Rebel and Usurper who could get himself crown'd, and then own'd to be King by a Parliament of his own calling, to have a legal Right to our Allegiance; and that Cromwell, if he could have got himself once crown'd, and recogniz'd, might have been defended in his unjust Usurpation against King Charles II. But admit this to have been so; yet it is still to be understood, that at this Coronation he had taken the Oath antiently taken by our Kings, and that the Parliament he had summon'd to recognize his Title, had consi{led} the antient Lords and Commons, consi{led} of Knights, Citizens and Burgesses, which never was observ'd in any of their Mock-Parliaments as which Cromwell call'd it: Had all these Conditions been observ'd, I believe he would have been as legal a King within this Statute of Henry VII. as he himself ever was before he married with the Princess Elizabeth, which was not till near half a Year after he had the Crown fetted upon him by Act of Parliament. So that the upon every Translation of the Crown from one Family to another, the first Prince of that Family could have no Hereditary Right to it, yet we find such Princes to this day taken for lawful Kings. This your William the Conqueror, King Henry IV. and King Henry VII. are each of them look'd upon as true and lawful Kings (according to our Constitution) as if they had been right Heirs of the Crown by lineal Defect; and thou mayst say, that as to William I. he had a good right by Conquest, that is only justi{ed}, since I have already prov'd that he could be really no Conqueror. And if the English Saxon Monarchy was Hereditary before the Conquest (as the Gentlemen of your opinion supposeth) he could be no other than a Usurper upon Edgar Atheling, the right Heir of the Crown by Blood. And as for Henry IV. and Henry VIT. tho' they both pretended a feigned Title to the Crown as Heirs by Blood, yet it is plain by the very Acts of Recognition I have prov'd that they durst not insist upon that Title; since I have already prov'd there is no such thing mention'd in that Act of Parliament, wherein the Estates of the Kingdom unanimously
unanimously agreed that Henry Duke of Lancaster should reign over them; nor yet in the subsequent Acts, whereby the Crown was intail'd upon himself, and his four Sons successively. So likewise in the Statute of the first of Henry VII. it is only drawn in general terms; declaring that the Inheritance of the Crown of England, &c. shall rest, remain, and abide in the Person of King Henry VII. and the Heirs of his Body lawfully coming, &c. Nor is there indeed any breach made upon this Statute (as you suppose) nor yet upon the Act of Recognition of King James, which you so much insist upon; since the Crown is certainly set in train for two Princes, who are not only lineally descended from them, but who are also to be look'd upon as right Heirs unto them, since the Great Council of the Nation, who are the supreme Judges, have declared them to be so.

But as for the rest of your Speech, whereby you would prove that this Act must needs be void, because contrary to the Laws of Justice and Right Reason; this also depends upon your former Error, in supposing that Princes have a Divine or Natural Right to their Crowns antecedent to the municipal Laws of their respective Kingdoms, which is already sufficiently confuted. So that tho' I grant it is not in the power of God himself to alter the natural Foundations of Right and Wrong, Just and Unjust; yet it is likewise as certain that the Civil Rights of Princes, as well as those of Subjects, can no ways be accounted for according to those Natural Laws; since all Civil Property, as well in Crowns as other Possessions, must depend upon the particular Laws and Constitutions of each Kingdom and Nation, as I have already sufficiently made out.

I grant that all legal Authority cannot be accounted for according to just or rightful Titles, yet since God makes no Kings at this day, but those who are made Kings by some human Acts, and have a legal Right to Kingship by some human Laws; how can you prove from hence, that in England none can have a legal Right to govern, but those who have the rightful Title of a lineal Succession? For if the Title alone does not confer the Authority, but that the Law says a legal Investiture by Coronation and Recognition by Parliament shall also confer it, it is evident that an Hereditary Title, and a Legal Authority, may be separated, and yet the Authority continue Legal still: For Legal Authority must be convey'd in such manner, and by such forms as the Law has prescribed, or apponts to that purpose, for there is no other way of conveying it; and then that Authority which is so given in form of Law (and that only) is the legal Authority. If then the Estates of the Realm, who are the only proper Judges of such Disputes, have adjudg'd the Crown to one, whom we will at present suppose to have no antecedent legal Title to it, yet be there by comes legally qualified, not only of the external Force and Power, but of the legal Authority of the Government also; and therefore he may challenge as his due, all legal Obedience, (which is the true notion of Allegiance, for nothing more than legal Obedience can be due to a mere legal Authority;) fo that because he is invested with the legal Authority, the Crown is his legal Property, against all other Claims, and his Subjects must defend him in it; as the legal Properties of private Persons being once determin'd by judgments of inferiorCourts of Law, are also to be defended by legal counsel; for Legal Authority is the force of him who perhaps may have the better Title to the Estate by Right of Blood. And if God makes Kings by human Acts, I hope it is no injustice in God to make him a King, whom the Law makes a King, and to enjoin our Obedience to a legal King; which legal Authority may be said to be annex'd to the legal Title, while there is no legal Judgment against it: which was not the Case of Queen Mary, and the Lady Jane her Competitor; nor yet of King Charles II. and Oliver Cromwell: since neither the one or the other were ever crown'd or acknowledg'd as lawful Queen, or King by Parliament, and therefore could obtain no legal Title against the right Heirs. But on the other side, when one is solemnly declar'd King or Queen, being crown'd or plac'd on the Throne by the Estates of the Realm, he is then legal King, and has the legal Authority, as the Royal Estate and Dignity was own'd to be in Henry VI. when the Duke of York claim'd the Right to the Crown.

Mr. I am not yet convince'd I am mistaken in this matter; for waxing at present any natural or divine Rights of Princes, I think this Act of Henry VII. (if suppose'd to be now in force) is no ways to be reconcile'd with the former declar'd Laws.
Laws and Statutes of the Kingdom; much less can this last pretended Act of Recognition of King William and Queen Mary reverse the Statute of Recognition made to King James I, whereby the Parliament does not only own him for true and lawful King by descent from Henry VII. and Edward IV. but also engage themselves and their Posterity to his Majesty, and his Royal Progeny for ever. And they do likewise conclude in these words, (I have not yet mention'd) "Which Act, if your Majesty shall be pleased (as an Argument of your grac-ious Acceptation) to adorn with your Majesty's Royal Assent. (without which it can neither be compleat and perfect, nor remain to all Posterity, according to our most humble desires, as a Memorial of your princely and tender Affection towards us) we shall add this also to the rest of your Maj-esty's unspakable and inestimable Benefits". Here they plainly acknowledge these two things. First, That the Crown descends by Proximity of Blood, and that immediately, even before any Ceremony of Coronation, or otherwise; so that there can be no Interregnum, or Vacancy of the Throne; and accordingly it is a maxim in Law, that Rex non moritur. Secondly, That the Affent of the King is that which gives the Life, Being, and Vigour to the Laws, without which they are of no force: therefore I shall plainly prove these Acts to the contrary to be void. It is a Maxim in our Civil as well as your Common Law, that every Senatus-Consilium, or Decree of the Senate, as also every Statute or Act of Parliament, must be abrogated and repeal'd by the same Authority by which it was made. Since therefore that Act of the first of Edward IV, whereby he was declar'd to be lawful King, as descend'd from Lionel Duke of Clarence, third Son of Edward III. By Philippa his Daughter and Heir, and that Henry IV. and Henry VI. who had successively held the Crown, were Ullorpers, and only pretended Kings; it would necessarilby follow, that none can after this fo solemn Law and Declaration, lawfully succeed to the Crown of this Realm, but such as have a true and just Right as Heirs by Blood, according to the course of descent allow'd of by the common Laws of this Kingdom: and therefore Henry VII. being an Ullyper, and enjoying no more than a Matrimonial Crown, could not join with a Parliament in making any Law contrary to that of the first of Edward IV. which had been so solemnly pass'd, and settled in Parliament by a King whose Title was by descent indispensible. 

So likewise in the matter now in dispute between us, I can never apprehend how a pretended Statute made in a Convention, and not in a lawful Parliament from which the King, can first declare the Throne vacant, and then appoint those to fill it, who certainly can have no just Title to it, according to that Act of Recognition of King James; "which expressly declares, that they "themselves could not have made that Act to be compleat and perfect to remain "to all Posterity, without his Royal Assent." Which being once pass'd into a Law, by a King whose Title was indispensible, can never afterwards be alter'd (if ever it can be at all) but by a Parliament as legally call'd, and that by a King whose Title is also as legal as that of King James I. This Objection, tho I have often urg'd in other words, yet could I never yet obtain a satisfactory answer from you.

F. Tho I have already in part answer'd this Objection at our last Meeting, and have also partly done it already in this; yet since I see you so much incline upon it, and do also urge it again in other words, with a fresh addition of new Arguments; I hope you will not think me tedious, if I am also necessitated to repeat the same things again, and put you in mind of what I have already prove'd: which when I have done, I doubt not but this Argument of yours will signify very little. Your first mistake therefore is, that Henry VII. being an Ullyper, had no power to alter the course of Hereditary Succession, settle'd by the Statute of the first of Edward IV. whereby he was declar'd lawful King: in answer to which, I must put you in mind, that this was the first time that ever this Point was so settle'd, and that not till after long War, and by confounding all those that stood with the House of Lancaster, he had made such a perfect Conquest of all that oppos'd him, that there were no Lords or Commons in this Parliament, but what were entirely of his Party. Yet we see that when Henry VI. got the upper hand again, his Party revers'd this Statute of Edward IV. and declar'd the Crown to belong to Henry VI. and his Heirs; which
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which Act was revered again by the next Parliament, in the 11th of Edward IV. when he again recovered the Crown by another Battel against Henry VI. So evident it is, that whoever is once seated in the Throne, and is recognized by Act of Parliament, tho' of his own summoning, all his Acts till they are repealed do hold good, tho' he were declared an Usurper, and himself attainted by Act of Parliament. And therefore admitting that Henry VII. was an Usurper at the time when this Act we now discourse of was made, yet would it not render this Act void as you suppose, since it was never yet repealed by any subsequent Statute.

But indeed Henry VII. was no Usurper at the time when this Statute was made; for you your self have already granted, that he had a good Title in right of his Wife, which he never renounced or disavowed: and therefore we may they well suppose that she, the Queen de jure, gave her setting of this Act in the Person of her Husband; and if so, I cannot see any reason why it should not stand good, not only against her self, and her own Children, but also against all others who should claim under her Title. But if you say she could not do this in prejudice of her own right Heirs, because the Crown had been already declared by Act of Parliament to be hereditary, and not to be acquired by Usurpation; this is to beg the Question, and to suppose an hereditary Defect to have been the fundamental Law, and constant Practice of theegration of the Crown before that time: whereas I have already proved, that till the Reign of Edward I., the Crown was partly hereditary, and partly elective; and ever since that time, tho' it has been still claimed as hereditary, yet has it been always believed to be the Right of the Parliament to declare who was lawful King; and that whoever was so declared and recognized, has been always looked upon, in the eye of the Law, as the only rightful and legal King, to whom the Allegiance of the Subjects was due, and whose Statutes are obligatory upon this day.

This being so (as it cannot be denied) your Argument from the Act of Recognition to King James I. may be easily answered; tho I should grant at present (for Diocletian-like) that their now Majesties King William and Queen Mary are only King and Queen de facto: for if all the Statutes of those three Kings of the House of Lancaster, and of Richard III. (may even those Statutes by which themselves were declared to be lawful Kings, and the Crown settled upon the Person of the late King) have at all times held good, till they were hereafter repealed; I desire you would show me any sufficient reason why the late Act of Recognition of their present Majesties Title, and for the Settlement of the Crown upon their right Heirs of the Protestant Religion, should not have the like force and effect in respect of our Allegiance to them, as it had to all other Kings de facto who have hitherto sat upon the Throne, tho' perhaps it may derogate from the intent of that Statute of Recognition of King James I., nor does it make any Difference, tho' we suppose that this Act was made by a King by Defect, and that we now discourse only of a King and Queen de facto, and a Parliament called or owed by them; since the Law allows no Difference, as to their Legislative Power, between Acts made by a King de facto, and one de jure.

And therefore tho I grant, (1) That those Conclusions you draw from this Statute are true, that there is no later successor or Vacancy of the Throne; and, (2) That the Adjud of the King is that which gives the Life, Being, and Vigour to the Laws: yet as for your first Conclusion, that there can be no Vacancy of the Throne, it is only to be understood; that ordinarily, and according to the common Course of Succession, there can be none; and yet extraordinarily there may, as you your self must grant: since upon the Death of Queen Elizabeth there might have happened a Contests between King James and the then Earl of Hartford, as Male to Mary the French Queen, Second Sitter to King Henry VIII. upon whose Death the Crown was settled by Henry VIII. Will, but if so, it would not be at our last Meeting. And if it should be, whether this Will had been rightly made or not, it could have been no otherwise decided but by War, or else the Sovereignty and Recognition of Parliament of that Title they had judged to be best; and he who had been so declared, would certainly have been lawful King, and all the Nation had been obliged to swear Allegiance to him. Apply this to the present Case, admitting King James.
James to have truly abdicated the Throne, and see whether it be not exactly the same, supposing (for once) your Prince of Wales to have been indeed the Son of the late King and Queen; and tho' it is true he is not yet declared an Impostor, yet is he neither acknowledged as their right Heir, for the Reasons I have already given.

But as for your next Conclusion, that it is the Affent of the lawful King that gives Force and Vigour to a Law; from whence you would infer, that the late Act of Recognition and Settlement is void, because not made by those who were lawful King and Queen at the time of the making this Act: this is also to beg the Question: For tho' it is true the Act of Recognition to King James declares this Act could not be compleat without his Majesty's Royal Affent, yet it is not there said, that no other King but he who claims by Descent (as King James did) could pass an Act that should be good in Law; since we find by the whole Course both of Law and History, that the Statutes made by Kings de facto are as truly as and as much Laws as those made by your Kings de jure; and Attainders for Treason committed against them, have been so far from being declared void, that they could not be reversed by any other means than by particular Acts of Parliament made for that purpose, as I have already shewn you from divers Instances; but in them no Exception against the present Parliament's not being called by the King's Writ of any force: since I have already proved at our last Meeting, from the Example of the Great Council that assembled to recognize and ordain Edward the First to be King when he was in the Holy Land; as also by the Parliaments of Edward and Richard the Second, by which they were deposed, and Edward the Third and Henry the Fourth declared to be their Successors; That those Parliaments could not be summoned by those Princes whom they recognized: and therefore tho' they were called by the Writs of the former Kings, yet their Authority determined as the Parliament of that King that called them, upon his ceasing to be King; and therefore must owe their sitting longer wholly to the Authority of him they had already declared King, whose Precedence and Authority was then looked upon as sufficient to give them power to sit and make Laws with the succeeding King, tho' they were never summoned by him.

To these Parliaments I may add that of the third of King Charles the Second, which called home the King, and after his Return made several Statutes both publick and private, which stand good to this day: so that to conclude, you have no reason either from Law or History to maintain that there can be no Vacancy of the Throne, or that none can be declared King or Queen, but in a Parliament summoned by the Writs of that Prince, whose Title they are to recognize.

Yet I shall not deny the Matters of Fact to have been as you lay them, as to the Great Councils or Parliaments you mention; but in what manner you may remember, that as for those Parliaments called in the Name of Edward or Richard the Second, there is no Precedent to be drawn from them, because they served only to depose their lawful Kings, and to set up those who had no Right, at least as long as they lived: and you very well know, that any coercive Power in the two Houses of Parliament over the King, is expressly pronounced and declared against in the Parliament of the thirteenth of K. Charles the Second, as I have already shewn you. But as for the Convention which was called in the first Year of that King, I have also given you my Judgment of it, that tho' they might lawfully meet to vote the Return of their lawful Sovereign, and to recognize his Title, yet were they not for all that a lawful Parliament, as to the raising of Monies, or making of Laws; and therefore whatever they did to both these, was faire to be confirmed by the Parliament of the Thirteenth I now mentioned.

But indeed I cannot but admire at this mungrel hodge-podge Coarse of Succession, which you now suppose to take place in England; for you cannot deny but the Crown is Hereditary, and has been always claimed as such for near 500 Years: and yet for all that, whenever an Usurper and a Parliament shall agree together, he to take the Crown by force, and they to recognize his Title as soon as he pleases to call them, he must then be looked upon as a lawful King; and the just and rightful Title of the true King, or lawful Heir of the Crown, shall be so far destroyed, as that Allegiance must be due to this Usurper,
per, the perhaps he obtained the Crown by the most horrid Villanies in the World: as the deposing and murdering of his lawful Sovereign, as Henry the Fourth did, and which would also have been the Cafe of Oliver Cromwel, had he ever taken upon him the Title of King. So that this is to set on foot at once two contrary legal Rights; a legal Right and Title to the Crown by Defeat of Blood, without a Right to exercise the Authority belonging to a King, and the legal Right to wear the Crown, and exercise the Authority belonging to is, without any antecedent legal Right to the Crown it self: which would indeed render the legal Authority in England to be like the Right that Men have to those Creatures that are for nature, which belong to him who can get them into his power; for as to the Conquell or Recognition of Parliament, I look upon that as a mere babble, since your self cannot shew me any Ufurper since the Conquell, tho ever so wicked and notorious, who ever failed to have his Title to his Nation: King Edward and Richard as the Thirde, I cannot blame you for denying them to be lawful Predecessors, because they make directly against your Opinion; but you say nothing to that of the first Great Council or Parliament of Edward the First, which not only ordained he should be King, but also appointed all the Great Officers of the Kingdom which were to govern it in his absence. But you may deny the Authority of those Parliaments of the first of Edward the Third, and first of Henry the Fourth, as much as you please in a Chamber; but if you should do the like at Westminster-Hall against any Act of Parliament, because made whils Edward and Richard the Second were living, you would find your self censur'd, and told that those Laws still continued in force and unrepealed, and it did not belong to private Men to question those Acts that have been hitherto received for Law.

But as for what you have said against the Authority of the Acts of that Parliament that brought in the King, I have already proved that they were only confirmed ex abundante causa; and that they had been good without it, appearing by this, that all the private Acts, the never confirmed in the following Parliament, are still in force. But if the solemn Recognition of a King's Title by Parliament be such a babble, and so easily obtained (as you suppose) I may say the name of that Act which recognized King James the First's Title, that it was done merely out of Flattery upon his Accession to the Crown; nor can you reply that they might do this, because he was the only right Heir; this is to beg the Question, since if he had not been so, it would have been all one, as you your self confess.

As for the ref of your Arguments, which you draw from the different means which our Law allows for Princes succeeding to the Crown, which you call a mungrel hodge-podge Course of Succession, and that it derogates from the Dignity of a true Hereditary Monarchy; I shall only say, that if our Law has now establisht it so, no private Man ought to judge otherwise; for nemo debet atri juris imponere leges, is a Maxim as old as true. But indeed the our Laws devolveth a legal Right in the present Possessor of the Crown, which is crowned, and recognized by Parliament, since they will not allow the Parliament to judge of, or examine the King's Title, or by what means he attained the Throne; yet this does not alter the ordinary Hereditary Course of Succession, for the Law still looks upon the Crown as Hereditary, and the Change of the Person or Royal Family does not make the Crown cesse to be so. And therefore whoever has Possession of the Crown, as an Hereditary Crown, and as such, may leave it to his Heirs as long as they can keep it; as is plain from the Example of the three Henry, who succeeded each other, and who had not only Allegiance sworn to them, but they who acted contrary thereto, were judged and executed as Traitors: so that the Law did all it could to maintain the Crown in the right Line of Succession. And if any Kings have gained it by Ufurpation, the Parliament have owned the Authority of such an
Ufurer, yet have they not thereby approved the Action: and you your self must acknowledge a great difference between these two, since you have more than once acknowledged that an Ufurer, or King in Possession, has a good Title to a Crown, in case all the right Heirs are extinct, or by their not claiming it for any long time, are suppos'd to have made a tacit Cession of their Right; since it is not so much to the Person, as to the Authority (which we grant to be from God) that we pay our Obedience. 

But let us also for once suppose that there may be a legal Title to a Crown without a Right to exercise the Authority belonging to it, and a legal Right to wear the Crown, and exercise the Authority belonging to it, without an antecedent legal Right to the Crown itself; this is no such Absurdity as you suppose, if you please to consider that allowed Difficult between *huus praem* and *huus re*, with the reason of it: for *huus* an approved Distinction in Law, that one may have a Right to a thing, and another a Right in it; the one is a Right of a legal Claim, the other of a legal Possession: And that this may and must be in all Civil Governments, and mere legal Rights, appears from the different Laws and Customs on which such different Rights are founded. This I have hinted before, but must now explain it more particularly; in all Civil Societies there must be particular Laws to determine personal and particular Rights, and whatever is due to any Man by such Law is a legal Right: But yet we know these Laws can determine no Controversy without a living Judge; for if every Man were to judge for himself, every Man will make the Law to be on his side, and then we had as good have no Laws at all. And therefore the fundamental Law of all Societies, which is superior to all particular Laws, is this, That the last and final Judgment of Authority shall be taken for Law, and that shall be every Man's Right as to all the Effects of Law, which is thus adjudged him. Whosoever calmly considers these things, will find that it is impossible it should be otherwise, without overturning all Civil Governments: And this I have proved to you from the Example of a right Owner of an Estate, when out of his Possession by a Verdict of a Jury and an unjust Judgment in one of the King's Courts, that no Man ought to re-store him by Force to his Possession, till he has again revered that unjust Judgment given against him.

Tho I grant this is true in the Case of private Persons and their Inheritance, yet it is not as to Princes, who hold their Crowns by a Title superior to the ordinary Municipal Laws, and therefore are not only Kings by Law, but by Divine Right, and the fundamental Constitution of the Government, and so cannot have their Title adjudged by Parliament, as you suppose: for our best Divines have unanimously concluded out of Scripture, that all lawful Kings and their Royal Power is from God by Divine Right, and is not from the People, nor not in Elective Kingdoms (such as Poland for example) for even the Power all of the Royal Authority is from God, and not from any Law made by the People, and neither they nor their Representatives have anything to do to judge of it: for I would gladly know who made that Law which made the King; certainly the King did not make it, for that Law which made the King must of necessity precede and be before the King, who had his Royal Power and Kingly Office from that Law.

F. I see you are very hard put to it, since you are again forced to fly back to the Root of Divine Right in Kings, which is not to be derived from any Law made by the Consent of the People; and if this be true, I defere you would shew me how Kings can at this day owe their Crowns immediately to God, and not to the Law, since God does no longer confer Kingdoms by any express Designation of the Person, but by the ordinary Course of his Providence: and then pray tell me why all Princes whatsoever, when they are once seated in the Throne, let them come by it which way they will, must not derive their Power all of it from God; and consequent Kings, by an unjust Conquest or Ufnration, are as much from God as those who ascend the Throne by the Consent or Election of the People. For if the Peoples Consent do no more than deign the Person, but that it is God alone who gives him his Authority, then which way ever he obtains this Power of the Sword, which is the only Sign of God's conferring this Authority, it will be also the Ordinance of God; and consequent their present Majesties being once
feated on the Throne, are upon those Principles as much to be obey'd as the Ordinance of God, as King James, or any other Hereditary Monarch whatever.

But if you do not like this Doctrine, and tell me of a legal successeive Right which King James and his right Heirs have to the Crown, according to the fundamental Constitution of the Nation; this is plainly to own the King to be so by the Law of the Land, tho' in words you deny it: for every Hereditary Right is either a continued Usurpation by Force, which can give no Right at all; or a Right by Law, which is by the Consent of the People to entitle the Crown on such a Family: which certainly is to make a King by Law, that is, by the Consent of the People. But if you will suppos'd that it was the Authority of the first King alone who thus entail'd the Crown upon himself and his right Heirs, I dare say, you would shew me how the Crown could be so entail'd without the Consent of the People, so that his Successor may not alter it, and give it by his left Will and Testament to which of his Sons or Daughters he pleases; since Sir Robert Filmer himself acknowledges, that a Teftamentary Heir to a Crown in an absolute Monarchy, is as much by Divine Right as if he had come in by Succession; as appears by the Infrances he gives in Seth, who could have no Right to succeed his Father Adam in the Government of Mankind, while Cain his elder Brother was alive, by the Will of Adam his Father. The like I may say of Solomon, who by his Father's crowning him King in his life-time, and thereby making him his Successor, gave him a Right to rule over Adonijah his elder Brother. So that I may very well ask you, if the present Law of the Land did not proceed from the free Consent of the People testified by long Custom, or express Declaration of the People by their Representatives in Parliament; I desire to know why the King of England cannot as well settle the Crown by his left Will upon which of the Blood-Royal he pleases, as that it should be lawful for the English-Saxon Kings to exercise this Prae-rogative, as Dr. Brady suppos'd they did before the Conquest, without the Consent of the Great Council of the Nation? So that I think I may much better ask you what that Law was, and who made it, which you suppos'to make Kings prior to, and independent from the Consent of the People; since if there be any such Law, it is either as yet unknown to Mankind, or else all those who are once possed of Kingdoms, have an equal Title to them by Divine Right. But it is only some Divine Reasonless, or knowing in Politicks, who first started this Questition, whereas indeed there is no such great Mystery in it: for that Law by which the first King of England for example was elected, was not in being before the King was made, nor yet was the King in being before that; but when the first King was made, by the Consent and Election of the People, the King, and the Law that made him so, began both together: that is, the People by chusing him to govern upon certain Conditions, and he, by accepting the Crown upon those Conditions, was that Law by which he then took the Crown, and by which it has been held ever since that time. So that if the Crown ought to be enjoy'd according to a legal Right, and that there must be some Judges appointed of this Right, whenever any Disputes may happen about it, either every Pretender to the Crown must judge for himself, and then he will be both Judge and Partizan of his own Cause, or else it must be left to the Confiscation of every Indiv'dual Subject in England to side with what Party he pleases, that may thus pretend to it: and so there may be a dozen Competitors for the Crown at once, and all with equal Right, for ought that any body knows. Or lastly, this Right must be left to the Determination of some Civil Judges to judge whose Right it is; and who can these Judges be, who shall thus judge what are the antient Laws of Succession, and Rules of Allegiance, but the Great Council of the Nation? Therefore if they have already declared and recognized King William and Queen Mary to be lawful King and Queen of this Realm, I think every Subject of the same may very well justify their swearing Allegiance to them, not only by virtue of this Statute of the 11th of Henry the Seventh, which requires Allegiance to be paid to the King in being, but also from the Equity and Reasonableness of the thing it self, to hinder the Nation from falling together by the ears, and entailing Civil Wars from Generation to Generation, if the Subjects were obliged by their former Oath of
Allegiance to the King de jure, to endeavour to restore him by force of Arms. And before the Preamble to this Statute very well, no true man gets forth, "that it is not reasonable, but against all Law, Reason, and good Conscience, "that the Subjects going with their Sovereign Lord to the Wars, any thing "should lose or forfeit for doing this their true Duty and Service of Allegiance "to the King for the time being."

M. But pray tell me, is not this very strange and unjust, and that by your own showing, that a Prince should have a legal Right and Title to the Crown, without a Right to exercise the Authority belonging thereunto; for they must now pay Allegiance to the King in being, let him be ever so great an Usurper. So that indeed the Preamble to this Act is expressly false, since I think it is very unreasonable, nay against all Law, Reason, and good Conscience, to swear Allegiance to an Usurper; for by that means not only all good Subjects would be put out of a Capacity of endeavouring to restore the King de jure to his Throne, tho' ever so unjustly deposed or driven out, as in Duty they ought, but also those who were instrumental in this Rebellion, and in depriving the lawful Prince of his just Rights, may not themselves be able to restore him, which would put them out of all possibility of making amends for the wrong they have done him, and of making restitution, by again restoring him to his Throne.

F. If this be all the difficulty that is left upon your Mind, I doubt not but to prove to you, not only from the Law of the Land, that Allegiance may be lawfully sworn in this case, but also that it is for the common Happiness and Peace of the Country which is the main Object in this End of all Governments, that it must be so. And therefore I shall first freely grant, that tho' it is Rebellion unjustly to deprive a King and his right Heirs of the Crown, and that those who had a hand in it are bound in Conscience to endeavour to restore him or them to their just Rights again; yet this must be done by no other Methods but what are consistent with the publick Peace and Safety of the Commonwealth: for if a King de facto has once got possession of the Throne, and has been crowned and recognized by Parliament, from what has been already proved, I think it is very vain, that they ought to obey him not only from the very Letter of this Law, but also because I have now said all private Persons ought to submit their Judgments in this matter to that of their Representatives, who if they have judged falsely, are to bear the blame; but yet their Judgment for all that is to be held for good, till it be reversed in the same way in which it was given: since if after such a Recognition every private Person should fill be free to pay his Allegiance to him whom he suppos'd King de jure, it would certainly follow, that the Civil Society or Commonwealth must of necessity fall into Civil Wars; which is against the nature of Civil Societies, and inconsistent with the Duty of Self-preservation, which obligeth Men not to expose their Lives and Fortunes, but to obtain a greater Good than both those, which can only be the publick Good of the Community, and not the single Interest of any one Person or Family. And tho' I grant it is a great Sin in those who are instrumental in raising Rebellion, and who are thereby guilty of a very enormous Wrong, that which made it so, was not merely the Injury they committed against the Prince to whom (if alone considered) the Breach of an Oath (in withdrawing their Allegiance) could be no greater a Sin than the Breach of an Oath to another Person; but indeed the fatal Mischief and irreparable Damage they did the Commonwealth, is that which aggravates the Sin. And if a new Commotion to restore the King de jure would in all probability prove yet more destructive, and a Nation by being so much weakened by a former Civil War; and which would bear a new Civil War, which may happen so far to the weakening of it, as to expose it to the Invasion and Conquest of a foreign Nation, who may be Enemies both to our Religion and Civil Constitution; in such a case I cannot think it our Duty to restore a Prince by force, the ever so unjustly driven from his Throne. And therefore if I had been then a Man, tho' I should have been as much for bringing home King Charles as any body ought to be, yet I should have been only for it in the way in which it was brought about; for Allegiance should never have been desired, if it could have been had, but by an Army of French or Irish Papists. And the like I say now as to King James, seeing he is joined with the Interest of France, and is already gone into
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into Ireland on purpose to renew the War, by the Arms and Affiance of those, whose Fathers, as well as several of themselves, did all they could to destroy not only the Royal Power, but also the English Religion and Government in that Nation.

And therefore I must freely tell you, that if even Rebels have put it out of their power to make Reparation for all the Wrongs they may have done by rebelling against their lawful Prince, because he in possession is too powerful to be driven out again without a violent Civil War, and a general Concussion of the whole Commonwealth; this Reparation to the injured Prince being not to be made, without a greater Evil than that they endeavoured to avoid, it ought to be omitted till it may be done with more Safety to the Nation, or else not at all: I say, if there be no other way to make Reparation to their injured King, but by engaging the Nation in fresh Civil Wars, they ought not to attempt it by such unlawful and destructive means.

M. I confess the Discourse you have now made carries the greatest appearance of Truth of any thing you have yet said; since it is drawn from the publick Good of the Nation, which I grant to be comprehended under the common Good of Mankind; and you have done well to own it to be Rebellion, to deprive a lawful Prince and his Heirs of the Crown: yet that it is unlawful to restore them again to it, if we think it cannot be brought about without a general Subversion of our Religion and Civil Liberties, may be a Question.

I grant indeed, if we could be absolutely certain of this, there would be some colour for this Argument; but since future things are not capable of Demonstration, if the restoring our lawful Prince be a Duty incumbent upon every good Subject, we ought to endeavour it, tho' with some Danger and Hazard of whatever it incurs to us: for God will either protect us both in our Religion and Civil Liberties, for thus honestly performing our Duties (according as we are bound by our Allegiance) or if he has called us to suffer for the Truth, he will either find as Patience to bear it, or else provide us a way to escape. This I speak in relation to the French and Irish, whose Conquest and Malice you are so much afraid of, in case the King should happen to be restored by their Affiance: But indeed I think this a needless fear, since I suppose the King will be too wise to bring over so many of either Nation, as shall be able to make an entire Conquest of his Kingdom, left thereby both he and his Crown may lie wholly at their mercy when the Buñefs is done. Nor do I think it either in the power of the French or Irish to perform these dangerous things: not of the former, because (as I now said) I suppose the King will never bring over more of them along with him, than what may serve to make a stand against the Prince of Orange's Forces, till his good and loyal Subjects can come in and join with them to his Affiance; and as for the Irish, they are also the King's Subjects, and tho' ignorant, they are very industrious against the Protestant Religion, and the English Nation and Interest; yet they may be so governed and over-ruled by the King, as not to be able to do us any considerable Damage.

But as to the King of France, I do really believe he is far from intending to make an entire Conquest of this Kingdom for himself, much less desirous to make the King as absolute a Monarch here, as himself is in France: for as to King James, it is too much Confusion of his own Interest and Reputation in the World to feize upon the Kingdom of a near Kinsman and Ally of his own Religion, and who had been driven from his Throne chiefly for being too much in his Interest: And besides all this, he may very well fear, that if he went about any such thing as an entire Conquest of this Nation, all Parties may join against him as a common Enemy, and drive him out again, as the English Barons did Prince Louis in the time of King Henry III. Nor can it be the French King's Interest to make our King absolute here; for then having the Permons and Parlia of his Subjects wholly in his own power, King Louis might justly fear, that either this King or his Successors may prove as dangerous Enemies to the Crown of France, as ever they have been in former times, if ever our Kings should go about to revive their ancient Pretensions to France or Normandy, or make war upon some other Quarrel: and therefore I think it will be more for the Interest of France to leave us our Laws, Liberties and Privileges, as we now enjoy them; nay, to make an express Capacitation for them,
them, and when he has done, to foment those Jealousies and Disputes, that are still like to arise between the King and us about them, whereby to hinder us from joining against him; than by rendering the King Absolute to take them quite away, and put the sole Power of the Parli as well as of the Sword wholly into his hands.

To conclude, You do also very much misrepresent the matter in supposing, that tho' the King cannot now be reftord without falling into a new Civil War, it does therefore follow, that such a War is not to be defir'd for the publick Good of the Nation; since we shall thereby not only reftore the Crown to its right Owner, and the Succession of it to the lawful Heir; but also shall reftore Episcopacy in Scotland, and prevent the Church of England from falling into a dangerous Schism, by depriving the Abp of Canterbury, and as many other of the Bishops, who are so honest as not to take a new Oath, for standing out against it, by the Temporal Power of a pretended Parliament, without the Judgment of a lawful Convocation, who are the only proper and legal Judges.

You likewise as much mistake, in supposing that this War can no ways be finisht, but by so great a Conciliation as shall to much weaken the Kingdom, as to render it expos'd to the Invasions of foreign Enemies, in which you may be very much deceiv'd: for who can tell but the Hearts of this Nation may come to be so inclin'd to receive their lawful King, and his right Heir, and may be so weary of the present Uproar, as upon his first appearance in England, with an Army insufficient to defend those who shall come into him, so many of his subjects, if they consider this advantage, as will be advantaigeous to him with as little Bloodshed, as when he was driven out? And then I think no indifferent Man but will acknowledge that such a War would prove for the best, since it will not only settle the Government upon its ancient Foundation of a lineal Succession, but will also extinguish those fatal caues of War, not only from among our selves, but also from foreign Princes, as long as the King, and the Prince of Wales, and his lawful Heirs, shall continue in being; which I suppose will be longer than those upon whom your Convention has fettled the Crown, either in Prefent or Reversion.

F. I doubt not but to shew you, that all you have now said, is either built upon false Principles, or else deduced by very uncertain Consequences; for in the first place, the you doubt my Principle, That the People of this Nation are not bound to reftore King James to the Throne, if it cannot be done without the evident Deftruction both of our Religion and Civil Liberties, it certainly is a great mistake to suppose it to be our Duty to reftore him, when with Safety we may.) For if the Obligation of all Moral Duties whatsoever, is only to be judg'd of according as they more or less conduc to the Happines or Destruction of the common good of Mankind, (whereof this particular Nation makes a part) it will necessarily follow, that this Duty of reftoring King James, is not to be practis'd, if it cannot be brought about without the Destruction of our Religion and Civil Liberties, since it is only for the maintenance of those, that even Kings themselves were first ordain'd in this Nation; and it is evident, that this Kingdom may be sufficiently happy, and for the State it is now in, the neither King James nor your Prince of Wales be ever reftor'd to reign over us.

So that then all the difficulty that remains, is, That since his Reftoration is not otherwise to be brought about than with the allisance or great Numbers of French or Irish Forces, whether it be not only to small a hazard as you make it, but twenty to one, that his coming in upon these Terms will produce those dreadful Effects, which I say will certainly happen from War, as no way I grant that future things, especially in the Revolutions of Government, are not so capable of Demonstration as Mathematical Propositions, yet if all the Circumstances of Time, and the Temper and Disposition of the King himself, and those who are to join with him in bringing him in again, be consider'd, it shall appear, that morally speaking nothing less than the evident Deftruction of our Religion and Civil Liberties will follow; I think I may still positively affirm, that we are oblig'd to reftore him till this Temper of Mind be alter'd, and that he can be reftor'd without those fatal Consequences I now mention. And if these Cautions are not observ'd, I deny that God hath any way promis'd to protect either our Religion or Civil Liberties, or that he is bound to provide us a way to
to escape, as you suppose; if to perform this suppos'd Duty of Allegiance thus unfeasibly, we slight the only means God has ordain'd for our Preservation. But as for the patience under those Sufferings that may then happen, that is a very sorry reason to embrace them; since God may give us that Grace, if he pleases, as the only Comfort we can have left us, when by our own Folly and mistaken Notions of Duty, we have brought all those Evils upon our selves.

I shall therefore now proceed to shew you, that these Evils I speak of, must necessarily happen to us, in case King James be restor'd by the French or Irish Papists. In the first place therefore, it is very fallly suppos'd, that this Alteration can be brought about without an entire Subduing or Conquell, not only of their present Majesties, but the whole Nation; as is apparent since none but the Papists and some few of the Clergy, Nobility and Gentry desire his Restoration, and who if they were put all together, will not I believe amount to the hundredth Man, who would be either willing or capable to come in to his Affianctt with Men or Money: and therefore it is a vain Supposition to believe (as you do) that this new Revolution can be brought about without any more Difficulty or Bloodshed than the last, as long as the present King and Queen continue to govern us according to the Declaration they fabuliz'd upon their acceptance of the Crown, and the Coronation-Oath they have since taken; which I hope they will always do, since nothing but following King James's Example, as well as to Religion as Civil Liberties, can ever make this Nation willing to receive him, or your Prince of Wales, with so little difficulty as you are pleased to imagine.

Since therefore the business must be wholly done by force, I shall in the next place consider all those Suppositions you have laid down, as well in respect of the Persecution of the Irish, who are the only Hands that I see likely at present to do this Work. First, as to what you say, that the King would be too wise then to bring over along with him so great numbers of the French and Irish Nations, as shall be able to make an entire Conquest of this Kingdom, left thereby both he and his Crown may lie wholly at their mercy, when the Business is done; you have hereby granted as much as I desire. For if their Majesties are never like to be without an Army in England, of at least fifteen or twenty Thousand Men as long as this War lasts, and the Militia of this Nation, which are almost totally against King James's Interest, and disposed to above a hundred thousand Men; I think you yourself will grant that King James cannot attempt coming over hither with an Army of less than thirty or forty thousand Veteran Soldiers of the French and Irish Nations, tho' you should reckon the Papists and others who should come in to his Affianctt at twenty thousand more; who if they should be all together able to beat not only King William's standing Army, but the Militia of the Kingdom to boot, I desire to know what shall hinder them from making as perfect a Conquest of this Nation, as ever Cromwell's Army did, either of England or Scotland, and consequently of setting up what Religion or Government they please in this Kingdom; which, that it will not be what is now exerciz'd either in Church or State, I think any unpredjudic'd Man will easily grant me.

But your next Suppositions are altogether as precarious, That it is not either the Design, or Interest of the French King, to make an entire Conquest of this but the Papists are, who yet to make King James an absolute Monarch here. One of these I must needs believe will happen: for tho' perhaps that King may at present stand so much upon his Glory, as not to seize the Kingdom of a King-Man, and an Ally, wholly to his own use and benefit; yet it is most likely, that he will retain French Garisons in all or most of the strong places of England, not only for the security of the Charges he will have been at to place King James on the Throne, but also as a tye upon us that we shall never endeavour to drive him out again, let him be as he pleaseth. So that tho' he keep an absolute Conquest of us now, yet it may be in his or his Son's power to do it hereafter, if ever King James's Son shall go about to shake off that Yoke, when once the present Obligation is forgot, or the near Relation between the two Kings shall be farther remot'd. Nor is what you say less precarious, that it will not be for King Lewis's Interest to destroy our Liberties, and make King James an absolute Monarch, because the Kingdom will be then weaker and more divided
divided than it is now, by those Jealousies and Disputes we shall then maintain with the King about our Civil Rights: which is indeed so far true, if he governs when he returns in the same arbitrary manner as he did before, but if he governs according to Law (which no wise Man can expect) there needs be no more Divisions among us than were for a great while after King Charles-l's coming in.

But that the French King should fear, if he once made the King of England an absolute Monarch, and put the whole Power of the Parliaments as well as Swords of his Subjects in his hands, he might then become so formidable as to be an equal Match to France if self, and so able to demand either the whole Kingdom, or any part of it, is yet more pleasant; since France is now, in comparison with England, not only in respect of Men, but also the Revenues belonging to the King, as ten to one; and I think I may very well maintain, that if England should once come to be governed as France is, it would be so far from growing richer, or more powerful thereby, that from the infinite Grievances and Discontents that such a violent course of Government would cause in the minds of the People, of all sorts and Conditions, by those excessive Taxes and Oppressions, that would follow from such an Arbitrary Government, the Kingdom would quickly diminish and decay, as well in People as Trade and Riches, and consequently in the Power too, which is but the value of both wealth withstanding whatsoever the fair appearance of an outwardly magnificent Court, and a great standing Army may produce, in the minds of those that do not truly consider or understand the true Grandeur and Safety of the Prince, and Happiness of the People.

But granting all this to be as you suppose, pray tell me what shall become of our Religion and Civil Liberties, not only in respect of the French King, but as King himself? Can it be supposed by any one believer, that the Church of England shall cease to be instigated by the Jesuits their Confessors to destroy the Northern Hereisy, (as they term our Religion) as well in England, as it has been in France? No, the public Prudens in Savoy have been too recent an Example, that the King of France would carry the Persecution to the same degree here, as he did there, and that King James being wholly in his power, will not be able to withstand his Commands, as well as the constant Solicitation of his Confessors of the same Order and Principles as those of the French King, to which Holy Father, the Protestant Religion in France and Savoy does chiefly owe its Destruction.

To conclude, let us suppose that King James shall prevail in this War by the help of the Irish Army, now rais'd by the Earl of Tyrconnel; can we expect better Quarter if the King prevails by their Arms and Affiance, than if they were entirely French? For having once conquer'd this Nation, it will not be in the King's power to govern them so easily as you expect; but being in favour in the Power, they will not only preserve what they pleas'd of the English Nobility and Gentry in Ireland, but in England too, which will be declar'd forfeited by their Owners opposing of King James: and then I will leave it to your self to judge in what a Condition we shall be both as to our Religion and Civil Liberties, when the King shall come to be master'd by Men who are declar'd Enemies to both, neither will it be in the power of those few moderate Men, either of the Popish or Protestant Religion, who take King James's part, to hinder it, since the other Party will by means of the Priests and Jesuits, and the Interest of France, run down all such Counsels, and they will be look'd up but as Trimmers (as best) that oppose it.

But as for King James himself, I desire to know of you what trust there can be put in him, or what assurance he can give us for the maintenance of our Religion and Civil Liberty, more that the renewing of those Promises, and that Oath which he generally breaks? This being most likely to be the Consequence of things, if King James prevail, I shall leave it to you or any indifferent Person to judge, if what I have undertaken to prove, be not as clearly made out as future things are capable of, and sufficient to deter any Man that loves his Religion or Country, from joining in such pernicious Designs.

M. I confess you have made a long and tragical Narration of the dreadfull Consequences that may follow, both upon our Religion and Civil Liberties, if
the King prevail by the present assistance of the French or Irish Arms; and were I lure of all this, I should so far agree with you as to this point, as never to join with the King’s return; and yet I may be said, and yet I dare not speak upon myself as freed from that Allegiance I owe the King, as well by being born his Subject, as from the Oath I have already taken to him and his Heirs, as long as they are in being; for I think I have already prov’d as well from Law as Reason, First, That the Bond of Allegiance (whether sworn, or not sworn) is in the nature of it perpetual and indissoluble. Secondly, That it is so inseparable from the relation of a Subject, that also the exercise of it may be suspended by reaction of a prevailing Force, whilst the Subject is lack such Force, viz. where it cannot be imagin’d how the endeavour of exercising it, can be effectually servable to restore the Sovereign Power to the right Owner, for the Establishment of that publick Justice and Peace wherein the happiness of Commonwealths consists; yet no outward Force can so absolutely take it away or remove it, but that ill it remaineth virtually in the Subject, and obligeth to a vigorous endeavour (whenever the Force that hindereth it is over) and to the actual exercise of it for the advantage of the Party, to whom of right it is due, and the advancement of the common Good thereby, upon all fit occasions. Thirdly, That no Subject of England, that either hath by taking the Oaths of Supremacy or Allegiance acknowledg’d, or that not having taken either Oath, yet otherwise knoweth or believeth that the true Sovereign Power in England to whom natural Allegiance is due, is the King, his Heirs, and lawful Successors; can without sinning against his Conscience, take any new Oath, or do any other Act whereby to transfer his Allegiance from the King or his Heirs, to another Party who have no right to it, and thereby put himself into an incapacity of performing the Duties of his bounden Allegiance to his lawful Sovereign, when it may appear to be useful and serviceable to him. This is the express Opinion of the Learned Bishop Sanderfor in his Case of Conscience concerning the lawfulness of taking the Engagement; which tho’ he did not think absolutely unlawful, because it might be interpreted in a dubious and qualified Sense, without abjuring the King’s lawful Right to the Crown; yet can never be taken in the like doubts; and I have already prov’d the words in the Oath being to bear true Allegiance to King William and Queen Mary, would be indeed a transferring of our Allegiance from our lawful Prince to others, which is absolutely unlawful.

F. I am somewhat pleas’d to see you are so far come off from your Bigotry, as not to think your self bound to a lift for the reebling King James, as long as it is no otherwise to be done but by the evident Destitution of our Religion and Civil Liberties; but yet you say you cannot take the Oath, because it is Bishop Sanderfor’s Opinion, as well as that of our best Lawyers, that Allegiance is perpetual, and untransferrable to another, whilst the King or his Heirs are in being. Now let me tell you (speaking as a lawyer) it may be prov’d from this Statute, as well as from the constant practice before that time, that Allegiance was due to the King de facto, and that by the Judgment of all the Judges in the Reign of Edward IV. But to speak of this matter, either as a Civilian, or a Divine, I think we are freed from the former by the Law of Nations, as well as the Law of God. For as for natural Allegiance, by which you supposeth a Man is indissolubly subject to the King in whole Territories he is born, and that as long as he lives, I can by no means understand, that being born in a Country, makes one a Subject for all his Life to the Government of that Country; or why being, when born, in a Country, it should make one become a Subject, more than being in the same Country at another time. Besides, common Experience hews this to be false, because whoever is born in a Country, where his Parents are Foreigners, may (as it is allow’d by all) leave that Country when he pleaseth: but perhaps it may be said, he is a Subject to that Prince where his Parents were born; but what if they were born under the same Circumstances? Or supposeth his Parents are of different Countries, as if a Dutch Woman, and an English Man have a Child in France, since France does not pretend to him, which of the Nations can claim him for their Subject, or must he be divided? So that I can see nothing at all in this notion of natural Allegiance, that can oblige any body in Conscience to observe it.
M. If then natural Allegiance signifies nothing, pray tell me is no body obliged to obey the King, or not to plot against him, until he has taken an Oath of Allegiance to the contrary? This would make mad work indeed, and upon these Principles no Man were bound to obey the King or his Laws, and not to conspire against his Person or Government, until he had taken the Oath of Allegiance; so that three parts of four of the Kingdom would be absolutely free from this great Duty.

P. No, Sir, you are very much mistaken, since I think I can found Allegiance on the King and Government upon a much firmer Foundation than that of being born his Subject; that I am so far from supposing that our Obligation commences from our taking the Oath of Allegiance, that tho' I think it may serve to enforce our former Obligation to our King and Country, yet does it not superinduce any new Obligation thereto: for indeed our Obligation to any particular Government may be made out from much furer Principles, viz. That every Person, tho' he be born free, yet is he, for the sake of his own Safety, obliged to part with his Liberty, and put himself under the Protection of some Government; nor can he be secure in what he enjoys but by it, nor can he have a Right in a Country (that is already possessed) to Property, but by owning the Government of that Country: and when by enjoying the Rights and Privileges of the Subjects of that Commonwealth, he has owned himself a Member of it, and a Subject to its Government, he is then bound to maintain this Government, and also the King that administers it, from a double Obligation: the one particular in respect of himself, and that Protection and regard from him; the other more universal, proceeding from that Duty which is incumbent upon every particular Subject to maintain the Peace and Happiness of the Commonwealth, as long as he continues a Member thereof. So that he is bound never to disturb it, as long as the main ends of Government can be had and enjoyed therein; and this is the only means that I know of, by which any Man (except by express Oaths and Promises) can consent to become Subject to any single Person or Government. Now this tacit Consent of particular Allegiance to the King and so finely given, unthinking People take no notice of it, and suppose they are as naturally Subjects as Men, and consequently that they have no more Right to free themselves from their Subjection, than from their human Nature; nay, must suffer themselves to be destroyed rather than endeavour it, let the Government oppose them ever so unmercifully: which is indeed to reduce Men to the Condition of brute Beasts, who belong to this or that Owner, because he either bought them with his Money, or else because they happened to drop from their Dams upon his Ground.

From what has been here spoken, I think we may deduce this general Conclusion. That every ordinary Subject, who enjoys the common Benefits and Protection of any Government, is bound in Gratitude not only to obey it, but also to be true and faithful to it during the time he lives under it, and is bound likewise not to conspire against it: and therefore that Oaths do not alter the nature of Allegiance, or make it due where it was not before, or any ways extend it, but only add a new Tie to pay that Allegiance which is due upon the account of Protection. He that lives under a Government, tho' he has not sworn to it, owes it the same Allegiance as he that has; and if he should deny his Allegiance to it, would be equally guilty of treason, tho' not of Perjury. It is evident by the universal Practice of Mankind, that no Subjects ever thought themselves obliged by those Oaths of Fidelity (which all Governments have constantly imposed on them) when they could not be protected by them, and that this failure of Protection did not proceed from any fault in the whole Nation, or People themselves. And this may be proved by the common and constant Practice of all the Subjects of Europe; for who does not know that the Subjects of the King of France's last Conquests in Flanders, have been forced to swear Allegiance to him, tho' they were satisfied that his Title was unjust, and that their natural Sovereign the King of Spain, to whom they had formerly sworn Allegiance, is still living? We have had also a late Example of the Subjects of the Duke of Holstein-Gottorp, who having both his Person taken Prisner, and his Territories unjustly seized upon by the King of Denmark, in time of Peace, the Subjects of the said Duke were forced to swear Allegiance to the King, notwithstanding their former Oath to their Master; nor
nor do our modern Cassuits, as I know of, blame them for so doing. And why the People of England should be tied to harder Terms than all the rest of Europe, I wish you could give me a sufficient Reason: since the Legislative Power of England (wherein it is certain the People have a Share) are presumed to recede as little as possible from natural Equity, and therefore design, by imposing such Oaths, only the Good and Preservation of the Civil Society, whose Interest it is, that they who have the publick Administration of Affairs should not be disturbed: but it is not at all material to that end, whether this or that Man hath this Power, provided it be well managed; nor can it, without the greatest Absurdity, be supposed, that such numbers of Men as Societies are composed of, who are, by Nature equal, should oblige themselves, by the most sordid Ties to become more miserable by living without Prosecution; may to lose even their Lives, rather than own the Government that can and does protect them, for no other reason but such an extraordinary fondness to this or that Person, or Family, as to fancy the Government to be inseparable from him, not the Necessaries or real Conveniences of Life, but only an Office (for Government is no other) which is but an imaginary Happiness. I grant therefore, that People should be true to those that have the present Administration of Civil Affairs, as well as the Oaths of Fidelity they give; and it is evident from the intent of it, that the late Oath of Allegiance required no more, and to extend it farther than the King in being, is not reconcilable with the Reason, End, and Design of paying Obedience, which is the Peace and Happiness of the Civil Society; which can never be maintained, if People may, for the sake of a single Person, disturb him that has the Administration of their common Affairs; and it would require Impossibilities, because private Persons are incapable of paying Allegiance to a King, when out of pollicion of the Government.

At. Notwithstanding what you have said, I think I am able to convince you of divers great Mistakes you have now committed in this Discourse of natural Allegiance, as also in the Obligation we are under by the Oath of Allegiance to King James. For first, as to natural Allegiance, you are very bold to suppose there is no such thing, when all your Law-Books hold so expressly that there is; I am sure this is to be guilty of the Fault for which you have already been reproved, and being better than the Laws themselves, are misapplied and misused, that this natural Allegiance merely springs from hence, that the Persons obliged by it are only such as are born within the King's Dominions; for Persons born without the Realm may be also his natural Subjects, as are the Children of Embassadors born beyond Sea, and the Children of Aliens born within the Kingdom, which are not therefore natural Subjects of the King: So that the mere Circumstance of Birth does not alone entitle any one to the Privileges of a natural Subject, nor consequently bind him to all the Duties of a natural Allegiance. But it is therefore called natural in our Laws, because, as the best Lawyers have affirmed, it is founded upon the Law of Nature, which gives a Sovereign Power a Right to the Allegiance of every one who is born under the Jurisdiction of it. As every Son is born a Subject to his Parents, and is by the Law of Nature obliged to honour, obey, assist, and support; so also he is born a Member of the Body Politick, and by consequence a Subject of it, and accordingly, by the same eternal Law, is bound to pay all faithful Service and Obedience to him, when he is in a capacity to perform them.

But your next Mistake is yet worse, when you confound that common Obligation of a Foreigner or mere Denizen to be true and faithful to the Commonwealth wherein he lives, with this natural Allegiance of every English Subject: for tho I grant the taking the Oath of Allegiance does not enforce any new Obligation upon him that takes it, more than the former, he is yet for all that, I think you will not deny, but that there is a great deal of difference between that common Obedience or Submission which such a Foreigner pays to the King and his Laws in a Country where he sojourns, and that true and perfect Allegiance arising either by Birth, or from such a Stranger's being naturalized, and by taking the Oath of Allegiance, becoming as true and perfect a Subject as a natural Englishman. And hence it is, that in all Wars declared between neighbouring Princes, whatever Subjects of theirs shall
presume to stay and reside in each other's Dominions, after once they are re-called home, may be justly executed as Traitors whenever they shall be taken.

And therefore the Grant I grant that every Person now living in England, and of ripe Age, is obliged to obey your King and Queen de jure, in all ordinary and lawful things, which tend to the publick Benefit and Defence of the Civil Society or Commonwealth, and which being for the Benefit of the King de jure, and his Liege People, it is to be morally supposed they have his tacit Consent for what they do, as long as it tends only to this end: yet does it not therefore follow, that the bare Protection of this usurped Government, and the Enjoyment of the common Privileges of a Subject, should give such a King de jure, or Government, a Right of exacting an Oath of Allegiance to them; since I have already proved, from the true Signification of being true and faithful, as also from the legal Signification of the word Allegiance, that no true Subject can lawfully take it, without renouncing his Allegiance to his natural Prince: seeing not only a bare Neutrality or Obedience in not transgressing the Laws is thereby required of them, but also an active Obedience and Duty in performing the King de jure's Commands, and the defending him, whenever there is occasion, in his ill-gotten Power.

But the only Difficulty being, how a strict Observation of this Oath can conflict with the Quiet and Happiness of the Subjects, whenever a new Oath of Allegiance is imposed by the King de jure, to the Subjects, be all ruined that do not take it, if it be once offered to them; this Difficulty might be easily removed, if the whole Nation would flock firmly to the Duty required by their former Oath of Allegiance, and resolve never to take a new one: for then the Numbers of the Refusers would be so great, as that they would be more than could be made to suffer for their refusing it. I speak of such Subjects as are in our Cafes, and who are not forced by a Prince, who either has the Right or Power of a Conqueror, to compel them by force; and therefore your Inhabitants of the Subjects of the King of Spain, or of the Duke of Holstein, who were conquered, or else as good as conquered by the Power of France and Denmark, signify nothing: whereas we are only overlooked by an inconsiderable number of Dutch and Germans, and might set our selves free, if we would give but a vigorous Effort towards it. For that K. William is a Conqueror over the whole Nation, I think you dare not affirm; and unless he were so, he could challenge no Right to our Allegiance as such: and therefore I must still believe, that the Oath of Allegiance I have taken to King James and his Heirs is perpetual, unless you could show me that their Right is determined, which you have not done by any thing you have yet said. I cannot therefore be of your Opinion, that the bare Protection of an usurped Power can justify our swearing Allegiance to it, either in Law or Conscience; for then all Men had been obliged to pay as firm an Allegiance to the Rump Parliament, and also to Oliver Cromwell, as to King William and Queen Mary, since both the former protected the People as much in their Religion, Civil Liberties, and Properties, as the latter I fear will ever do.

And that the bare Protection of a Government does not give it an absolute Right to the Allegiance of all those that enjoy their Protection, I think may be sufficiently proved from the Instance of a Frenshman, or any other Foreigner; who tho' by his living here, and enjoying the common Protection of the Government, I grant he is obliged to be obedient to its Laws, and is not to be excused or defended in a false or unjustifiable; yet this does not discharge him from his natural Allegiance which he still owes to his former Prince, so as to do any thing which may prejudice that Allegiance he owes to him, either by conspiring or fighting against him. And this was solemnly declared to be Law by the Judges of the King's Bench, in the case of Dr. Story, in the 13th year of Queen Elizabeth: He being a violent Papist, fled over into Flanders to the Duke of Alva, and there conspiring with him to invade this Kingdom, and being afterwards taken and brought to the Bar, was tried as a Subject, and as a Subject, as the Crown declared, was to plead as such, because he said he had sworn Allegiance to the King of Spain; notwithstanding which Plea he was executed as a Traitor, as you will find at large in my Lord Chief Justice Dyer's Reports: which Judgment is also confirmed by the Lord Chief Justice Coke in Calvin's Cafe, where he expressly affirms, "That a Person born under the Dominion of the King of England, owes

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"" him
"him perpetual Faith and Allegiance, and this by virtue of the Law of Na-

ture, because *Jura naturalia sunt immutabilia." From whence will also ap-
pear the Fallacy of your Conclusion, that Oaths of Allegiance extend no fur-
ther than to the King in possession, or to that Government to which we do at
present owe our common Protection, and therefore that our Law has a much
higher Consideration of this inherent Allegiance that belongs to a King *de jure
as to his particular Per son, and his Heirs: So that it cannot be indifferently
paid to any body else, who can, by feizing of the Government, force us to
owe our Protection to them; which appears by what my Lord Coke hath also
laid down, to have been agreed by all the Judges upon this Oath of Allegiance
in Calvin's Case, as I cited it to you at the beginning of this Evening's Con-
versation. So that I confess I much wonder, considering what he has there
said, how he can so positively maintain as he doth (in the place you have also
quoted) that Allegiance is due to the King *de facto, and not to him *de jure,
whil'st the former is poislid of the Crown: since it seems a flat Contradic-
tion to me, how a Subject is to pay Allegiance, as long as he lives, to the King
and his Heirs, of Life and Member; that is, until the letting out of the last
Drop of our dearest Heart's Blood, and that in all places whatsoever; and
yet that this Obligation should last no longer, than whil'st the King *de jure is
in actual possession of the Throne. And therefore I think I have very good
reason to maintain, that we are still obliged by our former Oath of Allegiance
to King *James, so as not to take a new one to any other King, unless we had
been unframed of this by an absolute Conquest, which you yourself will not
maintain to be our present Case.

F. I confess you have now argued this Point very stiffly, and I think what
you have said carries with it the greatest appearance both of Law and Reason
of any thing you have yet urged upon this Subject; and therefore if I can
fairly answer it, I hope you will come over to my Opinion, and take the Oath
which is now required of you. In the first place therefore, I cannot deny,
that all you have said concerning a natural Allegiance due by Birth to the King,
is true according to our Laws; and I do my self allow the thing, viz. That
Allegiance is due to him, tho' not for the Reasons upon which our Lawyers
have founded it, but upon those I have already given. And therefore grant-
ing it was held to be Law in the Case of Dr. Story, that his Plea of becoming
a Subject to the King of Spain was over-ruled by the Judges, and he re-
fusing to make any other Plea, was condemned upon a *nobil diis; yet this be-
ing only a penal Law, I think obliges the Subject to the Penalties if he be taken
but does not oblige him in Confidence never to change his Prince or the Go-
vernment he was born under without their Consent, let his Circumstances be-
come ever fo uneasy under it. And that this is so, I need go no further than
the late Case of the French Refugees, who though they are strictly commanded
by their King not to stir out of France, whatsoever Persecution they may suf-
fer; yet I think no Man of Sense can blame them, if, being persecuted there,
that they now go into other Countries, and are Naturalized Subjects or Denizens, at least in that Government whereunto they re-
move. And this is so known a thing, that no Cautiul, as I know of, thinks it
a Sin in such Subjects of England, as finding it for their advantage, go over
into another Country, to settle and make their Fortunes, and are there natu-
rnalized, or made free Denizens in those Kingdoms or Commonwealths where-
unto they remove; nor are such Persons obliged in Confidence to return home
upon the Command or Summons of that Prince, to whom you suppose them
to be Subjects by Birth. Nor is your Argument at all convincing, because
a Man owes a Duty to his Parents by the Law of Nature, and by being
born their Child, that therefore the Subjection to the Prince, under whole
Government he is born, must be alike perpetual, since the ground upon which
you found this Confidence is altogether false; for I have already proved,
at the first Meeting we had to discours of these Matters, that a Man's being
begotten, and bred up by his Parents, does not make him become their Sub-
ject or Servant in the State of Nature as long as he lives, so that he may ne-
ever withdraw himself from their Subjection without their leave.

But in the next place, I think I am as little mistaken in my Notion of Al-
legiance, which I suppose every Person, who is a true and perfect Subject of the
the Government, owes to the King or Sovereign Power thereof: for tho' grant there is a great deal of Difference between that imperfect Allegiance, or bare Submission, which every Foreigner owes the King or Government under which he resides, and that more perfect Allegiance which every Subject owes the King, who enjoys all the Rights and Privileges of a true Englishman; yet to let you see that this Distinction proceeds not from the absolute Protection of his Person and Goods by the Government under which he lives, but by his being naturalized, and becoming thereby a perfect Member of this Civil Society, it is plain from your own showing: and therefore whatsoever not only enjoys the common Protection of an Inhabitant, but also all the Rights and Privileges of a true English Subject, is bound to swear Allegiance, if required, to the King or Queen of S. without enquiring into their Right or Title: For if they are Strangers, or have never taken any Oath or Allegiance before, they cannot be under any former Oath. And as for natural Allegiance, I have already proved it to be a mere legal Notion, and this Allegiance I have also proved to be due to the King and Queen of S., not only from the Opinion of the Judges in Roper's Case, but also from my Lord Coke's Interpretation of the Statute of Treason; which tho' you suppose to be contradictory to what he had before laid down in Calvin's Case, yet if you please better to consider of it, you will find it not to be so; for tho' it is true the Judgments in these Cases, that the Oath of Allegiance is in "definite and without Limitation, as being made to the King and his right "Heirs; and also that it extends to the vesting of Life and Members, and: "to the letting out of the last Drop of our Blood;" yet is this ill to be understood only of such a one and his Heirs, who still continues to be King in a legal Sense, which can be only he who is King for the time being, as he is filled in this Statute of the 11th of Henry VII. and only during the time that he continues in actual possession of the Throne. And therefore the word King, or Majesty being indefinite, and without having any respect to his Title, whether by Defeat of Blood, or else by his being crowned and recognized by Parliament, it is no Contradiction to suppose this Allegiance is only due to the King in this limited Sense, according to the Statute of Henry VII. Where pray take notice, that I have made this Allegiance to be only due to Kings and Queens of S., because they only are within the Intent and Letter of this Statute, as also of that of Treason, according to the legal Government of this Nation by the fundamental Laws thereof, and can no ways be extended to any other Powers under other Titles, such as the Rump Parliament under the Title of a Commonwealth, or Oliver Cromwell under that of a Protector; who tho' they took upon them to protect the People after a fort in their Lives and Estates, yet since it was not according to the true Rights and Privileges of the Subjects of this Nation, which they highly violated, and in some points quite destroyed, and that they also took without upon them this False Title of the Conquest of the lawful Representatives of the Nation assembled in a full and lawful Parliament; I can by no means allow them to have given the People such a true and legal Protection as the Law requires to constitute a true and perfect Allegiance, or can make them to be the supreme Power of the Nation, and within the Statute of the 25th of Edward III. So that this Statute, and that of the 11th of Henry VII. must be our Rules in this Case.

But I return to the Expedition you have formed out to hinder the People of this Nation from being ruined, if they do not take the Oath of Allegiance to their Majesties, which is by a general and absolute Refusal of it; and this you suppose, if unanimously agreed on, would hinder them from suffering any thing by this their Refusal. And you think they are also strong enough to oppose it, because the King has only a small Army of Foreigners, which he still maintains here; and this you think may lawfully be done, because their Majesties do not claim by Conquest, but by the Election of the Convention, and therefore that this Case does not come up to that of the Subjects of Flanders and Holstein: in which Argument I doubt not but to shew, that every one of your Soppotions are false. For tho' the Nation is not conquered, yet it is certain that all private Subjects are under as great a Restraint by this legal change of the Government, as if they were in the power of a Conqueror: for to rest would be equally fatal to them in both Cases, and there is no
no visible Power nor Authority that can defend them against the present Power, in case they should go about to refuse this Oath when it is offered to them. And therefore tho I grant the King's standing Army of Foreigners is but small, in comparison of the whole Nation, since he does not intend to keep us in subjection by force, but only to hinder any sudden Insurrection of those of your Party; yet besides all this, God be thanked, their Majesties have the main Body of the common People of the Nation on their side, who are sufficiently able to destroy all those that shall go about, to make those vigorous Efforts you so much desire. So that you have nothing else to plead, but that which I hope never to see, that we are not under a Force, because we still entirely enjoy our Religion, Liberties, and Properties. And tho the King, out of his great Goodness and Modesty, did not think fit to insert upon his Title by Conquest over King James and his Adherents; yet I think I have already proved at our last Meeting, that he may as justly claim by Conquest, as his Name-fake William I., since he came not over to conquer the Nation, but to vindicate his former Right; and after his Conquest of King Harold, could have no just Title to the Crown, till he had been formally elected and recognized for King, according to the Laws and Customs used at that time. And why the Nation might not do the same thing now for their Deliverer from King James's arbitrary Power, I should be glad if you could give me a sufficient Reason. But if the whole Nation should have been as peevish and discontented as those of your Principles, and should not look upon the King as their lawful Sovereign, because he does not claim by Conquest, it would be altogether as grateful and reasonable, as if a Woman having, by the affittance of an honest Guardian, restored from being ravished, and afterwards finding she in love with her himself, should court her to marry her; she should refuse him, because he had not ravished her when he might, or at least have forced her to marry him whether she would or no: apply this Comparison to the Cafe in dispute, and see if it does not hold. And therefore I must still maintain that the parallel Cases of the Subjects of Flanders and Holstein are good as to those of your Opinion, who have no notion how Allegiance can be transferred, unless by perfect Force and Conquest; since if you please to desire it, I'll undertake the Government shall seize upon your Estates, and imprison your Persons, till you do take the Oaths, as the Kings of France and Denmark did those who refused to swear Allegiance to them.

M. I have heard you a great while upon this Subject, and I wish I could say I were fully satisfied with your Reasons; however, since it grows late, I will not dilate this Point any farther, but will take time to consider what you have now urg'd; only I must needs tell you thus much, I could with the Princes could find some other way of securing themselves of their Subjects Piedadly, besides this Test of an Oath of Allegiance, which serves as a Snare to many pious and conscientious Men; whereas those of none, or at least of very loose Principles, will swallow any Oath that can be imposed upon them. And I am sorry to see so many of those, who I know are in their Hearts of my Principles, prevailed upon to take it, not out of Confidence, but mere weak and Advantage, and whom I doubt I shall see hereafter in this Government the more heartily or sincerely for having taken it. And therefore to tell you the truth, I begin very much to incline to Grotius's Opinion, that promisory Oaths are absolutely unlawful: yet considering the several Changes and Turnes of Government which we have seen in England for above forty years past, I am so far for the Good and Happiness of my Country, as to think every true Englishman obliged to far to obey the Powers in being, as may tend to the common Good and Defence of the Nation, by the Administration of Justice between Man and Man, and in the Punishment of Offenders, and for Defence of the Nation against foreign Enemies. But sure, methinks, this might very well be done without the imposing any Oath at all, either upon Magistrates or Officers, and much less upon ordinary Subjects; since if they are persuaded in their Consciences that it is lawful to act under this present Government, let them do it if they will: but as for the common People, I confess they are so stupid, that they have seldom any other respect of their Friend or Lawfulness of any Good or True Title, than the Safe or Advantage they find by it. And therefore upon the whole matter,
matter, I think it were much better for the Government, in the unsettled State it is in, to follow Cromwell's Example, and to impose no Oaths of Allegiance at all, since the Government may be as secure without it, as (for all that I can see) they can be with it; and as it is now managed, I see little it can serve for, but to distinguish and divide us one from another. And besides its being a Snare to the Consciences of so many that take it, it is like also to prove the Ruin of divers of our Bishops and other honble Men, both of the Clergy and Laity, who will certainly rather lose their dignities and employments than ever take it; which will also caufe a great Schism in the Church, as I doubt you will find when it is too late: whereas if thefe Men might have held their Bishops, and all other Prelates and Offices, without having this Oath imposed upon them, I doubt not but they would serve both the Church and State in their several Stations, according to their Duties, and as far as lawfully they could.

F. I cannot indeed but I think you have spoken very honestly, and like a good Eng- lishman in many things you have now said, in caufe your Intentions towards the present Government were real, as your words are fair; and therefore I cannot wonder that you who have been formerly a flif.f Afferter of the Lawfulnes and Necessity of the Oath of Allegiance, should now be for taking it quite away, since it grows too hard for your self, and thofe of your Opinion to diggeit: as if to oblige Subjects to defend their Governors, were a neceffary Securi- ty for your rightful Princes but were unnecessary for Princes who would: he furely think fit to oppofe to be Uppers. And tho' I confess I muft very much pity the overnice Principles of thofe of your way, who are truly peaceable and confcientious, and are like to be ruined by their Refuflal of it; yet for all that, I very much doubt whether it would be for the bleft to take this Oath quite away, since it would make a strange Alteration in the Government to admit all Persons into ordinary Charges, much lefs into employments of Truft and Profit, without taking any Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is unlawful to take an Oath of Allegiance without taking any other Oath at all. Your only Objections against it are these: (1) That you doubt that it is lawful...
which Oath (as appears by what we can find of it in Edward the Confessor's, and King William's Laws, which we have already recited; as also you may find it in Sir H. Spelman's Glossary, Tit. Fidelitae) was made to the King, as their Liege Lord, of Life and Limb, and which implies an active obedience to defend him against all his Enemies, without any exception of such as may claim by Inheritance, or Right of Blood.

Now this being so, I cannot be persaused that the Government ought to quit any lawful means whereby it may preserve it self, and dislinguish those who would really serve it from those who will not: and the perhaps the Government may find it self mistaken in its account in some Men, whole Consequences are large enough to swallow any Oath whatsoever; yet I think I may still safely maintain, that it is in less danger from a few such Libertines, than from those of your Opinion, who would not only keep their Places under this Government, but will also continue in a perfect State of War against it, let them be treated ever so kindly. And therefore with respect to those dreadful Consequences of Schifm in the Church, and the leisening and dividing our Party; as to the former, we must run the hazard of it, since it was never heard of that the Bishops, who are in some respects temporal Barons, held their Bishohipricks under any King since the Conquest, without owning his Authority; and I can also shew you, that the King and Parliament have either actually deprived, or else declared such Bishops Traitors to the Government.

So that if any such Schism be made, it will proceed from a Scandal unjustly taken by some scarceulous Men, and not by the Government. And as for the other Inconvenience, I think it is much safer for the Government to employ fewer Men, than by not knowing who are Friends or Foes, to trust all promiscuously; the perhaps, notwithstanding their utmost care, some Men of little or no Credit will have Places in this as well as they have had for many years; which can by no other means be prevented, as I know of, but by chusing Men of honest Principles, and sober Morals, and of a quite different Interest to those employed in the two last Reigns. And therefore I am so far from taking away the present Oath of Allegiance, that I rather wish that there were a new one more strict and full than the present, ordained to be taken by all those who shall take Offices, and Employments of Trust or Profit, whereby they should not only declare their present Majesties to be true and lawful Kings of this Realm, but also the King himself, and all their Enemies, King James himself excepted.

And I confess I cannot expect to great a Tenderness from this Government, which has been introduced by so much Artifice, that they should absolutely take away all Oaths of Allegiance whatsoever, since I doubt not but it will allume to it self all those Advantages which any former usurped Power could pretend to; yet this much I must needs tell you as a Friend, the depriving these Bishops, and I can also shew you, that the King and Parliament have either highly ungrateful, since many of them have been as violent Opposers of Popery and arbitrary Government as any Men in England, as appears by their late Petition to the King. If therefore the Archbishop of Canterbury, and those other Bishops I know to be so averse to this Oath, should be deprived upon the refusal of it, since it will be done uncanonically, by the temporal Power of an Act of this Convention, without the Sentence of the two Houses of Parliament, it will be thought by many Clergymen that shall pass from the preest Church-Communion, and of setting up distinct Congregations by those who will be deprived, and turned out of their Livings for refusing this Oath; and what the Consequences of that may prove, God knows.

But whereas you think this present new Oath not full enough, and therefore with there were another made, declaring the present King and Queen to be lawfully and rightfully so, &c. since this would amount to as good as an Oath of Abjuration of King James and his Title, I doubt it were better let alone; for I do not think the present Government will get any thing by it, since the intent of the Oath you propose can only serve either to gain the present Government more new Friends, or else to fix the old ones fatter to it, or else to discover secret Enemies. And if I can prove it will not serve for any of these three ends, I suppose you will grant that it were better to let it alone.

T t t

Now
Now that it will be so far from gaining it more Friends, that it will rather serve to drive away a great many from it, is apparent; since many Men are now in Offices and Employments, who think they may lawfully take this new Oath of Allegiance, as long as the present King and Queen are not therein declared to be lawfully and rightfully so, and I believe may serve them faithfully enough in their several Stations; who if they should come to be put to it, to declare and swear that they were rightful and lawful King and Queen, would rather lose their places than take it. Neither will it fix those that are for this Government farther to it, since those that are zealous for it, will be so whether they took any Oath or not. And I have already proved, that by the word Allegiance in this Oath, it is implied, that the present King and Queen are to be defended as lawfully so by the Swearer to it; which is the main reason that I, and those of my Opinion, can by no means think it lawful to take it. Nor lastly, will it discover any secret Enemies to your Government, since those, who being rightly instructed in the true sense of this Oath, and what is thereby required, shall notwithstanding take it against their Conscience, will I doubt take any Oath whatever the Convention shall think fit to impose; and nothing but the fear of losing their present Employments, or else the desire of getting new ones, could have made them take the Oath as it is, and to my knowledge it hath been taken by many now in Places much against their own Judgment, and I doubt the Conviction of their Consciences too.

I speak this only in relation to some of those Principles: but as to my self, and many more of my Acquaintance who refuse this Oath, we should be so far from taking any place of Trust under this Government, that we should not do it, tho' no Oath were at all required of us; since I think it not only wicked and unhonourable for an honest Man to serve a Party, out of the opportunity to betray it: but I also believe my self obliged by my former Oaths, as well as the Duty of a natural Allegiance which I owe the King and his right Heirs, not to serve those whom we look upon as Usurpers of their just Rights.

But if you would also have this new Oath to be an absolute Abjuration of the King and his Title, it will not only be unjust, but impossible; since who can tell but either by the Help of a foreign Force, or the general Content of the Nation, tired out by a long expensive War, either his Majesty or the Prince of Wales may be again placed upon the Throne? and then sure, whenever they shall call a Parliament to recognize his Title, they will, even according to your own Hypothesis, more lawful and rightful Kings than King William and Queen Mary, since they will not be only Kings de jure, but de facto. And therefore I believe it was out of this Consideration, that in all those long and various Contests which so often happen'd between Competitors for the Crown, they never presumed to propose to the Parliament the passing any Act to impose an Oath to abjure the Title or Person of the rival Prince. Thus it was in all the long Wars between King Stephen and Maud the Empress, as also between the two Houses of York and Lancaster; each of whom, as they prevailed in their turns, were very well contented to make the Subjects take the ordinary Oath of Pideliy to themselves, without abjuring each other's Title: and even in the later times of the Rump,Parliament, when the most violent and hot-headed Competitors might have imposed an Oath of Abjuration of the late Charles Stuart, and all his Family, (as they then termed his late Majesty) the moderate and moderate Men among them, such as Lenthall their Speaker, and others, stiffly opposed it, saying it would be a fighting against Providence to take an Oath never to own his Majesty for their King, if once he should come in again without their Assistance. And I think there is as much, if not more reason now against such an Oath of Abjuration, as ever there was then.

F. I cannot deny but you have spoken like an honest Man, in absolutely refusing to act under this Government, tho without an Act, unless you could be satisfied of the Lawfulness of the Powers to whom it is taken: and I must acknowledge that you therein act with much more Sincerity and Honour than divers of your Party, who tho they have been, and are of your Opinion as to the Justice of King James's Title, yet think they may take this Oath well enough in that looser and more qualified Sense you grant they put upon it. And therefore to answer in the first place what you have said against the impounding any more explicit or stricter Oath of Allegiance than what is already appointed, the
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the I think I can very well answer all the Arguments you have now brought against it; yet to let you see I am a fair Adversary, I will shew you how far I agree with you wherein I must differ from you.

In the first place therefore let me tell you, that you very much mistake me, if you believe that by this new Oath I propose, I do design an express Abjuration of King James, or the Prince of Wales, in case that King should ever happen to recover the Throne, and call a Parliament who shall again recognize him for lawful King, and the Prince for the right and undoubted Heir of the Crown. I am too sensible of the frequent Alterations that have happen'd in this Nation, to wonder or propose any such thing, since a Man may as well abjure the having a Fever or the Small-Pox; Change of Government, and consequently our Submission to it whenever it happens, being no more in our power to prevent, than the having those Diseases. All therefore that I intend by a stricter and more explicate Oath of Allegiance, is only for Men who shall undertake any Employments of Truth and Consequence, either Spiritual, Civil, or Military in the Commonwealth; since I grant the Oath, as it is now worded, may be sufficient for all ordinary Subjects, from whom a passive Submission and true Obedience is a sufficient Performance of their Duty: but as for all others that either now have, or expect to enjoy Places of Truth, I could with a stricter Oath were enjoin'd, afflicting their present Majesties to be lawful and rightful King and Queen of this Kingdom, and that the Taker will defend them in the present Possession of it, to the utmost of his power, against all Persons whatsoever, Kin. James and the Prince of Wales not excepted. And this I must think necessary, not only from that low and qualified sense of this Oath, which I gave and signed this Night's Conversation, and I deny but that many, not if the greater part of those who still hold such Employments, have lately taken it; and as long as they do so, how they can ever think themselves obliged to defend their Majesties against King James, or any French or Popish Forces that shall act by his Commission, I cannot understand: for since they now look upon the present King and Queen to have no other Right to the Crown than what their bare Power and present Possession of it gives them, and much of such Men take the first opportunity to act, and join with King James as soon as ever he lands with an Army, or appears upon our Coasts with a Fleet formidable enough to oppose ours; and they must also (if they are true to their Principles) in the mean time do all they can to protect and indemnify those, who, being of tender Consciences, cannot stretch it as far as themselves, and who understand do act as far as they dare for King James's Interest. And tho' it is true you have very solidly proved, not only as a Civilian, but like a Lawyer, that the word Allegiance, inserted in this Oath, does of its own nature imply not only that the King and Queen to whom it is taken ought to be rightly and lawfully so, but that more than a mere Neutrality, viz. a real and vigorous Defence of them and their Right against all their Enemies, is required and imply'd by it; and that is one great reason why you say: you cannot take it. Now tho' I confess the Reasons you have given are very weighty and convincing, yet since the words are in themselves too general, and doubtful for every Person that takes or holds such Offices or Employments of Truth, to understand it in that sense, it might be that there were another more plain and explicate Oath to be administered to those who expect to keep or hold such Employments, since the present Government cannot well be safe without it, as long as such Persons are employed, who can take the Oath with a mental Reservation of serving King James, as soon as they safely may by virtue of that former Oath of Allegiance they have taken to him.

This being the case, I shall now answer all the Objections you have brought against it, as well as I can; the better rather framed to keep the Matter alive, that they may serve your Designs whenever they are able, than to do any service to tender Consciences. First then I think I may maintain, that such an Oath will, notwithstanding what you have now said, have contrary Effects than what you are pleased to allow: for in the first place, it will gain the present Government more new Friends amongst the Neuters, who reetr their Allegiance to it only from its present Settlement, and the hopes of its Continuance, when they find that none can be employed in places of publick Truth, who will not take an Oath to acknowledge their present Majesties to be lawful and right-
ful King and Queen, and who will also swear to defend their just Right, which will for the most part put places of Trust into their hands, who will think themselves obliged faithfully to perform what they have sworn. Secondly, it will also fix the old Friends of this Government fatter to it, when they see none but themselves, or those who will really come into the Government upon their Principles, admitted to such Places of Profit and Trust; and whoever will take this Oath, are to be presumed to take it willingly and willingly, and understanding what they do, since the words will be of themselves so plain and evident, that they will admit none of those loose and doubtful Sentences in which so many have taken the present Oath of Allegiance. But your main Objection against this is, that a new Oath will not discover secret Enemies to the Government, because that most of the same Persons that have taken the former Oath, will take any other that can be required of them; which I suppose is not so, since you your self do grant that such an Oath would be a Snare to a great many, who if it were not for that, would serve this Government faithfully enough, that is to say, as long as there is no necessity of shewing their Good-will to King James, or no opportunity given of returning to their former Allegiance to him with safety to themselves: and you your self cannot deny but, according to their Principles, they must needs perform it whenever they think they may. Now certainly it were better to be rid of such false Friends (if it were possible to discover them) by such an Oath, than to keep them there where they are, only to take an opportunity not only of doing a mischievous chief, but of serving this Government very carelessly and lukewarmly, whilst they are in those places they enjoy; as also of favouring and alluring those that are the declared Affillets of King James's Right as far as they dare. So that there will be an infinite difference about their Oaths of Allegiance in such large, who have no notion of, do not wish to, swallow any Oath whatever, provided it will fit with their present Advantage; no Oath can tie them, or serve to discover their secret Sentiments: as I cannot deny but that there are too many Men of such large Concessions as you describe, and could heartily wish with them were fewer. Now tho' I grant an Oath alone will not keep them out, yet it might be in great part prevented, if the King would take a true Character of the Men fit for publick Employment, and from those about him, of whose Worth and former Integrity he is already fully satisfied. But admitting some such Men should get into places, and consequently when they are in, manage things for their own Advantage, (that is, vilely and corruptly;) yet even those will not prove half so fatal to the Government as those Men of half Concessions, who think they may take this Oath in their own sense, and for their own present advantage; and also believe it no Breach of it to allit King James whenever safely they may, because they hold their present Oath to be only temporary, but their former to have a perpetual Obligation upon them: whereas thole of no Principles never expect any Interest longer than it serves their own turns. So that as long as they can make their Fortunes under this Government, they will never desire to change it for another, in which they cannot but expect a much less free Enjoyment of their Liberties and Properties, which are things that all Men (as well thole who have no Principles, as well as those that have) desire to enjoy: And lastly, some even of these Men that have been formerly notorious Affillets of and against the Arbitrary Government of King James, have no name as well as fear of the loss of their Credits with thole of their own Party (which they are not assured but may again prevail) will flock to take this firstrer Oath, tho' they do not that which is now enjoined, since they can find an Evasion for the one, but will scarce be able to do it for the other.

M. But pray tell me, will not this new Oath, declaring King William and Queen Mary to be lawful and rightfull King and Queen of this Realm, and that all Men that take it shall afflit them against their Enemies, prove as imply'd Oath of Abjuration of King James; tho' not in express Words? And you have not yet shewed me that such an Oath hath ever been administr'd during all the various Cœlefts that have been for the Crown since the Conquest.

F. I allow that such an Oath would be a virtual and implied Abjuration of King James's present Claim to the Crown, and would also oblige all Persons to fight against him, and hinder his regaining it: which tho' I grant to be the des
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sign of it, yet would not such an Oath oblige us at all to abjure the obeying King James, should he be ever by an irresistible Providence be again set over us; since it is not abjuring of a future, but a present Right, which I now contend for. And that the antient Oath of Fidelity and Allegiance (as it is now called) was of the like nature, and taken in the same sense with this I propose, I shall shew you from the Form of the Oath of Fidelity, which all Freemen were to take at fourteen Years of Age, as appears by King William the First's Law, which I have so often cited; "Whereby all Freemen were so Cap. 5; affirm upon Oath, that within the Realm and without, they will be true and faithful to King William their Lord, and preserve his Lands and Honour with all Fidelity, together with his Person, and defend them against all his Enemies." So likewise in the antient Oath of Homage, which was taken by all the Earls, Barons, and Tenants in capite in England at the Coronation of our Kings, were these words; "I N. N. become your Liegeman of Phill. Spelman's Life and Limb, and earthly Honour, and Faith and Truth to you shall bear; and to live and die, so please me God." And in the latter Allegiance, which Sir H. Spelman gives us out of the Cuffomary of Normandy, the words were much the same, only the Perfon is there fwear to be true and faithful to the King and his Heirs (which they were not before Edward the First's time:) and also that they would hear of no Evil or Damage against them, which they would not hinder to their power. Now pray tell me, were not all these Oaths taken to the King for the time being, as lawful and rightful King and with all his Lords and Barons, and other Subjects, to defend him with their Lives against all his Enemies, then certainly all others who might pretend to, or claim the Crown, were included within this number. And tho' it is true in these antient Oaths there is no swearing to the present King, as lawful and rightful King, yet these words were needleless in that Age, when (as I have proved at our late Meeting) there was no difference between a King de jure, and one de facto: and whoever was crowned King, and blessed or recognized by the Great Council of the Kingdom, was looked upon as lawful and rightful King, and as such, was to be defended against all his Enemies: so that till that Distinction was broached, that there might be a King de facto different from the King de jure, (which I have proved was not elder than Edward the Fourth's Reign) there was no need of any mention of such words in the Oath of Allegiance as lawful King, and lawful Heirs, which are first found in the Oaths of Allegiance and Supremacy prescribed by the Statutes of Queen Elizabeth and King James: in the latter of which (it is new and different) it is first sworn, That the King of Fidelity lawful and rightful King; secondly, there is an express Abjuration of the pretended Authority of the Bishop of Rome; which shews that the Abjuration of the Temporal, as well as Spiritual Right of a foreign Prince (who claims it ever since King John's Resignation) is no new Invention: and lastly, there is an express Abjuration or Engagement to defend the King's Person to the utmost of the King's power against all Conspiracies and Attempts whatsoever. And why might not this be inferred into the former, and as such, and at the same time, I can see no reason, since they are only declarative, and pursuant to the late Act of the Convention, whereby after the Declaration of the Rights and Liberties of the Subjects, King William and Queen Mary are declared, "That they were, and of right ought to be by the Laws of this Realm, our Sovereign Liege Lord and Lady, and King and Queen of Eng- lish, &c."
Lay-Power of the Convention, without the Authority of a Convocation or Synod, such Proceedings are sufficient cause for all of our way to break off all Church-Communion with you, as soon as the Archbishop of Canterbury and those other Bishops shall happen to be deprived, and new ones put in their places; since all Church-Communion wholly depends upon the Lawfulness of the Bishops, who are the Supreme Pastors of our Church.

I shall say any thing of this, because I said so much concerning the new Oath I proposed as fit to be taken by those in places of Trust; but since you desire it, I shall say somewhat, the not so large as I could speak upon this Subject. First, I must tell you, it is altogether a new Notion, and contrary to the Doctrine of the Church of England, whereby it is declared that the Kings of this Realm have the same Power with Peers in the Church, as the Kings of Judah and Israel had among the Jews; therefore you must either deny this, or all this Canon, or else this Canone, or else this Canon, or else the Kings of Judah were to that of the Jews, may as well deprive the Archbishop of Canterbury (for example) for treason, or Disobedience to the Government, as Solomon did Abiather for anointing his Brother Adonijah King. And besides this, I can shew you many Examples of the like Power exercised by the Roman and Greek Emperors, in depriving and banishing not only Bishops, but Patriarchs, for Matters of State, without any Sentence of a Synod, or General Council of other Bishops. If your Doctrine were true, the poor Greek Church would be in a sad Condition, and all her Members in a perpetual Schism for some Ages past, since there have been scarce any Canonical Elections or Depri-

vations of the Patriarchs of any of the great Seas, viz. Constantinople, Antioch, and Alexandria, but they are all nominated, and put in and out at the Grand Signior's, nay Visier's will and pleasure; as any Man, who will but peruse Sir Paul Ricaut's Account of the Greek Church, easily see.

But this Error for want of considering the Original of Bishops' Pricks in England, and the true Meaning of this intended Deposition: for pray take notice, that the Episcopacy was settled in England in the time of the Britons, yet all the Seas, and Jurisdiction of the Bishops of this Realm, in respect of fuch and such Dioceses, have been wholly owing to the Bounty of our Kings, and the Authority of our Great Councils, which were also confirmed by the Pope's Bulls; and since the Reformation, to the Authority of the King and Parliament, as of all the Bishoprics of England, is all in the Reign. So that the Bishops mere Spiritual Power of Ordaining, Communicating, &c., may be derived immediately from Christ if you please; yet the Execution thereof, as limited and appointed to this or that Preceptor or Sea, is as mere a temporal Institution as that of Parishes, which was not introduced till long after Christianity was settled in this Island. So that the Execution of this Ecclesiastical Jurisdiction within the Sea of Canterbury (for example) being a Civil Institution, it has of course belonged to supreme Orders not only to confer this Power (as appears by their ancient Inveiglements of our Bishops per Ecclesiam & Annulam) but also to take it away for Treason or Disobedience against the State; since the King and Parliament do not pretend to deprive them of their Spiritual Character or Episcopal Orders, but only of their Right to execute it within such Seas or Dioceses. Thus, although the Archbishop of York, and the Bishops of London and Winchester, with the rest of the Popish Bishops, were deprived by Act of Parliament in the first of Elizaberth, for corrupting the Oath of Supremacy; the Queen and Parliament never took upon them to degrade those Bishops of their Episcopal Orders, but only to forbid their acting as Bishops in their former respective Dioceses. And therefore I doubt not but notwithstanding this Deposition, those Bishops might (if they had pleased) have ordained Priests, and confirmed Children, and that such Ordinations and Confirmations would have been good even in our Protestant Church, if such Priests or Children had afterwards entered Protestants; since it is very well known the Church of England owns the Orders of Bishops to be valid, which is more than we do for the Ordinations of mere Presbyters coming from those Protestant Countries where there are no Bishops at all: the like I may say for their Confirmations too.
But pray, Sir, consider how upon your Principles this Schism can be so universal as to influence and involve all England in it; for if the Archbishop of York (for example) will rather take this Oath than suffer Deprivation, and that the rest of the Bishops of his Province should be of the same mind (as I am credibly informed they will) pray tell me how the People of that Province (being a difficult Church, or Body Ecclesiastical, from that of Canterbury, as to all spiritual Matters, as having a difficult Convocation of their own) can ever be involved in this Schism by the Deprivation of the Archbishop and Bishops of the Province of Canterbury?

And pray also tell me, in the next place, how all the Members of the two Universities can ever be involved in this intended Schism, since they owe no Canonical Obedience to the Archbishops of Canterbury or York, nor to any other Bishop, but only to their Chancellor, and the Vice Chancellor as his Deputy, who exercise all Ecclesiastical Jurisdiction within the said Universities; and therefore their Church-Communion cannot depend upon the Canonical or Un-Canonical Deprivation of any Bishops in England. I desire you to consider these things as a Canon-Lawyer, and give me your Answe'r, if you can, against the next time we meet, and then tell me whether the Causes of this threatened Schism be so just and apparent, that it is like to involve so many of the wisest and most considerate of the Clergy and Laity into open Separation from the Church, as you suppose it will. Not but that I will grant there be many of the Clergy of this Opinion, who, as well out of Conscience as for their own Interest will be contended to set up and encourage such a Separation, thereby to make themselves Heads of separate Congregations, when they shall be deprived of their present Benefices and Employments, upon their refusal of this Oath.

M. I must confess I never heard so much said upon this Head before, and if you could make out to me all the Matters of Fact you have now insisted in, I know not but that I may come over to your Opinion; tho' let me tell you, this is the first time that ever you could shew me that any Bishops were deprived in England by the mere Lay-Authority of the King, and a Great Council or Convention of the Laity, whilst they continued of the same Church-Communion with those Bishops: for as to your Insistence of the Popish Bishops deprived by Parliament in the Reign of Queen Elizabeth, I doubt you will find it does not come up to the point in question, since the Queen and Parliament having then newly declared themselves Protestants, did not own them for true and orthodox Bishops, and consequently thought they might justly depart from their Communion, and upon the same account might deprive them, and the Queen might then nominate others of her own Religion in their places.

F. I cannot but differ from you in the Matter of Fact, as you now relate Vide Dr. Burnet's History of the Reformation, Part 2, for Queen Elizabeth and the Parliament were, when they made this Act, so far from being separated from the outward Communion of the Church of Rome, that Ms. was then Gid, and the Roman Priests still continued in all Parishes and Churches of England; and yet they still maintained an outward Communion, tho' their Bishops were deprived by the Civil Power, and others ordained in their Room. So that it is plain the Papists themselves had then no Notion of this new Cause of Schism, by reason of their Bishops being uncanonically deprived; nor indeed can we well vindicate the Honour or Legality of our Reformation, if the Protestant Bishops who succeeded in the places of those who were thus deprived by Act of Parliament, could not be Canonical, because the Predecessors deprived by the Lay-Power were still alive.

And to shew you that the King and Parliament have deprived even Bishops of their own Communion, and that such Deprivations have been held good, and that the King hath nominated new Bishops upon the Vacancy, you may see in Dr. Burnet's History of the Reformation, and in the Appendix to it; where you will find a memorable Act of Parliament of the 25th of Henry the VIIIth (before his Obedience to the See of Rome), by which, in the Year 1549, Campeggio, and Hieronimo de Chiniaci were deprived of the Bishopsricks of Salisbury and Worcester, which they had held for near twenty Years, and Campeggio had without doubt been install'd in it when he was in England.
The Act is itself being so remarkable, I shall give you some Passages out of it verbatim. First the Preamble sets forth, "That whereas before this time the Church of England, by the King's most noble Progenitors, and the Nobles of the same, hath been founded, ordained, and established in the Episcopacy and Degree of Prelacy, Dignities, and other Promotions spiritual, &c." (which sufficiently confirms what I but now assert, that all the Bishopricks were founded by our Kings, with the Consent of their Grand Councils or Parliaments); and then it proceeds to recite, That whereas all Persons promoted to Ecclesiastical Benefices ought to reside within the Realm, for preaching the Laws of Almighty God, and keeping Hospitality; and since these Prelates had not observed these things, but lived at Rome, and carried the Revenues of their Bishopricks out of the Kingdom, contrary to the Intention of the Founders, and to the great prejudice of the Realm, &c., in consideration whereof, it is enacted by the Authority of this present Parliament, "That the said two Sees, and Bishopricks of Salisbury and Worcester, and either of them, henceforth shall be taken, repaired, and accounted in the Law to be void, vacant, and utterly defunct, and any Inhabitants or Prelates." And then follows a Clause, enabling the King, his Heirs, and Succeedors, to nominate and appoint Succeedors (being the Natives of this Realm) to the said Sees, and the King did nominate Succeedors according to the said Act.

But admit this was the first time that ever it had been thus practiced, yet if it were then reasonable, and done upon good grounds, I cannot see but when the Necessity of the Church and State require it, and that the Clergy in Convocation are for-willed and wedded to some fixed Notions, as not to consider the Peace and Safety of the Church and Kingdom; why the King and Queen (who are acknowledged to be supreme over Ecclesiastical as well as Temporal Persons) may not, together with the two Houses of Parliament, make the like Law now, as was done in the first of Queen Elizabeth, for a leis matter: for none of those Popish Bishops, tho' they believed Queen Elizabeth to have no better than a Parliament-Tittle to the Crown, yet ever denied her to be their lawful and rightful Queen, only they would not own her Supremacy in Spiritual Matters.

So leaving the farther Diffusion of this Point to those who better understand it, I would gladly know of you what you intend to do, and what you would have us do, who are like to be made Deputy-Lieutenants and Justices of Peace: for if, as you yourself allow, there be a necessity that some Civil Government be maintained during King James's Absence, I desire to know of you how it can be managed, and who shall manage it, in case all the Gentlemen of England were on your Principle, and thought every Prelate the Oath of Allegiance to their present Majesties. For if King James be ever so much our lawful King, it is not now possible for us to be governed by him since he is gone, and God knows whether ever he may return again. Since then you cannot have him if you would, and that there is a necessity we should be governed by some body; and since it is also as certain, that those who actually govern us will exact this or the like Oaths of Allegiance from us, as were due to their Predecessors, and that no Man can enjoy or execute any Place or Office, not only of Profit, but of Burden and Charge, for the necessary execution of Justice, and the maintenance of Civil Government (without which we cannot live or subsist) without taking this new Oath of Allegiance, as the only means to qualify them for it: if then the end, viz. Civil Government, be absolutely necessary, and the taking of this Oath is the only means allowed of to qualify Men for it; this seems as evident to me, that taking of this Oath is not only justifiable in Law, but by Reason and good Conscience, since it is done for the highest and noblest end, viz. the publick Good of the whole Nation or Commonwealth, which you grant cannot subsist without some kind of Civil Government amongst us.

I will say something in answer to what you have now alluded concerning the necessity of taking of the Oath, in order to the maintenance of some Civil Government, without which I grant the King's good Subjects cannot subsist till his return; since I confess this is the strongest Argument you have yet brought, all I can say to it at present, is, that all your Country Gentlemen, and all the Lawyers in England, would be so firm in their Loyalty to
his Majesty, as unanimously to declare that they cannot take this Oath with a safe Conscience; the Consequence then would be, that either the present usurped Power must be forced to give up the Government to the right Owner, or else they must at least desist from pressing this Oath upon you.

F. You know well enough this is altogether a vain Supposition, since you cannot but know sensible that their Majesties have not only a sufficient Force both of native Englishmen and Foreigners on their side, who can force these, who should make any opposition, to the taking it; but that there are also many Fanaticks and Commonwealthmen, who not looking upon themselves at all obliged by your Notions of natural Allegiance, and the Obligations of any former Oath of Allegiance, will get into all the Offices and Implyments of the Kingdom, to the great Prejudice and Defrauction, not only of the Church, but the Monarchy itself, which is as yet preferred, the Person that administered it is certainly. So that it would场合 nothing to King James's Affairs, if all the Geltery and Lawyers of the Kingdom should go about to refuse this Oath; which, as I have already proved, they are also obliged to take by the Law of the Land, and also that greater Law of persecuting the public Good of the Nation, to the utmost of their power.

M. Well, since I cannot expect to great front of Mind and Courage from your Country-Gentlemen, and especially the Lawyers, who have been always but too forward to comply with all Governments, how unlawful ever; and since you, who think that you may lawfully take this Oath, not only by the Law of the Land, which you have interpreted to countenance your Opinion, but also from a higher and nobler Law, viz. that of the common Good of the Nation, or Civil Society; which I grant must be maintained during the King's Absence, since you say there is a necessity for it: tho' I am not fully satisfied of the Lawfulness of it so far as to take it myself, yet will I not absolutely condemn you, or any other wise and honest Men, who do only take it out of a good intent to maintain some Civil Government amongst us, and also to the keeping out the Fanaticks from having any share in it; and I hope the Government will excuse me, if my Conscience will not give me leave to take it myself, since there are enough of you who are free to do it without us. So that if I cannot keep that small employment I have, without taking this new Oath, I will freely give it up, since I am not satisfied in my Conscience of the Lawfulness of it; and whatsoever is not of Faith, is Sin, as the Apostle has truly defined it.

F. I confess you speak very honestly and charitably in this matter, and I could with all those of your Opinion had the like Moderation, and that they would not condemn of wilful Perjury to many good Bishops, Noblemen, Gentlemen, and others, both of the Clergy and Laity, who have been perjured that they might take this Oath with a safe Conscience; and therefore pray, however we differ in Opinion about these matters, let us maintain the fame Friendship for ever, as we had before.

M. Sir, I readily embrace so fair and kind an Offer; and as I hope you will do me what kind Offices you can whilst you continue to act under this Government, so will I promise to do the same for you, whenever the King shall come to be restored to his Throne again.

F. I willingly and thankfully accept the Proposal of the Continuance of your Friendship, since I look upon your diverging from me, not to proceed from any Willfulness or Obstinacy, but out of a tender Conscience, and to do the greatest, and give a sense of your Duty, which I must still confess are Errors on the right hand: and therefore now taking my leave of you, I shall only desire you to believe me your real Friend and humble Servant.

M. I hope you think I have the same Esteem for you, and therefore must always own my self yours.

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Biblio-
D I A L O G U E XIV.

That the Arraigning and Murder of King Charles I. can by no means be justified by the Proceedings of the Convention-Parliament against King James II. upon his Abdication; the Grounds and Manner thereof being wholly different. Proved by an exact Relation of the Beginning, Progress, and Issue of the late Civil War.

M. Am come this Evening to discourse with you about somewhat that I have heard to-day, which has very much raised my Spleen against all the complying Clergy, who justify this Revolution; and it satisfies me, that most of them are no better than downright Hypocrites and Turncoats.

F. Pray, Sir, be pleased to tell me what it is that has put you into this ferment.

M. I shall, and am glad to find you so willing to hear me. You must know then, that this being the 30th of January, the Anniversary of the Martyrdom of that great and pious Prince, who fell on this day by the bloody hands of his rebellious Subjects, I was resolved to go and hear one of our celebrated Preachers in the City, to observe how he would manage his Point; (which I must tell you I thought was a nice and ticklish Subject) since I foreknew, that as he must necessarily condemn that horrid and barbarous Fact, so he would likewise at the same time justify this Revolution, which was begun and carried on upon the same Principles, tho' not by the same Persons. And I was not deceived in my Expecations; for my City-Doctor was frivolously put to it, and like an Ass mumbling a Thistle, tho' he condemned the Fact of this Day with great Warmth and Bitterness of Spirit, yet when he came to handle those good old Church-of-England Doctrines of Passive-Obedience and Non-Resistance, he touched them very gingerly, because he was afraid they would go near to prick his Chops; therefore being sensible that this Revolution was not to be justified upon those Terms, he fell into a strange fantastical Hypothesis, of God's ways in disposing of Kingdoms, and that the Prince of Orange, by the wonderful Success of his Arms against King James, was, by a kind of mixed Right of Conquest and Election, become our King, and by God's Providence wonderfully declaring it self in his favour, he might, nay ought to be lawfully owned and recognized as such by all the Subjects of this Kingdom: but yet that it was still downright Rebellion before God for any private Persons to conpire
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conspire or make war against the King, which I thought very strange Doctrine: since the Prince of Orange set forth in his Declaration (which we have no reason to disbelieve) that he was invited over by divers of the Bishops, Peers, and Gentlemen of the Kingdom; which was so far made good, that one of the first, and divers of the second and third Orders, either declared for him, or actually went in to him upon his Landing, besides those who came over with him in a military Posture. But how they could be justified by this Doctor's Principles, let them look to it whom it concerns.

But I am sure his whole Sermon was so far from edifying, that it gave great occasion of Scandal and Offence to all the honest and judicious part of his Audience; for if God's Providence must be brought in to justify, at every turn, a Rebellion or Revolution (as it is now more softly worded) I cannot see why the Murder of King Charles I. may not also be justified upon those very Principles; it being sufficiently known to all that lived in those times, that Cromwell and the Rump appealed to their strange and wonderful Successes and Victories over the King, and God's delivering him into their hands (all which in their Cant they called Providence) as an Indication that God had designed him to be taken off in the manner he was; and that their wicked, illegal, and tyrannical Power was that which was thereby sanctified and ordained by God, and to be submitted to and obeyed, according to the Apostle's Precept, Let every Soul be subject to the higher Powers, the Powers that be ordained of God, &c. So that by such a plain and manifest wresting of Scripture, the most open and barefaced Rebellions and Usurpations, when they prove successful enough to carry the outward show of a Civil Government, must pretentiously be owned as God's Ordinances: and if this must pass for sound Doctrine, they are better wholly to lay aside the Bible and attend on the Authority of the Acts of Parliament, than thus to mock God, and at the same time condemn an Action, when done by those we call by the hard names of Rumpers, Commonwealthsmen, and Fanatics; and yet in the same breath justify the very like Practices of those who now call themselves Alieners of the Monarchy, and feeming Members of the Church of England, who have solemnly declared King James to have abdicated the Throne, upon the Breaches of I know not what original Contract, and fundamental Laws; and it thereby becoming vacant, have placed the Prince of Orange and his Princes on the Throne. And the long Parliament, after their execrable Murder of King Charles, might, with the like Right and Justice, have proclaimed Cromwell (the chief of his Enemies and Judges) for lawful King, as he set himself afterwards for Protector by the like providential Title.

And tho', I confess, the Prince of Orange hath not been so cruel to his Uncle and Father-in-law, as to imprison him and take away his Life, but gave him an opportunity to make his escape; yet whether that did not more proceed from Interest, than either Mercy or Good-nature, I may have some reason to doubt: because had the Prince either imprisoned him, or put him to death, it would have proved disadvantageous to his Interest, and turned to his Prejudice, even among the common People of the Nation; and besides, would have prevented the notion of the King's voluntary Abdication of the Government; which has been since so greedily (worse than profanely) or at least an unthinking Party of the House of Commons. And how they would have proceeded against his Person (had he stay'd here) God knows: for they might with the same Justice have taken away his Life, as declared him to have abdicated; that is, (as you your self confess'd at our last Meeting) forfeited his Crown. So that to conclude, I fee no Difference but the changing of the Names of the Persons, that can justify this Revolution from the same Impostures of Treason and Rebellion, as the Murder of King Charles I: for tho his Son is still (God be praised) alive in France, yet the Party you have so much vindicated have done all they can to destroy his politics Percon, by declaring him actually deprived of all Sovereign or Regal Power as lawful King of England.

F. You have made a sharp Discourse against the Murder of King Charles I. and Abdication of his Son King James II. In great part of which, as I shall not oppose you, so, I hope, the unwarthy and indirecte handling of this Subject by some of our City-Presachers, will not prejudice you against the late U n a n 2 Revolution,
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Revolution, and placing the Prince of Orange on the Throne. For I agree with you, that a temporal Success or Victory of any Party of Men, was of a whole Nation against an Enemy, either foreign or domestick, ought not to be regarded as an evident Token of God's approving the Cause they were engaged in; being sensible, that this Argument has been made use of not only by Cromwell and his long Parliament, both before and after the King's Murder, and is indeed the common Topick and refuge of all unjust Force and Violence committed in the World, and serves the Turks at this day for their main Argument of the Truth of their Religion, and the Justice of their Arms against the Christians: and therefore before ever we give a Judgment concerning God's Allowance of such Actions (whether good or bad) we ought to distinguish between God's permisive, and his declared and express Will or Providence; without the former of which, no human Actions, whether good or bad, could ever be brought about: since tho' he has so wisely contrived all the Affairs of the World, that even the wicked Actions of Men do turn to his own Glory, and the common Good of Mankind, yet his direct and declared Will ought never to be made use of as an Argument, but where the Scriptures declare it, or that the apparent Justice and Merits of the Cause may make us presume, that God, by his granting Success, does likewise allow the Justice of the Cause.

I have not therefore, in whatsoever I did or shall say on this Subject, drawn any Argument for the present Government from that head, nor found their Majesties Right to the Throne on the fallacious Topick of Success. But as for your main Objection, and which so much scandalizes a prejudiced and inconsistent Party of our Church, that this Revolution (as it is called) will serve to justify the denouncing and murdering of King Charles I. I utterly deny; since there are a great many, and those very material, Differences between that Fact, and the Abdication of the late King.

I shall therefore proceed to shew you these grand Differences between those two Transactions: which I shall do, First, by enquiring into the Beginning and Original of the Disputes between King Charles and his Parliaments, and then comparing them with those which lately happened between the late King James II. and his Parliament, and his Proceedings after it. Secondly, that if we look back upon the Actions of both those Princes, and the Proceedings of the Parliament and People of England in opposition to them, we shall find them vastly different. First, As to the Original of them, King Charles was left involved in a War with Spain by his Father, and being not long after unhappily engaged in another with France, and denied any Assistance in three successive Parliaments, I grant he was forced, for the carrying on of this Wars, to take very illegal Courses by Loans, and Privy Seals, and other ways to raise Money; and being so often disappointed of his Expectations of receiving any Benefit by Parliaments, it was no wonder if that Dislike was afterwards, by Some evil Counsellors about him (who feared to be called to an account for what they had acted contrary to Law) heightened to a perfect Aversion to them, and he put upon to raise Ship-money by the bare Opinion of the major part of the Judges, contrary to Law. Yet to say truth, this Mony was not vainly laid out, but was really laid out for the aid of the King in his Wars in of Naval Stores, and building of Men of War, the Royal Sovereign being made out of that Money. But when the necessity of the King's Affairs, upon the breaking out of the Scotch War, obliged him to call a Parliament, he then offered, if he might have a sufficient Assistance against them, to have redressed all those Grievances; and had certainly done it, had not the House of Commons, by denying the King that reasonable Aid he required, obliged him to dissolve them. But when the long Parliament in 1640. came to sit, the King having, upon the Earl of Strafford's and Archbishops Laud's being impeached and committed to the Tower, and the Lord Keeper Finch and Secretary Winchbank's withdrawing themselves beyond Sea, altered his Measures as well as his Counsellors, he confoundedly to pass whatever Laws the Parliament thought fit to offer, to secure the Nation against those just Fears of Popery and arbitrary Government, which then so much perplexed them: So that after all those unparalleled Condescensions, they had no just reason longer to continue those Jealousies and Distrusts, unless they could wreak from the King...
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King the whole Power of the Abissia, which gave the first occasion to that unhappy Civil War.

I grant what you say to be in great part true; and yet upon your Principles this will not do the business: for if the King, upon any wilful breach of the Original Contrats (as you call it) and obstinately persisting in it, may be resisted by the People, and declared to have abdicated the Government, upon such written and publick Laws and Liberties; (King Charles I. having also knowingly persisted in those Violations after his granting the Petition of Right so solemnly, in his third Parliament; and after many Petitions of divers of his Subjects against those Oppositions, yet they were still continued:) sure he might with as much Law and Justice have been resisted, and have had Arms taken up against him by the People of England, as have been lately against his Son: And upon Charles's refusal to redress them, might also have been declared by the Parliament to have abdicated the Kingdom, by renouncing the Laws and Government of it, according to your supposed fancied Civil Conventions thereof. And yet for all that, the Long-Parliament it self, tho they declared that the King's setting up his Standard at Nottingham was an actual making War upon the People of England in their Representatives; yet neither then, nor in the very heat of this War did they ever arrive to that degree of Impudence, as to declare the King to have broken his Original Contrats, and thereby to have abdicated the Government; but still continued their Address to the Prince: if they might have had it upon the other ground, when they had voted no more Addresses to the King, did they ever declare that he had forfeited the Crown by his wilful Breach of the Laws, and making War upon his People. These things, I say, were never done by them, till Cromwell and the Army, with the Independent Party in the House, first declared at St. Albans, That the King, by beginning a War upon the People, had committed Treason against them. But your Commission has quite outstript the old Presbyterians and Independents, it is saith, as they did, but have also taken from him the very Title of King, and have declared him to have abdicated the Government; which Act, I doubt, can never be justified by your Notion of making him forfeit the Throne by a tyrannical Administration, and so to depose himself.

I am very sorry to see you so hard put to it, as to find no way to justify the late King's Miscarriages, but by comparing them with those of his Father's Reign; which I grant them to be very great, and in some things worse than those of his Son's, yet were they chiefly at the beginning of his Reign, and indeed before he had granted the Petition of Right, when he had in truth very much violated, the Laws of the Kingdom, by exacting illegal Loans, and Imprisoning those that refused to pay them; as also by levying Soldiers, and requiring the Counties to furnish the Charges of Coat and Conduct-Money for them, contrary to Law, I grant also that his appointing Commissioners to try, condemn and execute Soldiers by Martial Law in time of Peace, was against the known Laws of the Land, as also quartering them in private Houses, whether the Owners would or not; and then his imprisoning divers People of Quality without any Cause shown, or Time limited, and without suffering them to be delivered by Habeas Corpus, as by Law they ought. All which Grievances being briefly summed up in the Petition of Right, were (it not without some difficulty) at last redress'd by the King, in that remarkable Answer, I have already cited. Scott Drae facit omne illud deficit. And altho there may be a great deal laid by way of Except in the King's behalf, for those illegal and Arbitrary Proceedings; as that he then found himself engag'd in a War with the Emperor and House of Austria about the Palatinate, and that at the desire of the Parliament; and notwithstanding when he could receive no assistance from them in the three first Parliaments of his Reign, he was forc'd to make use of those exercitamus Methods to raise Money to carry on an unsuccessful War against Spain and the Emperor, in order to restore the Prince Elector his Brother-in-law to his inheritance; tho' who were the Cofes of the War was whether the King or the House of Commons, I shall not now dispute. But whoever was in the fault, it was sufficient that the King redress'd all those Grievances in the third Parliament of his Reign. And yet even before that time, I affirm there was no just Cause for the People to take up Arms, since (as I said at first) those Oppressions
Oppressions were either but light, or else fell only upon some Trading Men; and I have already laid it down for a Rule, "That it is never lawful to redress the King's Commands by Force, but when they strike at the very Root of the Constitution, and become not only general, but insupportable by the Subjects, and that there are no hopes left of redress by Parliament; which "I do not see was the Cafe at that time, seeing the King at last did remedy all those Grievances by a Parliament."

M. I grant it might be as you say; but did not the Nation quickly fall into fresh Discontents by the King's exacting of Tonnage and Poundage from the Merchants, before those Duties had been new granted and confirmed by Act of Parliament? And also, by his clapping up divers of them for refusing to pay it? Nay, did he not also, some time after this, by the Opinions of almost all his Judges, and Advice of his Privy Council, levy Ship-Mony upon the whole Kingdom by his own Proclamation, and committed divers Gentlemen to Prison that refused to pay it, nor would admit of any habeas corpus to release them? I shall omit divers other things of that moment, such as his disfavouring with the Statutes against Popish Priests and Jesuits, and his releasing and pardoning of them, when they were condemn'd: as also his making several Popishly inclin'd Lord Lieutenants, Deputy-Lieutenants, and Justices of the Peace; his turning out the Lord Chief Justice Crew, because he declar'd himself against the Leven; and imprisoning the Refusers of it during pleasure; and would also have turn'd out the Lord Chief Baron Walter upon the same account, had he not held his Place by Patent, quandam benem erigeri; and yet nevertheless he was forbid by his Council any more to do the like thing to the same personage, or else effect, as the Convention have put into their late Declaration against the present King; and therefore I must say again, that the one is no more to be defended than the other. But if these things did not deserve any Resilience, or Abdication of the Father; why should the like, nay less, matters have that tragical effect upon the Son?

F. I should not have desir'd to enter upon this odious Comparison, or to rake into the Abuses of the Dead; yet, since you will put me upon it, give me leave to mention freely, of this part of the Reign of King Charles I. that those Violations upon the Laws you mention, were so great and general, that had they been as obstinately persisted in, when the Parliaments met in 1640, and 41, I doubt not but they might have produc'd (and that lawfully) the like Effects, as his Son's Miscarriages have since brought upon him, by his going away, rather than he would suffer them to be redress'd by a Free Parliament. But his Father was better advis'd, and either redress'd those Grievances and Oppressions, or his Nation complained of before the Parliament; or else yielded to the Parliament's Declarations against them, and gave up the Offenders to be punish'd according to Law. Thus for example, before the Parliament sat in 1640. he releas'd all those Gentlemen and Merchants that were in Prison, for not paying Ship-Mony, Tonnage and Poundage, &c. And as for Ship-Mony, he acquainted with the Judgment of both Houses, who condemn'd it as illegal; and left all the Judges that gave their Opinions for it, to the Judgment of both Houses. He also sign'd a Bill for Tonnage and Poundage, as also another to attain the Earl of Strafford for endeavouring to introduce an Arbitrary Government, and subvert the Laws of the Kingdom. He also pass'd several other Acts for the taking away of the Star-Chamber, and High-Commission Courts, and even for taking away the Votes of the Bishops in the House of Peers: And last of all, he pass'd that unparallel'd Act I now mention'd, of making the Parliament not capable of being adjourn'd, prorogu'd, or dissolved, without their own Contents: so that he omitted nothing (as I know of) that was desir'd of him for the redress of all those Grievances that the Nation then justly complain'd of; those Persons who were accounted the Authors of them, being either executed, imprisoned and fined; or else sav'd themselves by Flight.

But as for what you say about that King's pardoning Popish Priests, and suspending the Laws against Roman Catholics, and turning out of Judges; they were nothing like what his Son King James hath lately done in that kind. For in the first place, his Father never did more in pardoning Priests, than what Queen Elizabeth, and King James I. had often done before; who seldom or never...
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never executed any, only for being Priests, unless they had also been found guilty of some other Treason: Nor do I know of any Law then there was in force against Roman Catholics, the Execution whereof was openly suspended most active in putting such Laws in execution against Papists, were commonly only in one who was so turned out, because he would not agree to the Laws; be done: But what is this to the turning out of three, or four, or five Judges at a time, because they were not content to give their Opinions as the Court would have them, even in matters of the highest Importance; and then placing Papists, or enmity Men of the looost Councils, and lest Law, in their Places, as was lately done? What is the pardoning of a few Priests, and the silent exempting from Roman Catholics from the Penalties of the Laws made against them, in comparison of a general and sound Suffrage, not only of all fire was never practised by any King of England before our Times.

To conclude: Let us suppose that in the Year 1644, the King, instead of redressing all those Grievances and Violations of the Laws we have now mentioned, should have withdrawn himself into Ireland, and there have joined himself with the Irish Rebels, and by the assistance of the King of France, had made war upon this Kingdom; declaring that he would never put up his Sword, till he had made himself absolute Master of all our Laws and Liberties: What do you think the Parliament which was then sitting would have done in this Case? Can you believe they would have sat still, without passing a Vote against the King's Arbitrary and Tyrannical Proceedings? No certainly, they would never have stopped, till they had declared him, by thus becoming a publick Enemy to his People, to have abdicated, or subjected all his Right to the Government of any other King; or else, I think, they could by no ways have secured the safety of it.

Mr. But pray let me ask you one Question more, before you proceed farther, since you have not yet answered my Objections: Why did not the Parliament then do so, when the King did afterwards actually declare War against them?

F. There were several good Reasons for that: As first, Because they could not but know in their own Consciences, that the King, before his departure from London, had already given them all the Security, against those Oppressions and Violations that had been formerly committed, as they themselves could desire. And Secondly, Because they knew what they inflicted upon so much heat, to wit, the dishing of the Militia of the Kingdom, had been so violent, from time beyond Memory; so that there needed an express Act of Parliament to take it from him by Law, (as they themselves at first acknowledged;) And it was nothing but the Tumults that were raised in London by the Rabble's coming down to petition the two Houses, and by their violent intimation to have the whole Power of the Militia out of his hands (which was indeed to take from him the chief Regal Power, that of the Sword) could have thus forced him from the Parliament, and to take up Arms, when he had neither Men nor Money to pay them, the Parliament having stipulated his Revenues, even for his going to India. And therefore, giving they bad no other Caufc, but their own Fears and Jealousies to justify what they did; they had no way to do that, but by laying all the fault from his Parliament, to invite him to make war against it; to remove him from whom, and to bring him back to his Parliament, they made the chiefest pretence for the War: yet notwithstanding there were still left in the House a great many honest well-meaning Men, call'd Puritans (the Name of Presbyterian Proceedings being not yet in fashion;) and who, tho' they were against all Arbitrary Proceedings, yet nevertheless loved Kingly Government, and did not desire his Majesty's Ruin, so long as there were any hopes left of coming to an Agreement with him, upon such Terms as they thought would befit him with the Presbyterian Discipline, and the Rights and Liberties of People: and these were for ending all Differences by a fair Treaty, and afterwards voted the King's Concessions at the Peace of Wilmot to be satisfactory;
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Satisfactory: and being for this alone driven out of the Houfe by Cromwell, and his Independent Fashion, were call'd the excluded Members, and were the very men, who being afterwards brought again into the Houfe by General Monc, join'd with him, in voting, for a Free Parliament, or Convention, which (you know) recall'd, and refur'd the King and Royal Family.

M. I cannot deny, but you have given me a fair Account of these Trans- actions; yea, methinks, according to your Principles, I can see no reason why the People might not have risen up in Arms against the King in that long Interval of Parliaments, when he levied Ship-Money, and (as you own) did so many illegal things, as that to force him whether he would or not, to call a Parliament, to redress those Oppressions and Grievances the Nation then lay under: and yet you cannot shew me any Man in England, who had either the Will or Interest to raise a Rebellion against the King, during those eleven Years that those things were transacted: so well were the People satisfied with his Majesty's Government, notwithstanding all the secret Murmurings and Difficulties of some leading and factions Men against his Proceedings. And therefore, when the Scots first invaded England upon the account of the New Service Book, I cannot find but the major part of our Nobility and Gentry were well enough satisfied with the King's Proceedings, and serv'd him with great Courage and Fidelity in his first Expedition against the Scots.

E. If this be so, you your self have given me a sufficient Reason, why neither the People, nor any part of them, ought then to have taken up Arms against the King; for if the major part were so well satisfied, as you make them to be, it was as clear that the Oppressions were either not general, or else but very light, and easily to be redressed; and therefore (as you own) this was the King's time when he would call a Parliament, rather than involve the Nation in a bloody Civil War, which I never suppose lawful, but as the last and only Remedy, (as our Cates lately was.) And besides all this, you know very well, that Ship-Money (which was the chiefest and most illegal of these Oppressions) was declar'd to be according to Law by all the Judges of England in the Exchequer-Chamber, except two, who I grant argued against it, with greater Law and Reason; and the Majority of them could prove on the other side, as appears by their Arguments, since printed in Dr. Franklin's Annals: yet, however, so long as the Judges are look'd upon as the Interpreters and Declaring of what is Law in doubtful Cates in the Intervals of Parliament; I told you at our last Meeting, that whatever is done under such a colour of Law, supported by their Determinations rightly given, ought not to be opposed or resisted by the Subjects, till their Judgment be revers'd and declar'd illegal by Parliament.

But indeed you are somewhat mistaken in matter of Fact: for tho I admit that Ship-Money was a very light Tax in comparision of what we have felt since, and that most of those Imprivements you complain of, fell only upon some particular Gentlemen and Merchants, who refus'd to pay Ship-Money, and Tonnage and Poundage; yet was the Nation very highly dissatisfied for all that, when the Scots came in, especially after the Parliament (in 1642.) was dissolv'd, because they would not agree to the King's demands, of fifteen entire Subsidies for the Spanish War; and 'tis true, the Nobility and Gentry yelded the King in the first Expedition against the Scots with a seeming Alacrity, as they were by their Tenures bound to do, and that there was also a mercenary Army rais'd upon Pay; yet it is very plain, by the great unwillingness of the generality of the Soldiers, as well as Commanders, to fight against the Scots, as also by the Intercession of the major part of the English Lords for Peace, and the mighty Joy which appeared at the Pacification; I say, it is very plain upon the Considerations, that most of the English Nobility and Gentry were not well satisfied with that War, because they very well knew, That when once the Scots were wholly subdued and brought under, the King might then take upon him to do even what he pleas'd with his English Subjects.

M. I shall not farther dispute what you say concerning this matter; but defer you only to consider, That according to your own Argument, if the Opinion of the major part of the twelve Judges, in the Intervals of Parliament, be such a Declaration of Law to the People (how illegal ever it might be in itself) as they ought by no means to gainsay or reft; then by a parity
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of Reason, the taking up Arms by those Noblemen and Gentlemen who joined with the Prince of Orange is not to be justified, seeing that the King had the judgment of most of his twelve Judges on his side for dispensing with the Act concerning the Oaths and Test.

F. I own what you have now said would have been close and home to the Cafe, had this been so declared by their judgments upon a solemn Argument of the point in the Exchequer-Chamber, as had been done in the Cafe of Ship-Money; but it was so far otherwise in this, that you may very well remember the King would not permit the Judges so much as to argue the Cafe, or give their opinions in public; but only in private in Serjeant-at-Law, and therefore after they had been closeted by my Lord Chancellor; and thence were turned out that would not be brought over to his Opinion, and such put into their places as promised to comply. And besides all this, the King's Declaration of Indulgence was not a Dispensation in one particular Cafe, or Act of Parliament alone, but an actual Suspenden of above forty Penal Statutes at once concerning Matters of Religion, which (as I have already proved) was as good a Defence against him as any Suspenden had been before declared unlawful in the Cafe of Thomas and Savit, in the Lord Chief Justice Vaughan's Reports, which I mentioned at our last Meeting. Now if you can shew me any thing like this done by King Charles the First in the business of Ship-Money, I grant your Objection to be good, otherwise not.

M. But pray give me leave to urge this matter a little farther concerning the Lawfulness of the War made by the Parliament against Charles the First, in defiance (as they pretended) of their Religion and Civil Liberties, against the King's Disparations upon both; for which they had a very specious pretence, since the King had left the Parliament, not upon any direct or open Force or Compulsion, but only upon a bare Suspend, follow'd by a Declaration, that he thought he could not be safe any longer at London, for fear of the Tumults of the Rabble. Now when the Parliament had upon this declared, That his Majesty's Departure and continuing from his Parliament, notwithstanding their humble Petitions for his Return, was an Obstruction to the Act of Ireland; and that those who advised him against it had a very specious pretence, the King, being at the Peace of the Kingdom, and justly suspected to be Favourers of the Irish Rebellion; and farther, upon his going to Hull, and his boisterous Preparations against that place, the two Houses had in a Declaration, publisht for their Justification, that all that Sir John Hotham had acted in that Affair, had been done by their Order; and that the King's Proceedings were unfuitable to his Declarations of never having an intention to make war against the Parliament: And farther, upon his Majesty's styling out his House of Commons as a Cafe, they voted them contrary to Law, and against the Liberty and Property of the Subject; and that all those that acted in putting those Comminions in execution, were Disturbers of the Peace of the Kingdom, &c. and farther declared it lawful to resort by force of Arms all those Noblemen and Gentlemen who had endeavour'd to put it in execution: And lastly, his setting up his Standard at Nottingham, and marching with an Army towards London, was an Act of War against his Majesty, and against the Nation better believe in this cause, than their Representatives in Parliament?

So that if you will suppose our present King James to have forfeited or abandoned the Kingdom, because the Convention hath lately declared so, you ought then to quit your old Cavalier Principles, and to own the late War against King Charles the First, being only defensive on the Parliament-side, to have been just and lawful by like parity of Reason, as you said; for surely a Declaration of both Houses of Parliament, called by a King's Writ, ought to be looked upon as of much greater Authority than that of a Convention, who have met and acted without any legal Authority to call them together.

F. You have indeed played the part of a Stout Advocate for the Presbyterian Party in the Long Parliament, which I know you urge against me only as Argumentum ad hominem, whereby you would prove me an Apostate from my former Principles; but I hope, for all that, so far to vindicate the late Proceedings of the Convention, as to shew that they have done, and declared anything in their Vote or Declaration concerning King James, but what may very well be justified upon my old Cavalier Principles.

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In order to which, pray take notice, first of all, that I lay down as a ground of what I have to say on this Subject, That the greatest part of the Nobility and Gentry, who took up Arms on the behalf of King Charles against the Long Parliament, never believed any absolute irresistible Power in the King, or those commissioned by him, if they acted against the known Laws of the Land; for this indeed is a new Doctrine, preached and set up since that time only to serve a turn. Secondly, That the Nobility, Gentry, and People of England, who understood any thing of the Grounds of this Quarrel between the King and the two Houses, by thinking on the King's life, and supporting his Cause, never intended thereby to make him an Arbitrary Monarch, and to give him a power over the Perfons, Estates, and Liberties of the People of this Kingdom, but only (as his Majesty himself set forth in all his Declarations) to defend the King's just Rights, as also those of the Church of England established by Law; both which were then invaded by that Parliament. Thirdly, That no sober Man of the King's Party then did (any more than we do now) appose the Judgment either of the whole, or major part of the Parliament, to be an infallible Rule of Law or Obedience, but only as far as it agreed with the antique and known Laws of the Kingdom: and hence it was that many Noblemen and Gentlemen, who were for the King, refused to yield Obedience to those commissioned by the Parliament, according to their Ordinance for setting the Militia. And therefore as they refused to own the Power of the Parliament when it was illegal, so I freely grant, that upon the same grounds both you and I, and any considering Man, have also the like Right to examine whether the late Votes and Declaration of the present Convention were according to the antient fundamental Constitution of the Kingdom, and the publick Good and Safety of the Commonwealth, or not; for otherwise all the Discourses that you and I have had upon this Subject are altogether in vain, and to no purpose.

M. But to argue this matter a little further; tho' it be lawful (upon your Principles) for the Parliament, when sitting, to be judge of its own and the Peoples Danger of losing their Religion and Civil Liberties, and of the King's Encroachments upon them; yet when the King came to the House of Commons, to demand and seize the five Members, and had failed in the Undertaking, he was never after that satisfied with his ceasing farther Proceedings, but judging themselves and the Nation in imminent danger, as long as the King had any power to hurt them, they would not be satisfied unless the Militia of the Kingdom were wholly put into Commissioners of their own Nomination; especially when after the breaking out of the late Rebellion, Sir Penfin Onsale, their General, pretended to shew the King's Commission for what they had done. So that (to argue on the same Principles) if the Nation were then in great danger, and that its Representatives, in the two Houses of Parliament, were the sole and proper Judges of this Danger, then upon the King's refusal to pass a Bill to settle the Militia out of his power into indifferent Hands, was certainly a Denial of granting all means necessary for the publick Peace and Safety of the Kingdom, and consequently the Parliament might upon the same grounds justify their raising an Army by force.

F. I confess you have urged all that ever was, or can well be said in justification of the beginning of that unhappy Civil War by the Long Parliament: yet give me leave to tell you, that I think it will not do the business; for whenever the King and Parliament differ about the Executive of any part of the Supreme Power, such as is that of the Militia, that great Power of the Sword, which when there is any Dispute about it, or even when it is feared the King will abuse that Power to enslave the Nation, ought to reside in King and Parliament jointly, whereas it be done when they divide, both the King and the Parliament separately claiming their Right to it. But at this present Revolution, the King being gone away without leaving any Deputy or Viceroy behind him, or calling a Parliament before his Departure, the Question now arises, Whether by his Departure his Right over us be lost or not? And the present Convention have determined that it is, yet I must still own, that neither you nor I are obliged to stand to their Judgment any farther than former Precedents from History, and Declarations of Parliament, and Statutes shall incline us; for we must not blindly take the ordinary Books of Reports
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Reports (which are but the Opinions of private Judges) for Law in such great Cases: therefore since nothing but the Justice and Reason of the thing ought to determine us in these matters, I shall endeavour to examine them to the bottom.

Therefore the Parliament is not infallible, and always in the right, nor the King always in the wrong; since that may fall out either way, according as either of them, through an Excess of Ambition or Desire of Power on one side, or too much Encroachment upon the Prerogative on the other, may give the first occasion for a War. I shall now comply so far with you, as to grant, that the breaking out of the Rebellion in Ireland, and the Queen and those of her Party so notoriously favouring the Papists, and Sir Phelim O'neiles's pretending to have the King's Commission to raise Rebellion, and murder the Protestants in Ireland, together with the King's Attempt to seize the five Members, might then seem just Occasions for the two Houses of Parliament to desire to have the Militia settled in some hands that they could confide in. Yet truly to determine whether the King or Parliament were in the wrong, he in denying, and they still urging to have the Militia settled according to their own pleasure, will give us occasion to look back, and take a short View of the most material Transactions of those Times.

My next business therefore shall be to shew you what great things the King had done to satisfy the Parliament and the whole Nation, that he did not intend to govern arbitrarily, but to make a general Reformation of whatever had been in the former part of his Reign; by which means the Parliament, besides the declaring of Ship-Money, Tonnage, and Pannage, with severall Monopolies, to be illegal, did pass a Bill for Triennial Parliaments; by which, in case of a failure of the issuing out of the King's Writs in due time, the Sheriffs were empowered to issue out Precepts for the Choice of Members to serve in Parliament, who were required to meet accordingly. After this he passed that unparalleled Act, which was indeed the main cause of all the Wars and Confusions that followed; whereby, under the pretence of giving the Parliament credit to take up Moneys to pay off the Scotch and English Army, the King tied up his own hands from proroguing, adjourning, or dissolving that Parliament without their own Consent; by which Act the Supreme Power became divided, and the Parliament was made wholly independent on the King; which indeed produced a great Alteration in the very Constitution of the Government itself. At the same time (tho' with much difficulty) he passed the Bill of Attainder against his late chief Minifier the Earl of Strafford, for certain Crimes and Misdemeanours, which certainly were not High Treason at Common Law.

Then the better to satisfy his People, the King within less than two Months after passed two Acts for taking away the Star-Chamber and High-Commission Court; and having done all those unparalleled Acts of Grace, he adjourn'd the Parliament, and went into Scotland, in order to quiet the late Commotions of that Kingdom.

But to let you see that nothing less than the depriving of the King of his antient and undoubted Prerogative would serve the turns of an unquiet Faction, you must know, that during the King's absence, this discontented Party in the House of Commons took a fresh occasion of aspersing his Majesty's Government, by contriving a Petition with a Declaration, called a Remonstrance of the State of the Kingdom; which being brought into the House of Commons at their re-sitting after their late Adjournment, was passed by a very small Majority of Votes, notwithstanding Sir Edward Dering's and worthy Members arguing and protestign against it: so that the Debate lasting from three of the Clock in the Afternoon till ten the next Morning, it caised many of the Members, through Weakness or Weariness, to leave the House before they came to a Vote; which made Sir Benjamin Rudyard compare it to the forced Verdict of a speeded Jury. This being presented to the King, contained an invicious Repetition of all the past Mifcarriages and Grievances of his Reign, that they be heard all, or most of them, either long or short, redressed, and taken away either by particular Acts, or Votes of Parliament. This Declaration and the Petition, tho' they were answered by another published by the King for that purpose, and written with great Strength of Rea-...
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Yet their Paper had so far obtained the end for which it was published, as to render its Government and Ministers odious to a great many well-meaning People, who gave entire credit to whatever their Representatives had set forth.

But indeed, all this tended towards their main end of getting the Militia into their own hands, for as they had that, they could easily accomplish whatever else they had a mind to; and for this purpose some of that Faction increased and spread abroad divers horrid Plots and Conspiracies against the State, of which the House of Commons had several false Informations, and seemed to give credit to them; so that a great multitude of Papists and other Malcontents were about to rise in Arms; also of great Forces to be sent out of Prances and Denmark to assist the King to enslave the Nation, and alter the Religion Established: of which Reports there was not a word true, as the People were afterwards convinced of, when it was too late.

Yet at present these Stories had so far wrought the effect for which they were raised, that divers Apprentices, and others of the meaner Sort of the City of London, coming down in great multitudes to Whitehall and Westminster, petitioned against the Bishops, and demanded them to be excluded the House: which clamours, with other saucy reflecting Language against the King, so far provoked him, that he thereupon issued out his Proclamation against such tumultuous Actions as contrary to Law, and as contrary to the advice of the Judges, he sighted an Order to the Sheriffs of Middlesex, and Justices of Peace of Westminster, for the setting of a Watch or a Guard about the Hall and Parliament-House: as which, when it came to be put in execution, the House of Commons took offence, and having examined the Constables and Under-Sheriffs that sat the said Watch, they voted in a Breach of Privilege to set Guards about their House without their Consent, and thereupon sent their Secretary to them to order their Discharge; and Mr. Lang, a Justice of Westminster who had signed the Warrant, was sent to the Tower, as having exceeded the Authority given him by the Warrant, in sending down armed Men to the Parliament-House, without acquainting them with the same. And yet, which was more strange, a few days after they thought themselves in such danger of a malicious Party (as they called them) that they addressed to the King that they might have a Guard out of the City, to be commanded by the Earl of Essex, which being denied, and civilly put off by his Majesty as unnecessary, they thereupon ordered Bishops to be provided and brought into the House for their better Security: But the truth was, the Faction looked upon themselves in no danger from that Party of the Mob that cried out against the Bishops, tho' at the same time they insulted both the King and the Lords that were not of their Party; whilst the same Men pretended they were afraid of having their Threats cut by certain malignant Officers of the late disbanded Army. But this was only a pretence in order to put the Nation into a posture of Defence under colour of their own Nomination, and to get the Militia, or whole Force of the Nation, into their own hands.

I think so far you are in the right: pray go on, shew by what means they obtained it.

F. I shall proceed to do so as few words as is possible, for the true Relation of so many and so various Transactions, as quickly followed each other.

When the King found that there was a multitude, prejudiced, and turbulent Party in both Houses, who made it their business, instead of healing the Breaches between the King and them, to make them wider, and the King-Leaders of this Faction were the Lord Spenston in the House of Peers, and in that of the Commons, Mr. Nowden, Mr. Pym, and three others whom I need not particularly name, and who were also believed by his Majesty to have had a chief hand in exciting the Scots to take up Arms, and enter England on the Pretence he was the only Person to keep the Peace; the Members at the Bes of both Houses of High Treason, upon seven Articles then exhibited; and them for the better Prosecution of this Affair, he commanded their Chambers and Studies to be searched, and their Trusts with their Papers to be sealed up. This was not only voted a high Breach of Privilege by the House of Commons, but the Lords also thereof ordered, that
that they should be forthwith open'd and deliver'd to their Owners. And when the King did by his Serjeant at Arms demand the said Members to be led into custody, they were so far from complying with that Demand, that the Speaker, by the Order of the House, commanded them to attend de die in diem, till the House should take farther order about it. So that the Treason, Felony, and Breach of the Peace, have been at all times the object of the Privileges of Parliament, yet it seems the Law was otherwise with them, and they declared that none of their Members were to be seiz'd on any account whatever, without the Leave and Consent of the House of Commons. Wherefore, when the King found he was not like to obtain any thing by his Impeachment, unless these Members could be first secured, he was by the Queen, or some others near about him, put upon a rash and violent Action, which was to go in Person to the several Parliamenters not only to arrest the Persons of the five Members; which being attended with his Guard of Pensioners, and about two hundred other Courtiers and Gentlemen armed with Swords and Pistols, he endeavour'd to perform: but when the King came into the House of Commons, he found none of those Members he looked for, for they having notice of his coming, were withdrawn before he could get thither. But as I do not justify the King's Proceedings, in going to the House of Commons in Person to arrest those Members, since the King cannot in Person execute the Office of a Magistrate, or other inferior Officer; for then there could be no Person left to whom the Subject might appeal: so thus much may be said in his excuse, that he did not take this Course till he found all other gentle Methods utterly desperate.

But to proceed: When upon the Votes of the House of Commons, that this Action of the King's, in coming to the House in a wanton manner to seize their Members, was a high Breach of Privilege; and when, upon the several Petitions of the several Members in their behalf, they were brought by a Rabble of Watermen, and other desperate Fellows, as it were in triumph; then he found it in vain to prosecute his Impeachment against them any farther: and so he gave the Houses of Lords and Commons notice, That he would for the present not only wave his former Proceedings, but, as a farther Testimony of his unfeigned intentions towards his People for the better disposing of this matter, and removing all their Fears and Jealousies, he offered all his Pardon to all his loving Subjects, as he thought convenient by both Houses. But this was refused by the Commons, and nothing would serve to quiet their Minds: but being full of needless Fears and Jealousies, put into their Heads by false Reports, and feigned Letters of Strange Delights to seize on, and murder the Members of Parliament; they not only ordered a Guard for their own safety, constituting of the City Trained Bands, under the Command of Colonel Skippon, but likewise ordered a Guard to be stationed before the Houses, that no Antimachiarian should be journied from thence without the Authority of Parliament: and also that Sir John Hornham should take the Command of the Town of Hull, and secure (that is, seize) the King's Magazine of Arms there, and should not deliver them without the King's Authority, signified to him by the two Houses of Parliament: which was indeed to take away the Command of the King's Arms and Stores, bought with his own Money, without any just cause shewn, except, as I said before, their own extreme Jealousies. But the better in, Horr'd that this Faction took to get the Militia of the Kingdom into their own hands, I shall now look back to what was done a little before this: When the City and Nation were put in a strange Ferment by the above-mentioned false Reports, that some Party in the two Houses excited underhand divers of the meanest sort of the City of London, and County of Middlesex, as well as other Counties, to petition the Parliament, that all Papists should be disfranchised, that all Bishops and Popish Peers should be excluded out of the Lords of the Kingdom speedily put in a posture of Defence: and to this end, that the Militia should be committed to each hand as the Nation might most confide in. Now to quiet and satisfy the House of Commons and City, whose Minds were still much disturbed about the business of the five Members, the King on the twentieth of January sent the two Houses of Parliament a most gracious Message in writing; wherein he proposed, for the preventing the Diffusion of the
that were now likely to ensue, that they should fall into a serious Confusion of such Particulars as they should judge necessary for the upholding and maintaining his Majesty's just and regal Authority, the settling of his Revenue, and for the present and future Establishment of their Privileges, the quiet and free Enjoyment of their Estates and Fortunes, the Liberties of their Persons, the Security of the true Religion professed by the Church of England, and appointing of Ceremonies in such a manner as may take away all just Offence; which when they shall have compounded and digested into one entire Body, to his Majesty and themselves may be able to stake the clearer Judgment of them, it shall then appear, by what his Majesty shall do, how far he hath been from intending those things which the great Fears of some Persons seem to apprehend, and then how ready he shall be to exceed the greatest Examples of the most indolent Princes: and it concludes, that if the present Distractions, which apparently threaten the Ruin of this Kingdom, do not end in a happy Accommodation, his Majesty shall call Heaven and Earth to witness, that it hath not failed in this reasonable Proposal, the House of Commons alone return an Answer, by way of Petition, to this effect: "That to give them a sure Ground of Safety and Confidence of what he would be pleased to do, he should forthwith put the Tower of London, and other principal Ports, together with the whole Militia of the Kingdom, into the hands of such Persons as should be recommended to him by the Petitioners," (viz. House of Commons) and the King being unwilling to part with those Persons, and Prerogatives, which his Predecessors from time immemorial constantly enjoyed, replied to this purpose, That he hoped his last gracious Message to both Houses would have produced a better effect. As to the Tower of London, his Majesty did not expect, having preferred a Person of known Fortune and unquestionable Reputation to that Truth, that he should be pressed to remove him without any particular Charge laid against him; yet if upon due examination it should appear, "That his Majesty was mistaken in his Opinion of this Gentleman, he would make no scruple to discharge him, which otherwise his wife he should be loth to do." That as for the Forts and Castles of the Kingdom, his Majesty is resolved they shall always be in the hands of such Persons as the Parliament may confide in; but the nomination of the Persons to those Places being a principal and inseparable Prerogative of the Crown, derived from his Ancestors by the fundamental Laws of the Kingdom, of which he will refer to himself." And then proceeds, "That as for the Militia (which by Law is subject to no Command but that of his Majesty, and of the Authority lawfully derived from him) when any particular Course for the ordering the same (which his Majesty holds very necessary for the Peace and Security of his Kingdom) shall be proposed to him, he will return such an Answer as shall be agreeable to his Honour, and the Safety of his People; being resolved only to deny those things, the granting of which would alter the fundamental Laws, and endanger the very Foundation upon which the publick Happiness and Welfare of his People is founded and constituted, and would nourish a greater and more destructive Jealousy between the Crown and the Subject, than any of those which seem to be taken away by such a Satisfaction." And then further goes on, "That he found his having granted more than any King ever had done before, encouraged his House of Commons to ask more of him than ever Subjects had asked; yet, however, if they shall think fit to acquaint him with their particular Grievances and Petitions, very wisely and truly apply Remedies proportionable to those Fears; for his Majesty calls God to witness, That the Preservation of the publick Peace, the Law and Liberty of the Subject, is, and shall always be, as much his Majesty's Care and Industry, as his own Life, or the Lives of his dearest Children." Then he concludes "with conjuring the House of Commons by all the Acts of Favour they have received from him, as also by divers other Motives, that they would be transported by the Power of their Doubts and Fears, or apply themselves or his Majesty into real and present Inconveniences; but that they would speedily pursue the way proposed by his Majesty's former Message, which in human Reason is the only means to compose the Distractions of..."
"of the Kingdom, and with God's Blessing to rehore a great measure of Fel-

lity to King and People."

But the Petition of the Commons-House was not at all satisfied with this rea-

sonable and moderate Answer, and not having as yet been able to procure the
House of Peers to consent to join with them in their farther petitioning his
Majesty for the Militia, they desisted from returning him any Reply for some
time, till they were again backed and encouraged by several Petitions from-

those of their Party in the City, and divers Counties of England; and had by

Dugdale's
Peers Views,
that, and several other Artifices, obtained a Majority in the House of Peers, to
join with them in another Petition for putting the Militia wholly out of his
Majesty's power.

Mr. I should be glad to understand by what means there was so sudden and
so great an Alteration wrought in so judicious and saguit a Body, as that of
the House of Peers.

F. I shall comply with your Desires, and to make you the better to under-

stand it, you may please to take notice, that This could never have been

brought about, but upon several of that Great Council then clapt up in

Prison, and divers of the Popish and other Lords frightened from coming to

the House by the Tumults and Petitions of the Rabble. But as to the Bishops,
you may remember, that they having been several times not only menaced,
but also violently assaulted by a rude multitude of Apprentices and other or-

dinary Fellows, that came down in great numbers, armed with Staves and
other Weapons, under pretence of petitioning against the Bishops and Popish

Lords having their Votes in Parliament: the former thought it from thence

forth not safe for them to come any more to the House, till the Cause of

their just Peers were removed too. And twelve of the Bishops (of whom

the Archbishop of York was the chief) presented a Petition and Protestation to

the King and House of Peers, setting forth their undoubted Right to sit in the

Parliament, and demanding his Majesty's Protection for the same, declared

their Hatred to Popery; and that so long as they shall be thus menaced and af-

fected, they cannot attend to perform their Services in the House: and

therefore protest against all Laws, Orders, and other Proceedings, that have

or shall be pass'd in their Absence.

This Petition being delivered by the said Archbishop of York, and the other

Bishops; and the House of Peers taking offence thereat, the House of Com-

mons laid hold on that advantage, so as thereupon to impeach all those that

had signed it of High Treason. And the Peers also too much relenting it,

they were by their Order not long after (all except two, who were com-
mitted to the Bishop of London) sent to the Tower, where they remained till the

time as the King had pass'd the Bill for disabling them, and the rest of the

Bishops, to sit and vote in Parliament, and then they were discharged: For

the Faction having obtained the end for which they had accused them, they

were prosecuted no further, but were all set at liberty except the Archbishop

of Canterbury and Bishops of Norwich, who had been sometime before committed

upon another account; and the former of these continued close Prisoner for

nearly twenty years, whilst he was beheaded, and the latter for near twenty

years without ever being brought to Trial. But this by the by; only you

may observe, that the rest of the Bishops and Lords, who looked upon them-

selves as obnoxious to the Faction, either forborne coming to the House at all,
or else, if they came, durst not oppose the Designs that were then so furiously

driven on.

Nor did the Party rest contented yet, till they had stirred up and procured

several factions in parts from the City of London, and the Counties of Essex,

Hertford, Suffolk, Northampton, Kent, Oxford, Lincoln, and York: Some com-

plaining of the Lofs and Dangers of Trade, and others that there was no

Redress to be expected, unless the Bishops and the Popish Lords were put

out of the House; whilst others decried that the Kingdom should be put into

a State of War. And the Faction having laid such a Foundation for the

mending their Designs, by ensnaring the People with their own Petitions,

which were delivered by many thousands in Perion, as also from several false

Stories and Reports of dangerous Plots and Designs of the Papists in Lanca-

shire and other Places, it struck such a Terror in the Lords that remained in
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the House, that upon Mr. Hoby's again moving them at a Conference, That their Lordships would now join with them, without any further delay, in petitioning his Majesty, that the Kingdom should be put into a posture of Defence: I say, the Lords, who refused to join with them at first in their Petition of the 28th of January, were so far brought about, that the Majority of them at last consented to it, being pressed to the King on the 2d of February, which was to this effect:

Rut. p. 510. "In the first place they set forth the present Evils and Calamities whereewith his Majesty's Kingdoms were most miserably entangled, and the imminent Dangers, which (as they pretended) threatened his Royal Person; and that they seemed to receive his Majesty's late Proposition of the 20th of January with great Thankfulness, and would with Baneftness of Affection endeavour to pursue the same; yet for the Safety of his Royal Person, and the honour and Authority of his own, and removing all Jealousies between his Majesty and his People, suppressing the Rebellion in Ireland, preventing the Fears and Dangers in this Kingdom, and the mischiefous Designs of those who were Enemies to the Peace of it; they still insisted, That for the accomplishing their Duties therein with more Comfort and Security, his Majesty would be pleased forthwith to put the Tower of London, and all other Forts, with the whole Militia of the Kingdom, into the hands of the Persons as above; that his Majesty should be recommended to the House of Commons, by both Houses of Parliament: and which they assure themselves would be a hopeful Entrance into those Courses, which (tho God's Blessing would be effectual for the removing all Difidence and Mifapprehensions between his Majesty and his People, and (as they said) for establishing and enlarging the Honour and Greatness of his Royal Politerity. And then conclude, that they expected his Majesty's speedy and gracious Answer, the great Difficulties of the Kingdom not admitting any delay."

The King being much surpriz'd to find the House of Lords now brought over to the same Sentiments with the Commons, and that his late so reasonable Proposals to both Houses had met with so unfuitable a Return, Seemed however not at all transport'd at it, but soon gave them a short, but very hand'some and reasonably Reply to this effect: "That having well considered their Petition, and being desirous to express how willing he was to apply futile Remedies, not only to their Dangers, but even to their Doubts and Discontents, they had returned an Answer, that the Extent of the Power which was intended to be established in those Persons, whom they desired to be Commanders of the Militia in the several Counties, and likewise, at what time it should be limited, that no Power should be executed by his Majesty alone, without the Advice of his Parliament; and then he would declare, That (for the securing them from all Dangers or Jealousies) his Majesty would be content to put into all Places, both of his Forces all the several Counties, such Persons as both the Houses of Parliament should either approve of, or recommend him to; so that they declare before to his Majesty the Names of the Persons whom they should approve of or recommend, unless such Persons should be named again; whom he should have just and unquestionable Exception."

But to return again to the matter of Fact: So soon as the Faction saw it self thus backed and encouraged in the two Houses, they then joined in an Ordinance to regulate the Militia of the City, which was at last approved of by the Mayor and Aldermen. But as soon as they made upon the King's Prerogative in this kind, and to second this, they again petitioned the King for setting the Militia of the several Counties on such as they had nominated, giving him at the same time a List of the Names of those whom they designed for Lords Lieutenants in the several Counties, being all of them of their own Party.

Rut. p. 520. The King replied his Answer till his Return from Dover, whether he had received the Queen and his Daughter that were then going for Holland; and at the same time they presented him with a Form of an Ordinance, whereby they would have settled the Militia of the Kingdom in the hands of those Lords they had already nominated. But when the King demurred to grant it, they pretended to be so transport'd with Fears and Jealousies, by certain feigned Reports of dangerous Plots designed by the Papists, to burn down divers
Dialogue the Fourteenth.

vers of the chief Cities and Towns in the Kingdom, "That they thereupon Id. p. 521.

"dispatched away another Petition to his Majesty (Bill at Dover) for ordering

the Militia. To which they desired such a speedy Answer, as might rouse in

them a Confidence (to use their own words) that they should not be exposed to

the Practices of those, whose Endeavours were to kindle that Commotion in Eng-

land, which they had in so great a measure effected in Ireland, and which no-

ting could do (as they said) but the granting that Petition.

His Majesty's Answer thereunto was just and moderate, "That as for the Id. 1b

City of London, and other Corporations, which by any antient Charters

had power of ordering the Militia, he conceived it unfit to alter their Go-

government, but that he could not content to the indefinite time propounded

for this Pollute of Defence. On his Refusal they voted this Anwer to be Dugd. p. 88.

"un satisfactory, and as good as a flat Denial, and that his Majesty's Advisers

thereto were Enemies to the State, and mischiefous Projectors against the

welfare of the Kingdom; also that the Denial was an open and open

sequence, that it would hazard the Peace and Safety of all his Kingdoms,

"unless some speedy Remedy were applied by the Parliament." And imme-

diately they sent another Petition to his Majesty (who was then at Theobalds)

wherein they protested, That if he did not speedily pass his Affent to the Satis-

faction of their Defeirs, they should be necessitated to dispose thereof by Au-

thority of both Houses, and that they did accordingly so resolve to do.

The House of Commons voted, That the Kingdome should be forthwith put into Id. p. 89.

a Pollute of Defence by the Authority of both Houses, and that the Navy

should be speedily rigged under an Admiral of their own Nomination, and that

a Declaration of the Reasons of their just Fears and Jealousies should be forth-

with drawn up; declaring the Grounds of their former Votes, for putting

the Kingdome into this Pollute by Authority of both Houses, to secure them from the

future from all Mifriifts and Jaellouises.

And to carry on this under colour of the Peoples Deifiers, divers new Peti-

tions were daily brought up from several Countys; as one from Staffordshire,

pretending such Dread of Papists rising there, that every Man was constrained to

stand upon his Guard, not daring to go to Church unarmed; others from

Worcestershire, Berkshire, Norfolk; as also from Norwich, Lynne, Salop, &c., all

of them earnestly desiring this Pollute of Defence.

So that the Factions being highly encouraged by these Petitions, the Ordin.

ance for ordering the Militia by the Authority of both Houses, was then on the day appointed to by the Lords; and thereon new Lieute-

nants were by them nominated throughout all England and Wales, without his

Majesty's Consent.

And having in a grand Committee, sitting at Merchant-Taylors-Hall, con-

trived the Declaration (mentioned in their Votes of March 2d) wherein they

made a very great noise of a Design to alter the Religion in this Kingdom, and

that the Wars with Scotland and Ireland were framed to that end: they Rush. p. 523;

perforce to his Majesty, first at Theobalds, and then again at New-

market within a few days after: which being then denied, they voted the

King's Commissions of Lieutenancies in the several Countys to be illegal, tho

they had not been altered since this Divute; as also that there was an urgent

and inevitable necessity for putting his Majesty's Subjects into a Pollute of De-

fence, and that the Ordinances of both Houses for the Militia, being obliging,

to the People, ought to be obeyed by the fundamental Laws of this Kingdom:

And, lastly, That the Earl of Warren should be appointed Vice-Admiral of

his Majesty's Ships, tho' he did by no means approve of him.

M. But pray, Sir, tell me what were the Motives that perced his Majes-

fty to leave London, and travel Northward, at a time when the grand Affairs

of the Nation rather required his Presence with his Parliament, to compile

the Differences that were now begun between them?

F. To do this, it will be requisite to look back a little, and give you a

more exact Relation of these Transactions: That his Majesty some time before

thinking his Person in danger, and his Authority expos'd by these exorbitant

Courtes, as also by the frequent Tumults and Affronts from the Mob (as has

been already related) did not think it safe to return any more to London after

his going down to Dover with the Queen; but coming no farther than Green-

wich.
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With, he sent for the Prince and Duke of York from HAMPTON-COURT to meet him there; and during his short stay at that Place, he sent the two Houles his Answer to their Petition concerning the Militia, shewing the Inconveniences and Breach of his Right to have it settled as they desired. From whence he went to Thrubsville, where he received that bold Petition of the two Houles above-mentioned; and being removed from thence to Newmarket, on the 9th of March the Earls of Pembroke and Holland were sent thither to him, with that yet more bare-faced Declaration of the two Houles already mentioned; setting forth the King's Misgovernment and unjustifiable Actions (as they called them) and in which they ripped up all that could be thought of to misrepresent his Person and Government, being to this effect:

1. By attempting to incense the late Northern Army against the Parliament, Jermyn's treasurables Actions, and Transportation by the King's Warrant.
2. The Petition delivered to Captain Leg by the King's own hand, and signed C. R.
3. The Business of the Lord Kimbelloe and the five Members, the suspicious Design of a Guard about the King's Person, the underhand-promoting the Irish Rebellion.
4. The ordering of Sir John Pennington to land the Lord Digby, thereby to alienate the King from his Parliament, and to procure foreign Assistance to the King. This appeared more credible, by his Removal from London with the Prince, and the many Advertisements from Rome, Venice, Paris, and other Parts, of great foreign Aid to be given to the King, in reference to some grand Design against the Protestant Religion and the Parliament; tho' (as it proved by the Event) there was no such thing ever designed or transacted abroad.

Then they desire the King to put away his wicked Counsellors, and to put his Trust in the Parliament; which if he would do, they would sacrifice their Lives, Fortunes, and utmost Endeavours to the Supportation of his Sovereignty.

The Lords, that then attended his Majestie with this Petition, moved him to come nearer to the Parliament, but it was refused. And when they further urged, that the Militia might be granted, as was desired by the Parliament, for a time; his Majestie replied with an Oath, No, no for an hour: so jealous was he of that great and important Power of the Sword, which no wise Prince can or ought altogether to trust out of his own hands. Then he told them in short, that as their Fears, Doubts, and Jealousies were such, as must take time to satisfy the whole World to be needless; so his own were not trivial, occasioned by so many scandalous Pamphlets, tedious Sermons, and sundry publick Tumults, hitherto unenquired into, and unpunished.

Then a few days after, so soon as his Majestie came to Huntingdon, he published a Declaration, for further Answer to theirs, to this effect:

1. That he had no evil Counsellors about him, but leaves such to their Censure where they should find them.
2. That he wished the Judgment of Heaven might be manifested upon those who had any Delusions against the Protestant Religion; and as to the Scotch Disturbances, they were already silenced by the late Act of Oblivion.
3. That the charging him with any inclinations to the Irish Rebellion, was a high and cautious Injury.
4. That he never intended to exasperate the late Army, or to use them against the Parliament.
5. That he signed Captain Leg's Petition only to satisfy the Army, and Sir Jacob Asbed was of his Opinion as to the Reafonableness of it.
6. That Digby and Jermyn were not at Whitehall, nor had any Warrant from him after their Refrains.
7. That he had given sufficient Answers about Kimbelloe and the five Members, enough to satisfy any reasonable and unprejudiced Persons.
8. That the care of his own Safety caused him to raise a Guard at Whitehall, and to receive the Tender of the Service of the Gentlemen of the Inns of Court; and that he looked upon those foreign Advertisements to the Parliament as false, idle, and incredible Stories.
Whilest the King continued at Huntingdon, he sent a Messege to the two Hay- 715
fes, March 14, that he intended to make his Residence for some time at York, 15 and desired them to haften their Succours for Ireland; and not upon any pre- 16 tence of an Ordinance, to which his Confect was not given, (as by Law it 17 ought) to act against Law, which he himself was to obserue, and his Subjects 18 to obey.

Notwithstanding which, the Parliament voted their Ordinance for the De- 19 fence of the Kingdom, not at all prejudicial to the Oath of Allegiance, but to 20 be obeyed, as being agreeable to the fundamental Laws; and the King’s Com- 21 mands for the Lieutenantcy over the respective Counties, to be illegal and void: 22 which was indeed a downright forcible dulleizing and outhing of his Majesty of 23 his juft Right and Prerogative in the Militia of the Kingdom, and necessarie 24 Defence of it, as well as his own Person and Authority.

M. I cannot deny but that you have given a fair account of all the con- 25 siderable Transfections relating to this great Affair of the Militia, which was the 26 chief Ground of that unhappy Quarrel between the King and the two Hou- 27 fes: yet give me leave to urge what I have heard several well-meaning Per- 28 sons to observe concerning his Majesty’s leaving London, and going to York; 29 that it was a great wonder to all prudent Men that the King should leave the 30 capital City, the Place of his and his Predecessors usual Residence, where most 31 of his Friends and Servants were about him, the Magazine of all Provisions 32 however, and his whole Seat of Intelligence and Supply; and betake him- 33 self to the Country, where these things were scarce to be had: and by his 34 leaving the Town, bring great Troubles and Disadvantages upon himself and 35 his Affairs, unlesse he had fully resolved, before ever he had left the Town, to 36 have begun a War against the two Houfes.

And whereas you allsed that his Majesty could not be safe at Whitehall, by 37 reason of the Tumults and Insults of the Mob; I pray tell me why he might 38 not have secured himself sufficiently against them, either by continuing at 39 Hampton-Court, or else by removing to Windsor, which, besides the distance 40 from London, is a Place of that competent Strength, that he might have con- 41 tinued safe enough there against any Attempts, except a formal Siege, tho’ the 42 Citizens and Apprentices should presume to come down thither to petition 43 him with Arms in their hands. And admit they had made any Affault upon 44 the Place, they could have done him no prejudice; since at the worst, besides 45 his own ordinary Guards, he might have ordered the Post Comitatus of the adja- 46 cent Counties to come in, and suppress those tumultuous Forces. But instead 47 of this, the King went away to York; and tho’ the two Houfes, as well before 48 he went, as after his Arrival there, often petitioned him to return to them, yet 49 he still refused to do it: and so the War began (as they said) by his raising a 50 Guard of the Gentry and People of that Country, for the Security of his Person, 51 and going to seize the Ammunition at Hads, when no Army was as yet raised 52 against him.

I confess what you now urge does carry a considerable shew of Reason 53 with it, and was much argued Pro and Con by the Politicians of those times; 54 but if we may give the King the liberty (as every Man else ought to have) of 55 judging of the Greatness of his own Danger, and since (as you yourself con- 56 fess) he could not be safe at Whitehall, by reason of the Tumults of the Rab- 57 ble, it might be as hazardous for him to have stay’d any where else to near the Town. For supposing the City-Rabble had come down with Arms in 58 their hands to Hampton-Court and Windsor, to petition him to grant the two 59 Houfes the Command of the Militia, or any thing else they had a mind to, the 60 Post Comitatus, you mention, would I doubt have stood the King in little or 61 no stead, and have hardly suppressed them; since the common People of most 62 of the adjacent Counties had (as appeared by their late Petitions) been as much 63 poisoned and prepossessed against the King, as the People of London: So that 64 he might have been affulted and imprisoned, nay taken in his own House, and the 65 Parliament might (for ought I know) have taken their parts that did it, and 66 declared, that they were not to be kept out, or denied those Petitions, which the two Houfes had voted to be according to Law, as well as they had done 67 before, when, after a great Concourse of the Rabble coming down to 68 Wiltminister, they cried out no Bishops, and gave fancy Language to the King himself: 69
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Self: Therefore for the better prevention of any mutiny such dangerous Tagings of pairs, and if near his own Palace, and the two Houses of Parliament, he had directed his special Writ unto the Sheriffs of London to place a Guard at Westminster. But the House of Commons presently voted it to be a Breach of their Privileges, and an Offence of a high nature; and therein upon not only ordered the said Watch to be discharged, but questioned and committed the Judges for fasting it, as had been already related. Now what can be a more egregious Proof, that the prevailing Faction in the House of Commons were so far from suppressing, that they rather encouraged both Tumults, as hereby not only took away the Liberty and Safety of both Houses of Parliament, but also rendered it unsafe for the King's Person to remain in his own Palace?

But as for his Majesty's going down to York, and his further Proceedings after he came thither, I shall, for his clearer Justification, give you a short account of them. As to the Behold of Had, and the King's taking a Guard at York for the Security of his Person, there will be, I hope, little need to doubt, whether this step might not very well justify his action at that time, and in so dangerous a Conspicacity: for he now plainly saw that the Parliament had already endeavoured to get the Militia of the Kingdom both by Sea and Land into their own hands, whereby they might, whenever they pleased, compel him to do what they had a mind to; it was safe then high time (if ever) to prevent them from feizing all the Magazines of the Kingdom, and to secure somewhat whereby he might be able to manage a defensive War, in case they should march their Forces to enter the whole Power of the Militia. Therefore since those Arms in Duke were his own proper Goods, being bought long ago for the War against the Scots, he might, I think, dispise of them to any use he pleased, unless it were to make war upon his People, which he always utterly disdained and declared against. And therefore for Sir John Hotham to presume to that the King out of his own Town, he the offered to enter it but with twenty Horse, was certainly an Act of duwarght Rebellious; for he might as well have that him out of any other, say all the Towns of England; as that to that this Act alone could be no Denial of his Intention to make a Proportion of his Forces against the Parliament, especially after Sir John Hotham had also summoned the trained Bands of the adjacent Country to come to his assistance; besides those Forces that he had already brought with him from London, before the King had done any holy Act upon that Place: All which was as plain and open Declaration of War against the King as any could be, unless he had actually discharged the Cannon on the Town-Walls against his Majesty. Therefore upon those Proceedings the King might be very well justified, if he also raised all the Militia of Yorkshire to reduce that Place to his Obedience: For if the Parliament by their own Authority could keep the King out of his own Town by force, they might as well have appeared in Arms against him in the open Field, as they did not long after.

Mr. But I suppose you are far enough as what they insisted on in their Justification of this Action, viz. That the John Hotham did first keep the King in the Order; yet I think this (said they) could not prevent his beginning the War upon them, which they were very well satisfied he designed when he went into the North. And this (they say) was evident by several of his Actions: For else to what purpose did he send the Queen into Holland, with the Princes, her Daughters, together with the rich and antient Jewels of his Crown, and divers Pictures of great Value, which were there pawned or sold outright, and the Mony laid out to buy Arms and Ammunition, which he brought over with her not long after, when the landed at Harlingen-Ray in Yorkshire? Or to what end else did the King leave his Parliament and go to York, and there, under the colour of a Guard for the Security of his Royal Person, raise Forces, which in a little time after increased to an Army? And admitting it to be true, that the Parliament first instited out Commissions for calling of Men, and mustering the Militia for their Service; yet it was not till the King had endeavoured to enter Had, to seize the Arms that were there kept in the Place, and also in the Cities, Towns and Forts, and Skirmishes in several Counties between the Militia that had been mustered and commanded by the King's Commissioners of Array, and the like People that were headed by those who were sent by the Parliament to must be and discipline
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pline them; so that what the Parliament did, they looked upon as done in their own Defence. And had they said till he had actually raised an Army to have marched up to London, the King might then have surprized them, quite unexpected for their own Defence; so that they could have made no considerable Resistance, for the Safety and Preservation of the Parliament, and consequently of the Liberties of the Nation. And if this had been; as they themselves set forth, it puts a much better colour upon their Cause and subsequent Actions; since that makes it only a defensive War against the King, which is justifiable enough upon your own Principles.

6. I will not deny but that when the Queen, and her Daughter the Princess, went over into Helstad, with the Jewels and Pictures you mention, it might be done with an intent to pawn them for Money, in case a War could not be avoided; but that there was none then designed by the King that Summer, appears plainly enough by the Queen's not coming over with those Arms till the Year following; since otherwise she went early enough in the Spring to have bought those Arms, and sent them over to the King, or returned her self with them the same Year. And as for your other Objection, that the King designed a War by his going into the North, and there raising a Guard, and endeavouring to seize the Town of Hull, it was the violent Proceedings of the Parliament that forced him to that Refolation; for besides that he did not think himself safe any where near London, where the Militia of that City was commanded by its own Officers, regulated by the Parliament, they might, under the pretence of removing evil Counsellors, not only have seized them, but his own Person likewise. And when upon his first Departure from London to Theobalds, they so earnestly prevailed with him to settle the Militia of the Kingdom by Act of Parliament, in the hands of Commissioners of their own appointing; what was it but to tell him in plain Terms, that the Forces thereof were no longer to be trusted in his power? For after he had so openly attempted to seize their Members, they no longer now looked upon him as their Friend, and scarcely as their King, any more than in Title; because when once they were possecd of the Sword, that main Prerogative of the Crown, they knew that he and all those that adhered to him, were absolutely in their power: and therefore he had very good reason to tell the Commissioners, whom the Parliament had sent to him to Theobalds for his Assent to the Bill for the Militia, That he would never trust that Power wholly out of his own hands, no more for an hour.

6. I shall not insist farther as to this point; but pray give me the rest of this Year's Transactions.

F. With all my heart, and I will do it as briefly as I can; but must first farther inform you, That a little before this, the King himself offered a very good Expedient to compose this Dispute, by a Bill for the Settlement of the Militia for a certain time; wherein he was content to name but one half of the Lords Lieutenants and other Officers, and so leave the rest to the Nomination of the Parliament. But neither would this satisfy them, unless they had the whole Power of it vested in Commissioners of their own Nomination, and that without any time limited; and to that end they refused the Bill the King had offered, and drew up another (that I last mention'd) by which they put that great Trust wholly in certain Lords and Gentlemen, whom they look'd upon to be entirely in their Interest, quite excluding the King from having any more to do with it, than if he had been a Duke of Venice: and the unreasonable urging of this Bill proved that Rock of Offence, on which the common Peace of the Nation was not long after split.

6. But pray tell me, What did the King after he came to York?

F. I shall observe your Directions. You may remember, that after he had been deemed entrance into Hull (which has been taken notice of by your self) he proclaimed Helstam a Traitor, and so returned to York, and from thence sent to the Parliament to have exemplary Justice against him, and that the Town, together with the Magazine, should be deliver'd to him; but they were so far from complying with his reasonable Demand (chose he sent more than once but it); that after some Measages which passed between the King and them, they issued out a Declaration, wherein they justified Sir John Helstam's late Action, and set forth the King's Design upon Hull as an infringement of the
the Liberties of the Subject, and a Breach of the Law of the Land (who, or wherein, had been a hard matter to shew;) and then they sent certain of their own Members down thither for the better securing of the Town. Etham being thus backed by the Parliament, presently sent out Warrants in his own Name to summon the Trained-Bands of the adjacent Country to march in with their Arms for the Defence of that Place; which being obey'd by several of them, he then pretended he had no pretest occasion for them: and so having disarmed them, turned them home again.

A little before this, the two Houfes not only paffed their Ordinance for the Majesty, against his Majesty's Content, and without letting him have any share in the Disposal of it; but also to reinforce it, iffued out a firit Order, requiring all Persons, fo authorized by themselves, immediately to put that Order in execution: which was done, notwithstanding the King's Declaration to the contrary; wherein he fet forth, that it was illegal, and commanded them not to obey it, since the two Houfes had no lawful Authority to make any fuch Ordinance without his Content. But this Declaration found no Obfeience, for the Parliament-Commissioers had already puffer'd it, and exercifed the Trained-Bands in feveral Towns and Counties where they were able to do it; of the Success of which you shall hear farther by and by.

Whereupon the King having hitherto had no Guards, but his Gentleman Pensioners and his ordinary Yeomen, and knowing the Parliament had fome time before raifed a Guard for their own Security, he therefore iffued out his Letters of Summons to the Gentry of Torfitors to attend him at Torf; who coming to him accordingly, he then acquainted them with the late illegal Proceffions of the Parliament; and that he looked upon his Person to be no longer in safety without a greater Guard, and therefore defired their Affiftance for that purpose: and this being cheerfully complied with by moft there present, they returned home to raife the Forces he told them were necefsary for his prent Service. And not many days after he farther signified to them by his Letters, that he should take it kindly if they would attend him to armed and provided as they should think fit, for he apprehended himself in some danger.

This was readily obey'd, and many of them came in to him pursuant to his Summons. At this the Faction of the two Houfes were fo highly alarmed, that thereupon they immediately voted, that what the King had done at Torf, in raising of a Guard, was a Preparadon for a War againft them, and a Breach of the Truft repofed in him by his People contrary to his Oath, and tending to the Diffolution of the Government; and that all fuch as ferved him therein, were Traitors to the Laws of the Kingdom.

Now by what Law they could judge it fo, I am yet to feek, it being expressly declared by the Statute of the 7th of Edward the Firft, That it belongs to the King alone to prohibit Force of Arms, and all other Force, when it shall please him, and to punifh Offenders which shall do contrary to Law; and herein every Subject is to be aiding and affifling.

But to return to the matter in hand: Immediately after this the Faction at Westminster published another Declaration in the name of both Houfes of Parliament, forbidding all Men to attend his Majesty at his pлеasure, except such as were bound thereto by special Service; and that if the Trained-Bands, or any other his Majesty's Subjects, should upon any fuch Command be drawn out in a warlike manner, they should be efeemed as Difobedchers of the publick Peace: wherefore the Sheriff of each County was thereby ordered forthwith to raife the Power thereof to suppress the fame, and to keep his Majesty's Peace according to Law.

And having already voted, that the Magazines of each repective County in England and Wales should be pofsession into the power of fuch Lords Lieutenants, &c. as the Parliament moft confounded: They also published another Declaration, highly reflecting on his Majesty's late gracious Miffages, Answers, and Declarations, taxing him with Breach of his Word and Promifes; as also with continued Oppreffions and Violations of the Laws, and with an intent to bring up his Northern Army to awe the Parliament.

And having so done, they voted farther the next day, That the King (feced by wicked Councils) designed to make war againft his Parliament; which
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"which (as they pretended,) in all their Confabulations and Actions, proposed to other end unto themselves but the Care of his Kingdom, and the Performance of all Duty and Loyalty to his Person." Nor was this all, but at the same time they made as great Preparations for a War, as if it had been against a foreign Enemy.

Having managed their point thus far, they go on, and set forth another larger Remonstrance in justification of all their Proceedings, in which they had this bold Expression, That now they had brought their Work to such a bright and desirable Issue, that it seemed to be left in their power able to hinder the full Accomplishment of their Design, unless God in his Justice should send a grievous Curse upon them.

Then within three days after they sent a Petition to the King, in the Name of both Houis, which was deliver'd to him at Torr; wherein they boldly blamed him for the Breach of his many fair Promises and Pretences, and desired him to disband his Guard, it being a cause of great Jealousy and Danger to the Whole Kingdom: otherwise they told him, That they should employ their Care and utmost Power to secure themselves and future Parliament, and to preserve the Peace and Quiet of the Realm. And shortly after they published a third Remonstrance, Hill justifying their former Actions, and farther blaming him for everything he had done, and challenging the Obligations of his Oath (upon that equal Contraction of guea Pngae elegerit) to pass all Bills which they should tender unto him. About this time also they removed the Magistrates from the Tower to London, and farther voted, That whatsoever should lead or bring any Mony into this Kingdom upon the King's Jewels, &c. should be adjudged an Enemy to the State. M. But had they not a plausible Defence for all this, if they were satisfied that the King had raised this Guard not only upon pretence to secure his Person, but indeed to seize Hall, with the Magazine of Arms there, in order to make war against the Parliament? And were not the Crown-Jewels now ready to be pawn'd by the Queen in Holland, to buy Arms and Ammunition for the same purpose?

F. I can easily take off this Objection; for sure it was high time for his Majesty to provide for his own Safety, when the Parliament had some time before began to borrow all the Mony and Plate they could upon the Publick Faith, as they then called it: And in this the Citizens of London swarmed themselves so zealous, that they not only brought in great Quantities of Plate, but their Wives deliver'd up their Candle-Cups, Thimbles, and Bodkins, to maintain the good old Cause; in which their Teachers so highly encouraged them, that they pronounced all those who refused to contribute to it, accursed from God, cunningly applying that Text to their present purpose, Casse ye Meroz, &c. I suppose you know Judges, 23, well enough what follows, without my repeating it.

And farther, as to his Majesty's Guard, was it not as lawful and necessary for him to have one, as the Parliament, who had raised one (as they pretended) for their own Security several Months before? But indeed the prevailing Factions represented every thing that did themselves as very just and lawful; but as if they had been the sole and supreme Power of the Nation, they declared the same thing, when done by the King, as illegal and arbitrary: for he (poor Gentleman) was wholly to submit to their dictates, and lie at their mercy; as appears about this time, by their feizing of Portsmouth, and all other strong places near London, into their hands, together with the Royal Navy, and then passing that Strange Vote above-mentioned, upon his Majesty's raising but one Regiment of Foot, and a few Horse, for his own Security.

M. But pray, Sir, tell me what effect these violent Proceedings then wrought upon the Minds of the chief of the Nobility and Gentry of the Kingdom.

F. I thank you for minding me of it; and I must now take notice, that not long after his Majesty's coming to Torr, and continuing there, many of the chief Nobility, as likewise of the Members of the House of Commons, with other Gentlemen of the first Ranks, being satisfied in the Arguments and Confidences of the Justice of his Case, from his Majesty's Declarations, and the whole Progress indeed of Affairs, referred to him at that City; and the Lord Keeper Little- ton himself, tho' at first he seemed inclinable to the Parliament in the busines
of the Militia, yet now, having deliver'd the Great Seal to one whom the King had sent for it, he presently after followed it himself, and then had it recommitted to him; and his coming in at that time very much conduced to his Majesty's Service, as being a Man of great Courage, Parts, and Learning. Not long after his Arrival, upon his Majesty's Declaration that he would not require any Obedience from such as attended him, but what was warranted by the known Laws of the Land; and that he would defend the Protestant Religion established by Law, the Liberties of the Subject, and Privileges of Parliament, against which he would not engage them in any War, unless it were for his own necessary Defence: Thereupon the Lord Keeper, together with the Duke of Richmond, the Marquises of Hertford, and divers other Earls and Lords, to the number of above forty, subscribed in Writing a Promise, whereby, they engaged themselves not to obey any Orders or Commands whatsoever, not warrantable by the known Laws of the Land; and further, engaged to defend his Majesty's Person, Crown and Dignity, together with his just and legal Prerogatives, against all Persons and Power whatsoever: as also to defend the true Protestant Religion, established by the Law of the Land, the legal Liberties of the Subjects of England, and just Privileges of his Majesty, and both his Houses of Parliament. And lastly, they engaged themselves not to obey any Rule, Order, or Ordinance whatsoever, concerning the Militia, that had not the Royal Assent. This was dated the 15th of June 1642.

M. These were indeed very fair Protestations from Persons of so great Worth and Honour; but pray what effect had these Proceedings upon the two Houses at Westminster?

Dugd. p. 95. F. Why, quite none at all; for I cannot but also observe, that a few days before this the two Houses, being flushed with their Success, and confident of their own Power, went down to the King certain Proposals for a Peace and Agreement, which were called the Nissen Proposals; by which they not only demanded the whole Power of the Militia, but also in effect the whole Regal Authority into their hands: unto which he soon after returned a full and clear Answer by the Marquises of Hertford and Earl of Southampton.

Ruth. p. 551. To second these Proposals, within four days after they set forth another bold Declaration against his Proclamation of the 27th of May, whereby he had forbidden all Obedience to the Parliament's Ordinances for the Militia: now (in opposition thereto) they declared it to be void in Law, requiring all Officers, 

murther, raife, march, and exercize according to their late Ordinance, affuring them, for so doing, of Protection from both Houses of Parliament.

Dugd. p. 95.097. And within few days after this, they sent out an Order, in the name likewise of both Houses, with fresh Proposals for the bringing in of Money and Plate; as also for providing Horfes, Horfemen, and Arms, in pursuance of their late solemn Vow and Protestation, for suppressing the traitorous At

ckers (as they called them) of those wicked and malignant Councillors, who sought to engage the King in the War against his Parliament; and likewise with Instructions for the Deputy-Lieutenants to proceed therein, themselves first making Subscriptions accordingly that very day. And about the same time they sent down divers of the most active Members to execute their Ordinance for the Militia, in the Counties of Leicester, Lincoln, Essex, Kent, &c. who infused into the People strange Apprehensions of very great dangers, that so they might be the better prepared to take up Arms in their defence (as they pretended.) After this the Earl ensured Money, Plate, and other things, of the Inhabitants of the City of London on the Publick Faith, for the buying of Arms, and raising of Men, under a pretence of a Guard for both Houses; notwithstanding the King had sent a Letter to the Lord Mayor, Aldermen, and Sheriffs of London, forbidding to give or lend any Monies, or provide any Horfes or Arms; since it was only out of Malice given out, that he designed to make war upon the Parliament.

This I the more particularly take notice of, for you to observe both the two Houses were providing all things ready for a War themselves, whilst the King had as yet neither Men, Money, nor Ammunition, and was hitherto attended with no more than his ordinary Retinue: So that all the effect his Majesty's Letter produced, was only an Order, in the name of both Houses, That the Deputy-Lieutenants throughout the Kingdom should tender Proposals to the
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Several Counties, for raising of Horse for the Service of the King and Parliament: and soon after that, a Declaration of both Houses was issued out, whereby they justifying their raising of Forces, alleging them to be for maintenance of the Protestant Religion, the King's Authority and Person, the free Course of the Laws of the Land, Privilege of Parliament, etc. forbidding any Officers whatsoever to spread that Paper, (for so they filed his Majesty's Letters) justifying their former Votes, that the King intended to levy War against his Parliament; intimating that neither his Majesty's Commands nor Threats could withdraw or deter such as were well affected to the Publick, from contributing their Moys, Horses, and Plate.

M. But pray, Sir, what effect had these Declarations?

F. I'll tell you as far as I can: in short, they fully answer'd their Expectations; for having thus deluded the People; large Proportions were daily brought in, and the County of Essex alone contributed twenty seven thousand Pounds and upwards, and eight hundred Horse; Hertfordshire, eight thousand Pounds, and three hundred Horse, &c. as appears by the Calculation thereof, made upon the 20th of August ensuing. The King therefore, taking thefe their violent Practices into Consideration, and that they had set up Lieutenants and Deputy-Lieutenants in all Counties, declaring his Commissions of Lieutenancy illegal; upon mature Deliberation and Advice (about this time he filed out his Commissions of Array into all parts of the Realm; which Courfe had been antiently used by his Royal Predecessors, for prevention of Invasions, or suppofing of any Insurrections, and approved by divers antient Statutes. And thereupon he let forth a Proclamation, informing all his loving Subjects of the Lawfulnefs and Ufe of them, commanding their Obedience thereunto; which Commissions, the Lord Strange, Son to the Earl of Derby, in Lancashire and Mr. Henry Harley, Lord Longbrough, in Leicestershire, with others in those Counties, to whom they were directed, did forth put in execution, but not without great opposition from the Commissioners of the Militia appointed by the late Ordinance of both Houses, as you will hear farther by and by.

But hereupon the Members at Westminster published a large Declaration, in Ruth. p.655; the name of both Houses, representing those Commissions of Array to be contrary to the Laws of the Land, deftructive to the Liberty and Property of the Subjects, y (if they might be believed) to full of Danger and Inconvenience, that it would bring a heavier Yoke of Bondage upon them, than any that had been taken away by this Parliament. Their fadious Emifaries were in the mean while employ'd in fundry parts of the Realm, to perufe the People that those Commissions were to reduce the Estates of all the Yeomanry of England, to ten Pounds per annum, and to enslave them beyond all expofition: and left those, who were thus reduced by theft their fable Illusions, should receive any Satisfaction from his Majesty's gracious Declaration, (for which he declared that the Rightnefs of his Actions, and Candour of his Intentions, might any ways appear, they fent out Orders, strictly forbidding the publishing of them, promising Protection from the Parliament to those who should refuse to do.

But to make short of the rest of this Narrative of matter of fact; after both Houses had fet out two other long and Specious Declarations, wherein Ruth. p.691, they pretended their whole Endeavours to be for his Majesty's Honour and Safety, the retaining the antient Laws, Rights, and Liberties of the Kingdom, which had been so much invaded, the Setting the Protestant Religion in Peace and Parfty, &c. they at the fame time tax'd the King with an Endeavour of a Change both in Religion and Government, as also with Breach of Solemn Protifations: and that he had already began a War against them, being fecured by Popifh Counfels, and a malignant Party, who had design'd nothing but Slavery and Confufion; and that this gave them a just occasion to raise Forces out of Religion and the Laws of the Land. And that the his Majesty published full and rational Answers, yet the Party at Westminster and the adjacent Counties were fo prepossessed with Prejudice, that they had little or no effect.

M. But what was the Ilue of these Declarations?

F. Why, from Skirmishes in Paper, they proceeded by degrees to real Hostilities; for to soon as the Parliament had prevailed upon a great many Persons Zzz of
of the City of London, and eighty Miles about it, to bring in their Money, Plate, and Horses upon the publick Faith (as they called it) they began therewith to buy Ammunition, and to raise Men, tho' they were not formed into an Army till some time after.

In the mean while the War was in a manner began by divers petty Conflits in several Counties, between the Commissioners whom the Parliament had order'd to murder and command the Militia, and those other Commissioners, who acted for the same purpose by virtue of the King's Commission of Augs. grounded on the Statute of the 12th of Henry the Fourth. For being by both Houses voted illegal, and against the Liberty of the Subject, thereupon happened many petty Engagements in several Counties between the Trained-Bands in those places, which were divided into two different Parties, of the King, and the Parliament, some of the Nobility and Gentlemen riding with the one, and some with the other, according to their different Interests and Principles: as particularly in Lancashire, where the Lord Strange, Son to the Earl of Derby, having raised great part of the Militia of Lancashire, with an intent to seize Manchester for the King's Service, was repulsed by Sir Tho. Stanley, and others, with the loss of one Man on the Parliament's side, which is supposed to be the first Blood that was shed in this unhappy Quarrel; and not long after the like Conflits happened in Oxfordshire, Devonshire, and Warwickshire, and with various Successes, and the loss of some Men on either part.

M. But you have not yet told me what the King hath been doing at Hull all this while, which seems to have been the main affair of this war.

F. I shall tell you as far as I can; but I could not do it till I had given you an account of the Success of this great Affair of the Militia. Sir John Hotham having now provided his Garrison of Hull with Men and Ammunition, the King about the middle of July resolved to relieve that place; and having raised a small Army of about three thousand Foot, and a thousand Horse, out of the Militia of Yorkshire, marched against the Town, the loss with its Success; so soon as the Governor heard of their Approach, he immediately pulled up the Sluices, and set all the low Grounds about this town under Water; so that all that could be afterwards done, was to block it up, and reduce it by Famine.

But the Garrison in Hull would not let it go so far, but boldly sallying out to the number of about five hundred Men, under the Command of Sir John Mel- 드روم, they beat off the King's Forces, which confining chiefly of the Country Trained-Bands, presently ran away; and the Horse being thus defeated by the Foot, quickly made toward the sea, when retiring; of the Parliament-Party, the Siege was again renewed; but was some time after, and after being raised. When the Governor had received fresh Supplies from London, Sir John Mel-drum made another Sally, and killing about twenty Men, and taking about as many more Prisoners, and setting fire to the King's Magazine of Gunpowder and other Ammunition, it so discouraged him, that by the Advice of a Council of War, he resolved to raise the Siege, and retire again to York; and so the Summer passed till the King, by a Reinforcement of his Army, set up his Standard at Nottingham.

M. But I forgot to ask you what became of the Fleet all this time; and how it came to pass that the King made no use of it to strengthen and block up the Town of Hull by Sea?

F. I thank you for putting me in mind of this, and I will give you an easy Answer to it. In short, the Parliament had now made themselves masters of almost the whole Royal Navy, and putting out Sir John Pennington, Admiral for the King, gave the Bar of Warwick the chief Command of it; who undertook it, notwithstanding the King's Commands to the contrary; and immediately falling out with a strong Squadron of Men of War, easily reduced all such Ships, whose Captains refused to obey his Orders; and in the Downs they feigned upon a Man of War, then bound for Newcastle for his Majesty's Service, together with a small Vessel laden with Gunpowder; which, as it proved a great addition of Strength to the Parliament, so it was a great weakening and disappointment to the King's Interest.

M. This
Mr. This Action of my Lord of Warwick was indeed very bold and violent, and suitable to the Character of that Nobleman, who afterwards proved one of the greatest Enemies the King had. But pray, Sir, proceed.

F. Matters being arrived to this height between the King and the two Houfes, they did not long continue in this uncertain State; but after a tedious Debate in the House of Commons, notwithstanding the Opposition of divers moderate Men of their own Party, it was at last voted on the 12th of July, and afterwards agreed to by the Lords, "That an Army should be raised forthwith (as they pretended) for the Safety of the King’s Person, the Defence of both Houfes of Parliament, and of those who had obedy’d their Orders and Commands; and for preferring of the true Religion, the Laws, Liberty, and Peace of the Kingdom:" And then they also voted, That the Earl of Effex should be General of it, with whom they declared they would live and die. All that in their Votes intwined of any Moderation, was, That they then also voted a Petition to be sent to his Majesty, to move him to a good accord with his Parliament, and to prevent a Civil War; but it was only to this effect, That he should dismiss his Forces from about Hull, Newcastle, and other places, and recall his Commissions of Array, and return nearer to his Parliament, and hearken to their Advice: And that they would then cease thofe Preparations they had made for their Defence, and would put the Town of Hull in the same condition as it was before Sir John Hotham brought his Forces into it. But as for their Own Part, the Militia, they inftituted to have it done, by no Bill, in a clearer way as should be honourable and safe for his Majefy, most agreeable to the Parliament, and effectual for the Good of the Kingdom; which signified no more in general Terms than to tell the King, that the Militia should be fettled as they pleas’d themfelves. This was not to be done neither, unless the King would leave all Delinquents (that is, all thofe who had obedy’d his Orders) wholly to their Jufrice, or rather Discretion.

But his Majefy having dispatched the day before, being the 11th of July, a Meffage to them, upon hisfending Forces to Hull, requiring that Place to be deliver’d to him, together with his Proclamation; wherein he fet forth how ill Sir John Hotham had dealt with him by divers Hoftilities committed in and from the faid Town; and of the Ships under the Command of the Earl of Warwick, keeping that Port and Pallage by Sea to it, in order to feize fuch Ships as were employ’d in his Service: he summons all his good Subjects in general to come into his Affiance, for the reducing it to his Obedience; and concludes with a Proteftation, That he would continue to defend the true Protestant Religion, as it is by Law eftablifh’d in the Church of England, the Laws of the Land, the Rights and Juft Liberties of his Subjects, equally to and with his own Juft Prerogative; and other things, needful here to be repeated.

But before the receipt of this Meffage, the two Houfes having already pre-ld. p. 603. pared the above-mentioned Petition, they resolved to return no other Answer to it than the Petition it felf; to which, being deliver’d by the Earl of Holland, Sir John Holland, and Sir Philip Stapleton, the King immediately after returned a very reasonable and folid Answer; wherein he bids them remembrance, That (which all the world knows) his Majefy was driven from his Palace of Whitehall for the Safety of his Life, and that not till both Houfes of Parlia-ment, upon their own Authority, raised a Guard to themselves (having gotten the Command of all the Trained-Bands of London for that purpose) without the leaft colour of Shadow of Danger; That they entered Power by their pretended Ordinance (againft all Principles of Law) over the whole Militia of the Kingdom, without, and againft his Majefy’s Confeient; That they took pos- session of his Town, Fort, and Magazine of Hull, and committed the fame to Sir John Hotham, who had that the Gates againft his Majefy, and by force of Arms deny’d Entrance thither to his Perfon; That they justify’d this Act, and took Sir John Gootham into their Prote&ion for whatsoever he had done or should do againft him; And all this while his Majefy had no other Attendants than his own meatial Servants.

That as for his Forces, he should not dismiss them till Hull was again reduc’d to his Obedience; and as for the Commissions of Array, he inftituted that they were legal, and which he promis’d to prove fo by a Declaration to be shortly publifh’d.
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publish'd. As to his coming nearer to his Parliament, he said, he hath expressly himself to fully as to his several Messages, Answers, and Declarations, and particularly avow'd a real Fear of his Safety, upon such Influences as cannot be answer'd, that he hath reason to take himself to be somewhat neglected. He says, he is also sorry, that since upon such manifest Reasons it is not safe for his Majesty to come to them, both his Houses will not come nearer to his Majesty, or to a place where the Freedom and Dignity of Parliament may be preserv'd. And as for the Tumults that had driven him from London, he should be glad to hear of some Examples of the punishing the Authors of them; which he knows not how to expect, since the House of Commons had already declared, that they knew not of any such Tumults, tho' they had heard thereof, both for the Dignity and Freedom of Parliament, that the House of Commons would join with them in a Declaration against them, which they refus'd and notwithstanding the Complaints that he himself had made of things of that nature, yet now had no reason to enquire out the Authors of divers seditionous Actions, Speeches, and Writings. Then he proceeds, That as for the last Delinquents to the due Course of Justice, his Majesty is well assured he hath given no shelter to any such: But if by Delinquents, such are understood, who refuse to submit to the pretended Ordinance of the Militia, and that of the Navy, or to any other which his Majesty hath not conferred upon those who had published his Proclamations, or had read his Messages and Declarations, (as divers Ministers about London and elsewhere had done) or such as had lent his Majesty Money in the Universities, or any other places; his Majesty declares to all the World, That he will protect all such with his utmost Power and Strength, it being no less his Duty to protect those who are innocent, than to bring the guilty to condign Punishment: of both which the Law is to be judge. And then concludes with saying, that much greater Delinquents sit on their throats, yet agrees that all Delinquents shall be proceeded against according to the known and unquestionable Rules of the Law.

Having said thus much of the Particulars of their Petition, he then proceeds to complain, that since the sending thereof they had beaten their Drums for Self-interest, and armed them against the General with a Power destructive to the Law and Liberty of the Subject, and chosen a General of their Honour; That Sir John Kerke, besides his burning and drowning the Country, had taxed his Wine and other Provisions for his House; and therefore demands, That the Town of London, with its Magistrates, be forthwith deliv'red into the hands of such as he shall appoint: That his Navy be forthwith deliv'red into such hands as he hath directed for the Government thereof; the detaining of it, after his Majesty's Directions publish'd and receiv'd to the contrary, and employing his Ships against him in such manner as they are now used, being notorious High Treason in the Commanders of those Ships: And then concludes with a Demand, That all Arms, Levies, and Provisions for a War, made by Order of both Houses (by whole Example his Majesty hath been forced to make some Preparations) be immediately laid down, and the pretended Ordinance for the Militia, and all Power of imposing Laws upon the Subject, without his Majesty's Consent, be disavowed; without which the same Pretence will remain to produce the fame Mischiefs.

Thefe things being done, and the Parliament adjourn'd to a safe and secure place, his Majesty promises in the Presence of God, and binds himself in all Confidence and Assurance on the Affections of his People, that then he will instantly and most cheerfully lay down all the Forces he hath raised, and discharge all his future and intended Levies, that there may be a general face of Peace over the whole Kingdom; and then he will repair to them, and define all Differences may be freely debated in a Parliamentary way, whereby the Law may recover its due Reversence, the Subject his full Liberty, and Parliament themselves their full Vigour and Elevation; and so the whole Kingdom a blessed Peace, Quiet, and Prosperity.

And if these Propositions should be rejected, his Majesty doubts not of the Protection and Assistance of Almighty God, and the ready Consternation of his good Subjects, who can have no hope left them of enjoying their own long, if their King must be oppress'd and spoil'd, and must be remediless: And the his Towns, his Ships, his Arms, and his Mony be gotten and taken from him,
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he hath a good Cause left, and the Hearts of his faithful People, which, with God's Blessing, he doubts not will recover all the rest. And then his Majesty concludes, That he expects a full and positive Answer by Wednesday the 27th of this Instant July; till then he would not make any Attempt of Force upon Hull, hoping in the Affection, Duty, and Loyalty of the Petitioners; and that in the mean time no Supply of Men be put into Hull, or any of his Majesty's Goods taken from hence.

M. These Offers appear very fair and reasonable; but what Return did the two Houses make to them?

F. I'll tell you precisely: To this Answer the Lords and Commons a few days after sent the King a Replication by the Earl of Holland; the effect of which was, to let them know that they could not agree to his Majesty's Demands for the Delivery of Hull, and the Magazine, together with the Navy, or the raising the Ordinance out of the Militia; the laying down of all Arms of the Authority of the two Houses of Parliament, and adjourning themselves to some other place: because the reason wherefore they took the Town of Hull, with the Magazine and Navy, into their custody; and why they paffed the Ordinance of the Militia, and made Preparations of Arms; was only for the Security of Religion, the Safety of his Majesty's Person, Kingdom, and Parliament: all which they did see in evident and imminent Danger. From which, when the shall be secured, and the Forces of the Kingdom shall not be needed for the Defection thereof, they shall then be ready to withdraw the Garrison of Hull, to deliver the Magazine and Navy, and settle the Militia by Bill in such a way as shall be honourable and safe for his Majesty, most agreeable to the Duty of Parliament, and effectual for the Good of the Kingdom, as they have professed in their late Petition. And for adjoining the Parliament, they apprehend no reason for his Majesty to require it, nor Security for themselves to cohere to it: And then conclude, That his Majesty need not fear returning to London, considering the Loyalty and Fidelity of that City to his Majesty. And as for laying down of Arms, they excuse it, till the Causes that had moved them to take them up shall be removed; and then they say, when this is done, they shall be willing to forbear making any farther Preparations, &c. But of all this they make themselves the sole Judges.

But I cannot here omit, that tho' both the King and Parliament commanded these their Declarations, Messages, and Petitions to be printed and published, and the King their Churches; yet the latter eire not published, tho' they were printed of their Cause, or fearing left the People should receive any due Information concerning the Justness of the King's Cause, and the Sincerity of his Intentions, strictly forbid any Ministers or other Officers from reading or publishing any Declarations, Messages, or Answers sent them by the King; and those that refused to obey, were committed to Prison: as in particular they dealt with Sir Richard Gurney, Lord Mayor of London, who for publishing the King's Committee of Arraignment was not only deposed from his Office, but also committed to the Tower, where he lay a long time. I have given you the more particular Account of this Petition, and the King's Answer, with their Replication thereto, that you may the better observe how things stood between the King and the two Houses, and who were most in the fault, that they could by no means come to a better Understanding. I shall therefore now proceed farther to shew you how they daily grew into greater Acts of Hostility, till it came to that height as engaged the whole Nation in a Civil War, which ended in the Ruin of the Royal Party, the Murder of the King, and the enrolling of the whole Nation.

M. But pray, Sir, before you go on farther, tell me whether, according to your and their Principles, the Parliament had not a fair colour for what they did; for who, said they, can or ought to judge when the Kingdom is in danger, or that the King goes about to destroy the Liberties of the People, and to make War upon the Parliament; but themselves, the Representatives of the Nation, and Interpreters of what is good, and what is evil? And now when they had thus solemnly declared their own sincere Intentions, that they did not design to begin any War against the King, but only to take him from his evil Counsellors, and therefore still earnestly beseeched him to return again to his Parliament at London; and he refused to do it, but flung in the North, providing Arms, and raising
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raising Men for his Guard; why should it be supposed that this was for any other end than to make war upon the Parliament?

F. I grant that this was the Effect, and indeed chief, if not only Reason, in all their Declarations and Remonstrances, why the Nation should put full Trust and Confidence in whatever they said; yet the King did not fail in his Messe-
ges to them, as also in his printed Declarations, in answer to whatever could be urged upon this Head, to set forth, that the Parliament were not the sole Judges and Interpreters of the Law without himself: for upon that ground (unless the two Houfes should be supposed infallible, and not capable of judg-
ing or acting any thing amiss) they might engross all the Power of the King-
dom to themselves, and to leave him the empty Title and the Name of a
King, as they had in effect done by their Ordinance concerning the Militia;
over which they asserted, that he had no more Authority but as it was de-
cleared, and sealed by and from themselves. Now granting it to be according
to their own Allegation, that the King was one of the three Bishops of the
Kingdome (whereas he is indeed the Head of the whole Body Politick) yet even
upon this Supposition they could not, nor ought to judge and declare what
was the Law without, For supposing it to be both

a known Maxim among Equals, that Par in parvo nullum habet potestatem, and
that in different Personns and Powers each of them must be endued with an in-
dependent Right to act and judge for themselves: Therefore since they had
made the King's Stay in or near London unsafe for him, by the Tumults raised
and fomented by the Faction in both Houfes, could any but himself judge when
his Person was in danger, and what were the best means for his own Security?
If they were to be trusted in it, and to have several months liberty, and
affix'd to their Defence against a malignant Party, might not the King
have a like Right to a Guard for his Defence, against those that had now got
all his Fleet and naval Stores, with his Magazines of Arms in the Tower and at
Hull, into their own hands, whether he would or not? And had by thus violent-
ly invading his Prerogative without his Consent, not only put themselves in-
to a Poffiture of War, but indeed actually begun it, by the Commissions they
had issued out for murthering the Militia of the Kingdom, before the King's
Commissions of Array were actually put in execution for the same purpose:
but especially after they had avow'd and justifie'd Herbon's shutting him out
of Hull, and thereby treated the King as if he had been apublick Enemy to
the Nation?

To conclude: If they had their Fears and Jealousies of his Proceedings,
why might they not be mutual, and he likewise have the same of theirs? For
when once Men cease treating each other like Equals, by Reason and Perfor-
mation of conscience, that they are then discharged of all Civil Obligations,
and in that Rate it is lawful, si vos respetesc, to repel Force by Force. Therefore
since neither the King nor Parliament could agree upon these Points, and that
neither of them were infallible, all they could do was to appeal to the People
which side they would take and adhere to: tho' as their Condition was very
unhappy, whilst they knew not which of these contending Powers to follow
or obey, yet certainly those that took part with the King had the Law on
the Side; for the Statute of the 11th of Henry VII. none can be called
in question for affixing the King in his Wars against his Enemies, whether for-

M. But pray, Sir, tell me then why you have not hitherto called the two
Houfes, and all that affix'd them, downright Rebels and Traitors, as certainly
they were (according to our old Church-of-England Principles) notwithstanding they were at first chosen for the Reprefentatives of the Nation? And
if (as you say) the Law on the part of the other Party acting against Law, must deferve that Title by your own showing.

F. I do not at present concern my self with what they were indeed, but
shall decline giving them or their Adherents that hard Names of Rebels and
Traitors, for several Reasons: As first, Because I am now to declare my self
directly of no Party, but to shew wherein the King and Parliament were both
to blame, as certainly they were, as well in the beginning, as carrying on of
this unhappy Civil War. And in the next place, I forbear calling the other
Rebels, because the King having made the two Houfes, by his own Act, not
subject
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Subject to any Dilution or Prorogation, otherwise than by their own Consent, had so far made them independent upon himself, and had given them thereby a Power of looking into and cenfuring his Actions, whether he would or not; especially since they put such a specious Gloze upon all they did, that it was hard for many well-meaning and prudent Men of the Long Robe among them to believe their Party in the wrong, but that in the Names, in defence of the Protestant Religion, and the Liberties and Privileges of the Nation, with an Acknowledgment of a Submission to the King's Authority, as far as they thought it according to Law. I shall not call them direct Traitors for what they at first did, till the Independent Party in the House of Commons having got the ascendant of the Presbyterian, and also beaten the King in the Field, and had his Person delivered to them by the Scots, not only kept him in Prison, but also had more Addresses should be made to him, and took the whole Power both Civil and Military into their own hands; and from that Period of Time I shall not flink to call them Traitors: Since no Man can justify the imprisoning of the King, without committing Treason, by the Act of the 25th of Edward III, wherein I find no Exception, whether it be done by one or both of the Houses of Parliament, or by any other Persons whatsoever; since they are all the King's Subjects, as well in their politick as private Capacities.

I shall now return from whence I have digressed, and proceed with the Narr. Ruth. ii. P. passion of what remains of this unhappy Civil War, till the Murder of the 759.

King. The Parliament having raised a powerful Army under the Command of the Earl of Essex (as you have already heard) the King thereupon issued a Proclamation, whereby that Earl and all his Adherents were declared Traitors, yet with Pardon to such as should return to their Obedience within six days. But this manner of speech was so much contemned, that so soon as it came to their notice, the two Houses published a Declaration in their Name, 1d. p. 771, tainting many shamefull Innuences against his Majesty, declaring all such to be 9 Traitors that were Conspiring or Conventancers of this last Proclamation of Augst. 9, and that if his Majesty would disband his Forces, abandon those wicked Counsellors, and hearken to the wholesome Advice of his Great Counsell, they would endeavour them to make him and his Potestacy as great and rich as any Prince that ever swayed the Sceptre. But these were but specious Prises, and the Towns were in great Danger of Siege, together with Dover-Castle by Surprize; and having now borrowed an hundred thousand Pounds of that Mony that had been raised for the Service of Ireland (with which the King not long after taxed them in a particular Message) they proceeded to raise fresh Forces, till they had completed an Army of above thirty thousand Horse and Foot; whilst the King's Forces were as yet weak and incursions, for want of Money to pay them: the going down into the States-General, and there having some Mony lent him, and good store of Plate brought in from deters of the loyal Nobility and Gentr of those Parts, he therewith raised so considerable a Force, that he was sometime after able to give the Earl of Essex Battle, as he was marching in pursit of him towards London.

But I ought to have first told you, that on the 25th of Augst preceding, the King had erected his Standard of War at Nottingham, tho he then wanted a considerable Army to encompass the Parliament, till he found means to recruit it, as I have now related: which Parliament deserves your notice; since the Parliament declared that this was the beginning of a War against them; whereas indeed the War was actually begun some months before on their side, by Hoour's feizing upon and keeping the King out of Hull, and by their reducing all other Towns and Places of Strength into their power, and by their Ordinance for the Militia, and feizing the Forces of the Kingdom into their own hands, ordering a vigorous Refiague to be made against all such as should dare to oppose them, as far as Shrewsbury, and there having some Mony lent him, and good store of Plate brought in from deters of the loyal Nobility and Gentr of those Parts, he therewith raised so considerable a Force, that he was sometime after able to give the Earl of Essex Battle, as he was marching in pursit of him towards London.

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by some other and nearer way of Treaty; he therefore proposed, that fit Persons should be enabled on either side to treat of and conclude all Differences between them, for the publick Peace of the Kingdom, and further promised all Safety and Encouragement to those that should be so appointed by the Parliament; and concludes, That if this Proposition should be by them rejected, God would ahsolve him from the Guilt of the Blood which must be spilt.

To which the two Houses returned a very high and positive Answer, wherein they refused to enter into any Treaty till the King had recalled his Declarations, whereby the Earl of Exefx, and both Houses of Parliament, with all their Adherents and Affiliants, had been declared Traitors, and that his Majesty take down his Standard; since when they remained in that State, they cannot (as they said) by their fundamental Privileges of Parliament, give him any other Answer. To this the King however soon returned a short and fair Reply: First he protested that he never intended to declare both his Houses of Parliament Traitors, or set up his Standard against them; and therefore to remove all Scruples which might hinder the Treaty he so much desired, he promised, so that a Day were appointed by them for revoking their Declarations against all Persons as Traitors for afflicting him, he would then, on the same day, willingly recall all his Proclamations and Declarations, and would also take down his Standard in order to a Treaty.

But all that he could obtain from the two Houses, was, That they could not recede from their former Answer; and positively informed, that the King should first recall his Declarations, and take down his Standard, and leaving his Forces, return to his Parliament, without any thing to be done or yielded to at all on their side; saying, they would not allow themselves to be set in equal Ballance with those Persons, whose Counsels had still prevailed to hinder the Relief of Ireland; and immediately published a Declaration, that the Arms they were forced to take up for the Preservation of the Laws and Liberties of the Kingdom, could not be laid down, until the King should withdraw Protection from such Persons as had been Delinquents by being Houses, and leave them to the Justice of the Parliament.

To this the King, within a few days after, made another Reply; the Substance of which was, That he could neither do nor offer any more than he had done already, and that he should think himself clear and innocent from any Blood that might be spilt in this Quarrel, praying God to deal with him and his Porrity, as he desired to preserve Religion, Law, and the Liberty of the Subject, and Privileges of Parliament. The two Houses, however, was in effect no more than to repeat their former Answer, That whilst the King thinks himself bound in honour to protect such Delinquents, in whose Preservation the Kingdom cannot be safe, nor the Rights of Parliament at all maintained; they cannot enter into any farther Treaty with his Majesty, besides other refting Language; too long to be here repeated. And I have been the more particular in relating these last Petitions, with their Answer, that it will from hence more plainly appear, how unwilling this King was to enter into a State of War with the prevailing Faction in the two Houses, who would come to no other Terms with his Majesty than an Indemnity for themselves, and a Power to inflict what Penalties they pleased on all such as had any ways affifted him in this Quarrel, which was so utterly to discourage and deter all Persons, that should go about for the future to side or protect him from their Infuits and unjust Invasions of his Kingdom. Thus did they sacrifice the publick Peace of the Nation to their own private Malice and Revenge.

I shall now draw to a Conclusion, and shall but lightly mention the particular Actions of this unhappy War; and what followed thereupon; as the Battles of Edge-Hill, Marston-Moor, and Naseby, and other Places, in most of which the Parliament-Arm y obtained compleat Victories, under the fortunate Conduct of their two Generals, the Lord Fairfax and Oliver Cromwell; till at last the King, being reduced to the lowest Ebb of Fortune, was forced to quit his Kingdom, and to the South Army, under the Command of the Country Army by Succession, being this time after given up to the Parliament, upon such Terms as had been agreed between them, he was by them confined to some of his own Houses, and upon his Refusal to pay such Bills as they offered to him, which were in effect to divest
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direc't himself of all his Regal Power, they thereupon voted, That no more Addressess should be made to him in any kind; which was in effect to disown him for their lawful King. And tho during the War, as well as after it was ended, there were several Treaties set on foot for the Accommodation of those unhappy Differences between the King and the two Houses; yet they still proved abortive, through the predominating Humour of some leading and fac'tious Men, either of the one or the other Party, who not desiring to see an end of the War, still infused upon higher and more exorbitant Conditions than were fit either for the King or Parliament to grant, with any Honour or Safety to themselves; as happen'd particularly at the Treaties of Oxford and Uxbridge, at the latter of which nothing would serve the prevailing Parties of both Houses, but the King's absolute yielding up the Power of the Militia, and the total Abolition of Episcopacy, and the Book of Common Prayer, and giving up all their natural Rights to him, and afflicting him in the present War, to be find'd and imprison'd, and punish'd at their discretion.

But when the Presbyterian Faction in the House of Commons was over-power'd by that of the Independent, which was back'd by Cromwell, and the major part of the Army, by whom so few as eleven Members were forced to quit the House at once, and most of them to fly beyond Sea; after this, and that the King had been frighted from Hampton-Court, where Cromwell and the Officers of the Army had for a time treated him as a Prisoner of Honour, till he fled to the Isle of Wight in disguise, and there was for some Months kept a close Prisoner: but at last, whilst Cromwell and his Army were gone into Scotland, to reduce the more moderate Kirk-Party there, which under the Conco't of Duke Hamilton had rais'd an Army (tho with ill Success) to fet the King at liberty; then the major or prevailing Party of the Presbyterians in both Houses seeing their Error, and finding their Cause desperate, resolved to take this opportunity of treating and making a full and final Agreement with the King upon certain Conditions, which however hard and unequal in themselves, yet since they were somewhat more tolerable than those that had been before offer'd him, and considering in what desperate Circumstances his Affairs then were, he was obliged to submit to: and he done so at first, he might have, by a speedy coming up to London, and joining his Interest with that of the Parliament and City, rais'd an Army sufficient to cope with that which Cromwell was bringing out of Scotland, which he had now no Power to stop. But whilst they were inflicting too long upon several unnecessary Punishments, the General with his Independent Army, march'd up to London, and soon put an end to the Treaty by a forcible Exclusion of the major part of the House of Commons, which had voted the King's Concessions satisfactory; and then the remaining part (not being sixty in all) upon the House of Lords refusing to join with them, not only voted them alike and dangerous, but also kept them from meeting any more. After which it was of great Importance for the King to pass an Ordinance for the Trial of the King, by certain Judges appointed for that purpose, who both condemn'd him, tho he utterly denied their Power, and likewise order'd him (beyond what can be parallel'd in History) to be executed at the Gates of his own Palace: all which he suffer'd (betimes many other Indiscretions) with the highest Patience and Christian Courage, as became the Greatness of the Character he bore.

Now I durst appeal to your self, whether there be any thing in all the Consequence of this precedences against King James that came near this; either in the Original of the Quarrel, the Means of the Profection, or lastly, in the Illust and Consequence of the whole Affair.

M. I must confess you have given a just Account of the Beginning, Progress and Catastrophe of that unhappy Rebellion, which ended (as most of them do when they prove successful) with the Deposition and Murder of the King: And tho I do not deny but there is some difference between that and the late Exceedings from the Throne, yet it is not so much a matter of a quite different Case, since you yourself cannot but confess, that the Illust of both their Votes have been much the same; viz. the Deposition, or (as you word it) Abdication of the King, and the total Abrogation of his Royal Authority: All the difference I can find between them, is, That in the Case of King Charles I. this was done when his Royal Person was in their power; but in that of
the King his Son, it was not voted till after his Departure, or rather his being driven away, since he could no longer stay here with Honour or Safety to his Person; and what they would have done had he continued here, I cannot without Horrour imagine: but it is well it proved no worse, and that they had not the opportunity of expressing their Malice against his Person as well as his Court was under. Therefore I desire you would now show me the side you understand to justify all that the Convention has done in relation to the King) why they might not as well have condemn'd him to death (as the Rump Faction did his Father) as have pass'd that Vote, That by his Breach of the Original Consent between the King and People, and by his deserting the Kingdom, he had abdicated the Government, and that the Throne was thereby become vacant: since I always thought, that it had been sufficiently declared for Law by the Statutes of the 15th of Charles the Second, which attains to the Person and not the Power of his Father; That neither the Peers, nor Commons separately, nor yet both of them together in Parliament, nor the People collectively or representative, have any coercive Power over the Person of the King. And certainly this was a fundamental Law of the Land from the very beginning of Kingly Government in this Island, notwithstanding the contrary had been preached up, and writ for, by the Leaders of the Commonwealth Faction; and much the like Doctrines have been also spread abroad, and justified of late in tedious Pamphlets and Sermons, tho' void of with false the Falsehoods to blind the Eyes of the People. Therefore pray let me see how you can defend this part of the Controversy.

F. I shall observe your Commands; but first give me leave to premise, that the I will not justify the Deposition of Princes, yet I very much doubt the Truth of what you say, that it was always a fundamental Law of England, that the Estates of the Kingdom, or Parliament, had no coercive Power over the Person of their King, or could pass any Judgments on their Actions: for that it was never thought of by the first Lawgivers of the State since the first Laws were given to the People of Israel. I think I have already given you several Proofs from Aristotle, and the Mirror of Justice, and shewn what was looked upon in those Times to be the Power of the Estates of the Kingdom, as to the restraining the arbitrary and illegal Actions of the King himself, his Queen, Children, and great Officers of the Crown; and what the English-Saxon Writers ancient did in relation to their Kings, upon any notorious Breaches of the fundamental Laws of the Government, or a general violation of the Liberties and Properties of the People, contrary to Law; as you may remember from the Infancies of King Sicheb, and Eddy, and others in the Saxon Times: and that the same was held lawful, and put in practice after the Norman Conquest (as you call it) is as plain from what was several Parlaments did in the case of two Kings, viz. Edward and Richard the Second; which Proceedings were also justify'd and confirm'd by the next subsequent Parlaments (as you may find in our Statute-Book) by the Acts there to be found, in the first Year of Edward the Third, and first of Henry the Fourth; tho' I will not justify those Actions neither, nor affirm that Parlaments have the same Power as this day, it having been by them disclaim'd by so many subsequent Statutes.

M. I cannot deny that there are such Statutes as those you mention; but if you please more nearly to consider them, you will find that they were rather made to excuse and indemnify the Persons that had a hand in rebelling against, and deposing those Princes, than at all to justify the Actions themselves; for in that Statute of Edward the Third, you will read it is only there enacted and declared, "That none that came over with the King that now is, and the Queen his Mother, or none other that went with the said King in aid of them, to pursuie their Enemies, in which Pursuit the King his Father was taken, and put in ward, and yet remaineth in ward, shall be impeach'd," molested, or grieved in Person, or in Goods, in the King's, or in any other Court, for the said Facts, nor for the Death of any Man, &c. from the Day of the Arrival of the great King's Proposition" to the Day of his Interment." And much to the same effect is that Act of Indemnity pass'd in the first of Henry the Fourth, "That none shall be impeach'd or punished that assisted that King " to pursuie and take Richard the Second and his Adherents." So that these Acts were only Pardons to such Offenders, but do no way declare those Actions to be legal, or any ways justifiable by the known Laws of the Land, or fundamental
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damental Constitution of the Government. And as for the Law at present, you know it is expressly declared by the Act of the 12th of Charle the Second, That any Person or Persons of the Militia of the Kingdom are not to be lawfully called together in the Name of the Right, but that neither of the two Houses can pretend to the same; nor can levy any War, offensive or defensive, against his Majesty. So that I think nothing could be more plain and express, than that the late Proceedings against his Majesty have been altogether unjustifiable, and contrary to Law.

E. I do not deny that what you now say is in a great part true, and our written Laws do no ways allow any Reprisal, or Imprisonment of the King; but however, there are three Actions, which, tho' not justifiable by the strict Letter of Law, yet being for the publick Good, and without concerning the Government, and original Constitution thereof, and in cases of extreme Necessity, when done indeed, ought to be justify'd and pardon'd by subsequent Parliaments, as I have already sufficiently made out: But since we have so fully discouraged, and, as I thought, sufficiently settled that point at our ninth Meeting, I shall say no more on that Subject now. And as to what you say. In relation to the late Proceedings of the Convention against the King, I have already sufficiently made out that you could allege to the Salon, and slyly alter all that would have been thought a fraud upon the People, in the Seventh Conversation, that I do not here make repetition; only give me leave to add, That if the two Houses of Parliament have no power to censure, and pass Judgment upon the notorious illegal Actions of the King and his Ministers, the Institutions of those great Councils are altogether in vain; since it was acknowledged by King Charles the First, in his Anwser to the Nineteen Propositions already mention'd, That Parliaments had sufficient Power to refrain Actions and Pardons, and this is always to be thus understood, that the prorogued or recessed Parliaments are to exercise this Power rightly, and as they ought, for due and weighty Causes, and not vent their own private Resentments and Revenge upon the King or his Ministers, for flight and trivial Occasions.

M. Admit I should grant it, yet you and your Party would gain little by that, since the Law still supposes the King can do no wrong; and all Acts that are illegal are not to be looked upon as his, but those evil Counsellors and Ministers that presumed to do them, and who are alone to answer for them, the Person of the King being always excused and unpunish'd. And if it hath at some times happen'd otherwise in point of fact, it is by no means to be justify'd, or drawn into example. But indeed this Revolution is in one thing very singular, and without any Example, viz. That whereas in all former Depositions of Princes, the Indignation of the People has fallen more severely on the publick Ministers and Officers, by whom any Actions, supposed to be illegal and arbitrary, had been done, than on the Person of the King himself; and any other case than the Histories of Henry the Third, Edward the Second, and Richard the Second, may observe; while in this Revolution that has lately happen'd, the King himself hath been almost the only sufferer; and his evil Counsellors, and corrupt Ministers and Judges, have all escaped, so much as any publick Sentence or Punishment: which either shews, that what they had done was justifiable according to Law, or else that the Convention was very partial to those Offenders.

But to conclude, and return to the point in question: If the Long Parliament could not legally call King Charles to any account for what he had done contrary to Law (as your self seems to grant) I desire you to shew me any sufficient Reasons why it should be treasonable for the Long Parliament to pass a Vote, That the King's raising a Guard at York, was in order to make war upon the Parliament, and a Breach of the Truth repro'd in him, contrary to his Coronation-Oath, and tending to the Dilolution of the Government: and you yet fully accord all that, That King James was wrong, That King James could not legally be put out of the Kingdom, had abdicated the Government, should be looked on as legal, and according to the just Power of Parliaments. So that you must acknowledge, that the Long Parliament were invested with a Power of censuring the King and his Actions, and calling him to an account for them; and if they had, then the Case of King Charles the First, and King James his Son, will be much alike. But if the Long Parliament had not the Power, neither ought the Convention to have exercised it over the Actions of the pre-
sent King. And pray, Sir, tell me why the Ramp Parliament should be guilty of Treason, for appointing Judges to try and condemn King Charles; and the Convention that he be innocent, who have as good an doped King James, by declaring him to have abdicated the Government, and that the Throne is thereby become vacant: since I suppose, that this Convention, tho' of all the Estates of the Kingdom, meeting and acting without the King's Writ, hath no more (if so much) Authority as that first end of a Parliament which murder'd King Charles, and meeting met at first by his Writ.

F. I hope, Sir, then, if I can give a satisfactory Answer to these your last Questions and Objections, you will come over to my Opinion, in the first place I own, and I think you yourself must grant, that Parliaments have a Power of impeaching and punishing such evil andopp'y Ministers, as shall presume to act any thing contrary to Magna Charta, and the known Liberties and Privileges of the Nation, the they did it by the King's express Commands, since they are presumed to know the Law, and either should have refused to accept their places upon unfit and unwarrantable Conditions, or else have resign'd them, rather than obey'd the King's illegal Orders. But it is by a far greater Agravation of the Offence, if (as some of our Judges do say) they acquit of those Offices on condition to give their Judgment in point of Law, only as the Court shall direct: So that the difference between as barely lies in the true Sense and Meaning of this Maxim in Law, That the King can do no wrong, or if he do any in his own Person, how far he be liable to Answer for it. I grant indeed, that if the King never executes any Function of the Government in his own Person, he cannot be said to do any wrong, but only those his Ministers and inferior Officers that act by such Orders: yet what if the King himself will act ministerially, and will take upon him in Person, to be sole that are innocent of everything but his arbitrary Designs? or what if he will himself, put the Broad Seal to a Pardon of a notorious Enemy to the Government, that hands unpal'd by the Commons of England; can any one say that this is not a doing wrong in his own Person? What if he will turn his Chancellor, Chief Justices, and other Judges out of their Places, and will not admit of any new ones, but such as will sacrifice their Consciences, and will not consent to such, or will not give Judgments according to whatever he shall please to set up for Law? Or suppose he do in his own Person issue and give Orders for a standing Army in a time of Peace, not to defend and preserve, but to enforce the Nation; or suppose that being petition'd to, and desired by some of his Peers, who are Conspirators Nati, to abate from making such notorious Breaches upon the Constitution, he should immediately order, under his own hand the Petitioners to be clapt up in the Tower; can the Governor of that place judge whether the fault is his Lord's, or committed for the Treason, or only High Misdemeanor? Or lastly, suppose the King shall either refuse to call a Parliament to redress these Grievances; or if he goes about to do it, shall evidently in his own Person dissemble and corrupt the justly and properly'autorized Members of it; what must be done in such cases, when all other Remedies fail? And how many of these Acts and Breaches upon the Law the late King, in his own Person guilty of, I shall not now particularly enquire into, having already spoken sufficiently upon these Points. And I with you, or any body else, could excuse him from these personal Violations. I would rather ask you, when he is to be done when he will beheard to go Advice and Remonstrances that shall be offer'd to him, to make him sensible that such Proceedings strike at the very fundamental Constitution of the Government? I say, what Contra shall the whole Nation, or Parliament, as its Representative, take in such cases what the King will remain incorrigible, and will not extract what he hath done, to repair those Breaches he hath made upon the Laws?

M. I know no other Remedy, but still to apply themselves to him by Petitions, and if Prayers and Tears will not do, then to observe Parliament's Rule, That if the King will not be amended, expel him.

F. Truly expected some such sort of Answer from you to these Questions. But pray tell me, what if the King is resolved still to prove incorrigible, and openly to decline by all his Words and Actions, that will, govern, and act only by a standing Army, and doth put it in practice accordingly? do you allow the People no Remedy in that case, but only Prayers and Tears?
what satisfaction is it to me, my Prince's expecting the Vengeance of God for the Breach of his Coronation-Oath? Will that prove any Alliteration of the Subjects Misery, that their Prince will be damn'd in another World, when perhaps he himself may not believe any such thing as a Life after this? For he may be told by his Princes andje的心, that it is a commendable and meritorious Action in him to make himself absolute, and to trample all the Laws of his Kingdom under his feet; since otherwise he can never set up the Female Religion, which upon their Principles is the only way to Salvation, and that it is lawful for him to use any means to compass it. So that unless you will suppose all Governments ought to be absolute and arbitrary, at the Will of the King, I do not see any means left the Subjects how to secure themselves from the unbridled Tyranny.

To deal only with you; it is still my firm and steady Opinion, That if the word Calm which you have here put should happen, it is better for the People to rely upon God's Providence, what shall become of their Persons, Religion, and Liberties, than to provoke his Wrath by any Rebellion, or Resistance of the King or his Officers: since I do not think that even the Defence of our Religion, or of those Liberties and Privileges which have been granted by our former Kings to the Subjects of this Nation, can ever be counter-balanced by a Rebellion and long Civil War, for besides the present Calamities which God is certainly bringing along with it, it is commonly known, the Deposition of the King's Person, if not the Expulsion of the Royal Line and Family, as we have seen lately in the Flight of the Queen with the Infant Prince, which was followed with that of the King: rather than which I think any thing, even Persecution it self for Religion, were better to be endured by us, than a Tyranny worse than the Dissolution.

It is a very long and tedious subject to discourse of the Rise of Tyranny, and the several ways of doing it. But this much I know, that if a King be disposed, and has the Assistance of a Tyrannical Power, he can by his Proclamation, or by the Consent of his Councils, make himself absolute, so that he may do what he pleases; and the Subjects are not able to resist him, or else he may get the Assistance of other Tyrants, or Kings that are his Neighbours; for these Kings will do what he pleases; and the force of thousands of Kings may happen in the defence of them, yet this State is rather sometimes to be feared (if it cannot be avoided) than the others; as any Man, I think, would, if it were put to his choice, rather have a Tyrant once in seven Years, and come off with Life, than languish under an Agony of Confusion for the Ike Space of Time, and then at last a Prince that is a Tyrant, etc.

And now this Parallel seems very just, without making any particular application to either Kingdom, or Age. But to return to the matter in hand, to which what I have just now said, has been only introductory; I shall as finely allow, that the other side, that it may happen, that a whole People, or the major part of them, or the Blottles of the Kingdom, or Parliament, or at least the major part of them, may enter into such Experiments against the King, and by pulling too hard, a Centurion on
his Actions, may, by the Artifices of faction and ill Men, be drawn into Rebellion, and to take up Arms against him without any just Cause: and in this case, if there be no superior Power between him and his People, he can be Judge, and the Appeal must then be made to God, and the Consciences of all his good Subjects, that remain fill untainted, and will be ready to assist in maintaining his just Rights; or he may also in such cases implore the Assistance of some neighbouring Prince, provided he take care that the Auxiliaries he shall afford him may not prove so powerful as to make themselves Makers of the whole Kingdom and Nation; as we often find in History to have been the Event of such foreign Alliances.

These things being premised, I think it not at all difficult to answer your Queries: As first, why the two Houses of Parliament could not justly or legally call King Charles to an account for what he had done contrary to Law; and secondly, why it should be treasonable for them to pass a Vote, that the King’s raising a Guard at York was in order to make war upon the Parliament, in breach of his Coronation-Oath, and contrary to the Truth reposed in him. Any person’s voting that King James the Second, by his Breach of the Original Compact, and by withdrawing himself out of this Kingdom, had abdicated the Government.

Now to answer your Queries in order, I shall let you know, that, in the first place, I utterly disavow all coercive Power in one or both Houses of Parliament, to call the King to an account for any Actions committed by himself, or his subordinate Ministers or Officers; and therefore all the Proceedings of the Rump-Parliament against King Charles were absolutely void and illegal, not only from the Incompetency of the Authority, they being but the faradized and remainder of the Members of that Parliament, and without any concurrence of the third Estate, or Peers of England; who (tho’ at that time excluded by force, yet) have always had a joint Power with, if not superior to that of the Commons, in all such cases of the highest importance: but indeed because both Houses are the King’s Subjects, and called by his Writ, and have sworn Allegiance to him, therefore they could not pass Judgment upon him as a Criminal, since he was still their Sovereign; neither could they proceed against him as an Enemy, because by the whole Narrative of these Transactions it appears, that he was unwillingly drawn into that unhappy War, and acted only upon the Defensively, in maintenance of his just Right of the Militia, and other Prerogatives of the Crown, which a prevailing Faction in both Houses would then have deprived him of against his Consent.

This being so, the other part of the Question is easily answer’d, viz. the Convention’s Proceedings against King James should be justifiable, and not those of the Rump-Parliament against his Father, since the Infrasons are by no means parallel; for the Convention did in no wise take upon them to judge or pass Sentence upon the King, as one accountable to them for his Actions: for they only gave their Vote or Censure upon what he had done, as that which had already diverged him of all Right to the Crowns, and in effect implied an absolute Abdisication of the Government. And I have already proved in our former Discourse that when a King’s Acting plainly derives from his own understanding, and will no longer govern by Law, and refuses to amende the Breaches that have been made by his subordinate Ministers, he thereby himself becomes answerable for those Miswarranties. And tho’ I grant his Person is still unaccountable and unpunishable, for want of a superior Power to condemn him; yet he may so carry himself towards his People, in wisely going about by force to subvert the Religion and Laws, that upon his abdication Resist, or will not put him to worse ends than he did himself when the Breaches he himself had made, he at least his inferior Ministers by his Order, he may thereby forfeit and lose the very Crown it self, and all Right to govern any longer; but still (as I have formerly said) this wholly proceeds from his own exorbitant Actions, and not from any coercive Authority the Parliament can pretend to over his Person. Thus for example, if in the State of Nature, a Husband carry himself so cruelly towards his Wife, as that she can no longer live in safety with him, the may lawfully quit his Bed and Family, and provide for his own and somewhere else; after which, I doubt not but in that State the Bond of Matrimonial is thereupon dissolved; and this not from any Authority the Wife has over the
the Person of her Husband, but from the great Law of Nature, of Self-Preservation; or else it would lie in the power of any Husband to tyrannize, nay to murder his Wife whenever he pleased, and she could have no Remedy left to provide for her own Safety. The case is so plain between the People and a tyrannical Prince, that I think it needs no farther indulging upon, than to add what I have now laid in general to King James himself in particular: And I shall but lightly touch upon this Head, having at our eleventh Conversation fully proved, that the King's late Actions and Proceedings, mention'd in the Prince of Orange's Declarations, especially that of his alluming to himself a Power of dispensing with all Laws, were Breaches of the Original Contract between the King and his People: and that there is such a Contract, I think I have sufficiently demonstrated in our last Meeting; and if so, what the Legal City, tended to a Dissolution of the Government, and not being redressed, gave the People a Right of Resistance by Force to such illegal Judgments and Commands. And tho' I grant, so long as there are any hopes left that the King would desist from, and redress those Violations, he ought not to suffer either in his Person or Dignity, but only those that assisted him in those exorbitant Actions, since the King's Person should always be sacred and unpunishable; yet when he plainly declares he will not redress them, and puts himself at the head of them, he is doing it, by leaving the Kingdom without offering any Satisfaction for what he has done, nay, doing his utmost to leave the Nation in a state of Anarchy and Confusion: if this be not an implicit Abdicating of the Government, when the King absolutely refuses to govern any longer upon those Terms and Conditions on which he has received the Crown, I know not what can be reckoned one, unless you would have an express Abdicating or Resignation of it, which I do not think can be expected in this Case. The same reason is of course of Lords and Commons upon their Meeting have said their Votes that it was so, it does not therefore follow that their bare voting so, can make it so, if it were not so before. However, you must own it that it is a solemn Declaration of the Sense of the Representatives of all the Estates of the Kingdom, and ought to be acquiesced in, and submitted to by all the Subjects of it, unless you can shew me better Reasons to the contrary than you have hitherto done. So that after all your aggravating Expressions, this Vote of theirs did not at all reach the King's Writ, you will needs fancy that they had no more Right to fix or act than the Rump Parliament, when all the rest of the Members were excluded, and the House of Lords voted useless. This is indeed a great mistake, and which you could not have fallen into, had you consider'd as you ought, that the People and their Representatives, the Estates of the Kingdom, were before Kings in this Nation, who often owed their Crowns to their Election, as I have already proved at our fifth and twelfth Conversations; to all which I did not then deny, but that it was considerable to return by way of Charge against them, on all manner of Emergencies and Revolutions of Government, the Estates of the Kingdom, or Parliament, have always exercised their Authority, either without any Writ or Summons from the King, or else have sat after the Kings who call'd them had resign'd their Crowns, and abdicated the Government. And to give you Instances of this, I shall begin with the great Council of Parliament at Runnymead, consisting of all the Nobility and People of England, in which Magna Charta was first granted: and tho' it was not caused by
King John, yet it was by him acknowledged for a lawful Assembly of the Estates of the Kingdom, as you may see in Matt. Par. 2: and pray also consult Matthew of Westminster, and Walsingham’s Chronicle; and you will there find, that upon the Decree of King Edward the Third, the Estates of the Kingdom met in a Great Council at Westminster, by their own Power and Authority, and there solemnly recognized his Son Edward the First (who was then, as they supposed, in the Holy Land) his Title to the Crown, and order’d him to be proclaimed King, when as yet they knew not certainly whether he was alive or dead. And when his Son Edward the Second was deposed in Parliament, and had also solemnly reign’d his Crown to his Son Edward the Third, the same Parliament that had deposed the former King, sat and sith without any year from Some and Rebellion under the new one, and there passed several Statutes, as you find in Ralph or Knoyle. And the like happen’d upon the Deposition and Resignation of Richard the Second; the same Parliament that deposed him sat some time after under Henry the Fourth, and there were divers Statutes passed (as there were also in the first Parliament of Edward the Third) which are accounted good Laws at this day, without the Confirmation of any subsequent Parliaments, as you may see likewise in the Statute-Book, and Parliament-Rolls themselves. So that when our Great Council met on such absolutely, and by Authority that is their own inherent Right and Power from the Constitution of the Government, that gives sufficient Sanction to their Proceedings. I did, as I remember, at our last Meeting but one, slightly mention these two last Inances upon another Occasion; but since they now serve for my present purpose, pray pardon me if I take the liberty to put you in mind of them again.

M. If I confers you have given divers specious Iniances of the independent Power of Parliaments upon any great Emergencies and Revolutions of Government; but yet I have very much to except against most of them. As for the first Iniance, of the Great Council at Running-Mead, I have long since told you my Opinion of it, that it was a riotous and unlawful Assembly, met there against the King’s will; and tho I am not for abrogating the Great Charter, since it has been so often confirm’d by the voluntary Sanctions of so many succeeding Kings, yet I do freely tell you, I think it was out of the State and Rebellion at first. Indeed your last Iniance of the Assembly of Estates that met to recognize Edward the First, is more to your purpose; but then I pray consider, that this was in a case of absolute Necessity, in the absence of the King, and for the publick Peace and Quiet of the Nation, to settle the Government in good hands till his Majesty’s Return. And admit I should grant such a way of proceeding may be good for the doing of a necessary and lawful Act; yet it does not therefore follow that a Convention shall have power to make Laws without a King, much less to confine his Actions, and actually depose him. Therefore give me leave to tell you, as you yourself cannot justify the two Houses of Parliament in their deposing King Edward and Richard the Second, so neither can their sitting and acting under their Successors be defended, according to the strict Rules and Customs of Parliament; because they were summons’d by their Writs to meet, consult, and all with the King that call’d them, and none other; and when he either reign’d the Crown, or deceased, their Authority was like that at an end.

F. I shall not only answer the Objections you have now brought against my Iniances from matter of fact, but shall, I hope, confirm them with such fresh ones as you will not be able to answer. First then, as to what you object against the Validity of the Great Council at Running-Mead, I think it will not answer the end for which you bring it; since I have already, in our ninth Conversation, sufficiently vindicated the Legality of that Assembly: And give me leave now also to show you that the Charter’s legality of that Assembly, it is noted, were sufficiently asserted by King Henry the Third’s confirming, or rather new granting of it in the first Year of his Reign, by the Advice of his Uncle William the Marchesel, Earl of Pembroke, and Guale the Pope’s Legate; who plainly found, that even those Noblemen and Gentlemen that took part with the young King against Prince Louis of France, would never be contented till it was done. And tho the same King Henry often confirm’d this Charter, as did also his Son Edward the First, yet it was not because their first Confirmations
tions were not valid and sufficient, but from the want of their being observed as they ought to have been, by reason of the frequent Breaches that had been made upon it, either by those Kings themselves, or by their evil Counsellors and corrupt Ministers; from whence, upon every notorious Violation of it, the Estates of the Kingdom were not satisfied till they had, by giving the King fresh Subsidies (as you will find mention'd at the end of those Charters) procured new Confirmations of that Charter, as also of that of Forefathers; and those often fortified with dreadful Excommunications denounced by the Bishops against all those that should for the future presume to infringe them: yet all this was scarce sufficient: in general, we lose Counsellors in those days (as well as ours) over our Kings, and so great Temptations did they find often to violate them.

As for what you say in mitigation of my Inflance of the Great Council that met without any Summons from the King, to recognize King Edward the First, you have granted as much as I would have; which is, That such an Assembly is justifiable, where the publick Necessity and Peace of the Nation require it: Nor do I my self maintain or defend any more; but then do not give the Kingdom a Power upon every turn to meet, whether the King will or not. Yet certainly, upon such great and extraordinary Occasions, they had, and still have such a Power to assemble, and act as a Parliament, and to make Laws too, notwithstanding they were never call'd by the King's Writ at first. Besides the Precedents of the first of Edward the Third, and first of Henry the Fourth, already mention'd; and against which you have nothing to urge, but the distance of Parliaments at this day, which is hold so much the more in those times even in our own Memory (as I told you once before) the Convention that recall'd King Charles the Second, passed the Act of Obligation, and made many other Statutes. And tho' it is true that they were confirm'd by the following Parliament, yet that those Acts had been good without any such Confirmation, appears by several private Acts which were then passed, without ever being confirm'd at all, and yet are still acknowledged to be good Statutes at this day.

And that this Independent Power of the Great Council of the Estates of the King, was not peculiar to England, but has also formerly been in other Countries: as in particular that Great Assembly which met upon the Death of King Charles the Fair, to determine to whom the Right of the Crown then belonged, whether to our Edward the Third, or Philip Count of Valois, who both laid claim to it; and upon solemn hearing of the Committees of the Estates, the Committees of the Estates adjudged the Crown to the last born as right Heir, by virtue of the Salique Law, the further removed in Blood than King Edward from the King that last deceased. The like Decision I also told you the Estates of the Kingdom of Castile made between the pretended Daughter of Henry the Impotent, King of Castile, and his Sister Isabella, who was afterwards married to Ferdinand King of Aragon; when upon a solemn hearing of the whole matter, the Estates adjudged the Crown to the Princes Isabella, and not to the young Daughter the Queen had by her first Husband. And I have again mention'd this piece of History, because it comes nearest to the present Case, concerning the Prince of Wales; for whom shall judge of his Legitimacy, if there appear any thing sufficient against the Reality of his being born of the late Queen, but the Parliament, or Great Council of the Nation? which I am sure you cannot as yet accuse of any Partiality in this Affair.

M. I am satisified, from the Authorities you have brought, as well as the Reason of the Thing. This in fact the Title to the Crown is not disputable, that the Great Council of Estates ought to judge of it, in all Kingdoms where there are any such Assemblies. But I think the Case of this young Prince's Legitimacy to be so clear and indisputable, that there can be no just occasion for any such Trial. However, if there should appear any such Necessity, I suppose the King and Queen, his Parents, would not be against the putting the Decision of this Matter to a Free Parliament, confiding of those of the true Church of England, and not of Whigs and Fanatics. And as for the Power of the Estates to meet on other necessary Occasions, such as recognizing the lawful Prince, I shall not oppose that neither; tho' I do not thereby allow them an
an unlimited Power of deposing Kings, or of putting the Crown on what Head they please, to the prejudice of the right Heirs by Blood.

F. I am glad you and I are so far agreed in the main; tho' I cannot but observe, that you are under a very great Mistake, in limiting the Power of the estates of any Kingdom, only to the bellowing of the Crown on th'o' you call the Right Heirs: for pray tell me, who can better judge of this than they? And might not the Estates of France, if they had so pirated, have adjudged the Crown to King Edward, as well as to Philip of Valois, and had not then all the Subjects of that Kingdom been obliged to acknowledge him, notwithstanding their pretended Salique Law? But the Estates of the Kingdom, or Parliament in England, have a higher Power; for it is enacted by the Statute of the 11th of Henry the Seventh (which I have already cited, tho' on another account) That no one whatsoever, who shall force the King for the time being in his Wars, or elsewhere, shall suffer any Attainder or Forfeiture for so doing. Where you may easily take notice, that the intent of this Statute is to indemnify the Subjects of England, who shall assist and serve the King for the time being, (let his Title be what it will.) Now how can the Subjects of this Kingdom disingenuously judge who is lawful King, or has the best Title to the Crown, but by the Judgment and Recognition of their Representatives, the Estates of the Kingdom? Nor is there any difference in this Case between an Act made by a King de jure, and one that is only de facto; for you can't deny that King Henry VII. before his Marriage with the Princess Elisabeth, was any other, and after her Death he could be no better: and upon your Principles likewise, Queen Elisabeth her self had no more than a Parliamentary Title; and yet the Act in the thirteenth year of her Reign, That the King or Queen, with the Consent and Authority of Parliament, might limit and alter the Succession of the Crown as they thought fit; which Act I have prov'd to you, at our last Meeting but one, to be still in force: and I now repeat it, to refresh your Memory, and let you see that this Revolution, and the present Limitation of the Crown, is justified by both those Statutes; and does not only differ in the Original and Prosecution of the Quarrel, from the Civil War begun and carried on by the Long Parliament, but also in the Issue of it; that ending, not only with the Deposition and Murder of the King, and the setting up of a Commonwealth, but with the Expulsion of the whole Royal Line, and the Destitution of the Church and Episcopal Government; whereas it is now (God be thank'd) quite otherwise: for the King James be declar'd incapable to govern, yet the Convention hath thought fit to place the Crown on the Heads of his Son-in-law and Daughter, whom they look'd upon to have most Right to it. And as for the Church of England, all things remain in the same State as they were in King Charles's Reign, and I hope it will continue so, or rather be reform'd for the better; and therefore I think I have sufficiently justify'd the present Revolution from your Objections, and shew you, That an old Cavalier, or true Son of the Church of England, may very well approve and comply with this present Change; and you may come keep the 30th of January without any Hypocrisy; and may also still maintain, that the cutting off King Charles's Head was a horrid Murder and Treason in those that were guilty of it.

As for the Conclusion of your Speech, I wholly agree with you, but not in the Premises: for tho' the Crimes the Nation is guilty of in one Cause, are not so horridly cruel and barbarous as in the other; yet certainly no good Subject can justify the taking up Arms against the King upon any pretence whatsoever, much lesse presume to declare, That he hath violated (I know not what) Original Contract, and that the Throne thereby is become vacant; and then placing any one thereon, but him whose Right it is: since I look upon the Oath of Allegiance of perpetual Obligation upon all those that have taken it, not only to his present Majesty, but the Heirs of his Body begotten; so that you may keep the Thirtieth of January as much as you please: yet I doubt you cannot excuse those of your Party that have been the Contrivers and Acttors of this Revolution, from much the like (tho' I will not say the very same) Crime, with that of the Rump-Parliament. And as to what you say concerning the present flourishing Condition of the Church, and your Hopes of the farther Reformation of it, I wish I could see it; tho' I cannot now expect it,
Dialogue the Fourteenth.

as things are like to go; since some of her Members have, by the taking up Arms, and joining with the Prince of Orange, given the Enemies of our Religion a great advantage over them. And what will become of the Church, when the Archbishop of Canterbury, and all other conscientious Bishops and Clergymen, shall be deprived for not taking the Oath to the present Government, I dread to think; for I can foresee nothing but a most fearful Schism, like to be the Consequence of that Act.

F. I thought I had sufficiently proved in our former Conversations, that taking up Arms in defence of our Religion and Civil Liberties, when no other Remedy could prevail, was not unlawful, according to our Constitution. Secondly, that there is such a thing as an Original Contract, however ignorant you are pleased to make your self of it. Thirdly, that by the Abdication, or Forfeiture of King James (call it which you please) the Throne did really become vacant; and that it is legally filled by their present Majesties. That the Oath of Allegiance is of perpetual Obligation, I also grant; but it is still on condition, that the King shall likewise truly keep and perform that part of the Contract contain’d in his Coronation-Oath, without going about to alter and invade our Religion and Civil Liberties by an armed Force, and arbitrary Power: and if this were not so, we should owe it wholly to the King’s mere Favour and Goodwill, if he did not make us all Papists, say Turks and Slaves, whenever he had a mind to it. These are indeed the Principles I have all along maintain’d, and I hope I shall never have occasion to be ashamed of them; therefore since it now grows late, and that I find it impossible to make a Convert of you, and bring you over to my Opinion, I will bid you good-night, and part as much your Friend as before: for I am satisfy’d of your Sincerity, and that it is only Prejudice, or a mistaken Zeal, and too scrupulous a Conscience, that hinders you from coming over to our side.

M. I thank you for your kind Thoughts of me; and in Return can only tell you, that I think your Error proceeds from much the same Causes as you suppose mine to be. If I could add that of a too scrupulous Conscience: however I am obliged to you for the Benefit of this Evening’s Conversation, in which I must own I have received a great deal of light in many things which I was before ignorant of; and so I take my leave, and shall continue your real Friend and Servant.

FINIS.

B b b b 2
An Alphabetical

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