

## CHAP. IX.

### Of the Ends of Political Society and Government.

Sect. 123. IF man in the state of nature be so free, as has been said; if he be absolute lord of his own person and possessions, equal to the greatest, and subject to no body, why will he part with his freedom? why will he give up this empire, and subject himself to the dominion and controul of any other power? To which it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others: for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very unsecure. This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual *preservation* of their lives, liberties and estates, which I call by the general name, *property*.

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

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

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

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

Sect. 127. Thus mankind, notwithstanding all the privileges of the state of nature, being but in an ill condition, while they remain in it, are quickly driven into society. Hence it comes to pass, that we seldom find any number of men live any time together in this state. The inconveniences that they are therein exposed to, by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, make them take sanctuary under the established laws of government, and therein seek *the preservation of their property*. It is this makes them so willingly give up every one his single power of

punishing, to be exercised by such alone, as shall be appointed to it amongst them; and by such rules as the community, or those authorized by them to that purpose, shall agree on. And in this we have the original *right and rise of both the legislative and executive power*, as well as of the governments and societies themselves.

Sect. 128. For in the state of nature, to omit the liberty he has of innocent delights, a man has two powers.

--The first is to do whatsoever he thinks fit for the preservation of himself, and others within the permission of the *law of nature*: by which law, common to them all, he and all the rest of *mankind are one community*, make up one society, distinct from all other creatures. And were it not for the corruption and viciousness of degenerate men, there would be no need of any other; no necessity that men should separate from this great and natural community, and by positive agreements combine into smaller and divided associations.

--The other power a man has in the state of nature, is the *power to punish the crimes* committed against that law. Both these he gives up, when he joins in a private, if I may so call it, or particular politic society, and incorporates into any common-wealth, separate from the rest of mankind.

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

Sect. 130. *Secondly, The power of punishing he wholly gives up*, and engages his natural force, (which he might before employ in the execution of the law of nature, by his own single authority, as he thought fit) to assist the executive power of the society, as the law thereof shall require: for being now in a new state, wherein he is to enjoy many conveniences, from the labour, assistance, and society of others in the same community, as well as protection from its whole strength; he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require; which is not only necessary, but just, since the other members of the society do the like.

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

community from inroads and invasion. And all this to be directed to no other *end*, but the *peace, safety, and public good* of the people.

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## CHAP. X.

### Of the Forms of a Common-wealth.

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

Sect. 133. By *common-wealth*, I must be understood all along to mean, not a democracy, or any form of government, but *any independent community*, which the *Latines* signified by the word *civitas*, to which the word which best answers in our language, is *common-wealth*, and most properly expresses such a society of men, which community or city in *English* does not; for there may be subordinate communities in a government; and city amongst us has a quite different notion from common-wealth: and therefore, to avoid ambiguity, I crave leave to use the word *common-wealth* in that sense, in which I find it used by king *James the first*; and I take it to be its genuine signification; which if any body dislike, I consent with him to change it for a better.

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## CHAP. XI.

### Of the Extent of the Legislative Power.

Sec. 134. THE great end of men's entering into society, being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society; the *first and fundamental positive law* of all common-wealths is *the establishing of the legislative power*; as the *first and fundamental natural law*, which is

to govern even the legislative itself, *is the preservation of the society*, and (as far as will consist with the public good) of every person in it. This *legislative* is not only the *supreme power* of the common-wealth, but sacred and unalterable in the hands where the community have once placed it; nor can any edict of any body else, in what form soever conceived, or by what power soever backed, have the force and obligation of a *law*, which has not its *sanction from that legislative* which the public has chosen and appointed: for without this the law could not have that, which is absolutely necessary to its being a *law*,\* *the consent of the society*, over whom no body can have a power to make laws, but by their own consent, and by authority received from them; and therefore all the *obedience*, which by the most solemn ties any one can be obliged to pay, ultimately terminates in this *supreme power*, and is directed by those laws which it enacts: nor can any oaths to any foreign power whatsoever, or any domestic subordinate power, discharge any member of the society from his *obedience to the legislative*, acting pursuant to their trust; nor oblige him to any obedience contrary to the laws so enacted, or farther than they do allow; it being ridiculous to imagine one can be tied ultimately to *obey any power* in the society, which is not the *supreme*.

--(\*The lawful power of making laws to command whole politic societies of men, belonging so properly unto the same intire societies, that for any prince or potentate of what kind soever upon earth, to exercise the same of himself, and not by express commission immediately and personally received from God, or else by authority derived at the first from their consent, upon whose persons they impose laws, it is no better than mere tyranny. Laws they are not therefore which public approbation hath not made so. *Hooker's Eccl. Pol.* l. i. sect. 10. Of this point therefore we are to note, that sith men naturally have no full and perfect power to command whole politic multitudes of men, therefore utterly without our consent, we could in such sort be at no man's commandment living. And to be commanded we do consent, when that society, whereof we be a part, hath at any time before consented, without revoking the same after by the like universal agreement.

-- Laws therefore human, of what kind so ever, are available by consent. *Ibid.*)

Sect. 135. Though the *legislative*, whether placed in one or more, whether it be always in being, or only by intervals, though it be the *supreme power* in every common-wealth; yet, -- *First*, It is *not*, nor can possibly be absolutely *arbitrary* over the lives and fortunes of the people: for it being but the joint power of every member of the society given up to that person, or assembly, which is legislator; it can be no more than those persons had in a state of nature before they entered into society, and gave up to the community: for no body can transfer to another more power than he has in himself; and no body has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. A man, as has been proved, cannot subject himself to the arbitrary power of another; and having in the state of nature no arbitrary power over the life, liberty, or possession of another, but only so much as the law of nature gave him for the preservation of himself, and the rest of mankind; this is all he cloth, or can give up to the common-wealth, and by it to the *legislative power*, so that the legislative can have no more than this. Their power, in the utmost bounds of it, is *limited to the public good* of the society. It is a power, that hath no other end but preservation, and therefore can never\* have a right to destroy, enslave, or designedly to impoverish the subjects. The obligations of the law of nature cease not in society, but only in many cases are drawn closer, and have by human laws known penalties annexed to them, to inforce their observation. Thus the law of

nature stands as an eternal rule to all men, *legislators* as well as others. The rules that they make for other men's actions, must, as well as their own and other men's actions, be conformable to the law of nature, i.e. to the will of God, of which that is a declaration, and the fundamental law of nature being the preservation of mankind, no human sanction can be good, or valid against it.

(\*Two foundations there are which bear up public societies; the one a natural inclination, whereby all men desire sociable life and fellowship; the other an order, expressly or secretly agreed upon, touching the manner of their union in living together: the latter is that which we call the law of a common-weal, the very soul of a politic body, the parts whereof are by law animated, held together, and set on work in such actions as the common good requireth. Laws politic, ordained for external order and regiment amongst men, are never framed as they should be, unless presuming the will of man to be inwardly obstinate, rebellious, and averse from all obedience to the sacred laws of his nature; in a word, unless presuming man to be, in regard of his depraved mind, little better than a wild beast, they do accordingly provide, notwithstanding, so to frame his outward actions, that they be no hindrance unto the common good, for which societies are instituted. Unless they do this, they are not perfect. *Hooker's Eccl. Pol. l. i. sect. 10.*)

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

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

--To constrain men to any thing inconvenient cloth seem unreasonable. *Ibid. l. i. sect. 10.*)

Sect. 137. Absolute arbitrary power, or governing without *settled standing laws*, can neither of them consist with the ends of society and government, which men would not quit the freedom of the state of nature for, and tie themselves up under, were it not to preserve their

lives, liberties and fortunes, and by *stated rules* of right and property to secure their peace and quiet. It cannot be supposed that they should intend, had they a power so to do, to give to any one, or more, an *absolute arbitrary power* over their persons and estates, and put a force into the magistrate's hand to execute his unlimited will arbitrarily upon them. This were to put themselves into a worse condition than the state of nature, wherein they had a liberty to defend their right against the injuries of others, and were upon equal terms of force to maintain it, whether invaded by a single man, or many in combination. Whereas by supposing they have given up themselves to the *absolute arbitrary power* and will of a legislator, they have disarmed themselves, and armed him, to make a prey of them when he pleases; he being in a much worse condition, who is exposed to the arbitrary power of one man, who has the command of 100,000, than he that is exposed to the arbitrary power of 100,000 single men; no body being secure, that his will, who has such a command, is better than that of other men, though his force be 100,000 times stronger. And therefore, whatever form the common-wealth is under, the ruling power ought to govern by *declared* and *received laws*, and not by extemporary dictates and undetermined resolutions: for then mankind will be in a far worse condition than in the state of nature, if they shall have armed one, or a few men with the joint power of a multitude, to force them to obey at pleasure the exorbitant and unlimited decrees of their sudden thoughts, or unrestrained, and till that moment unknown wills, without having any measures set down which may guide and justify their actions: for all the power the government has, being only for the good of the society, as it ought not to be *arbitrary* and at pleasure, so it ought to be exercised by *established and promulgated laws*; that both the people may know their duty, and be safe and secure within the limits of the law; and the rulers too kept within their bounds, and not be tempted, by the power they have in their hands, to employ it to such purposes, and by such measures, as they would not have known, and own not willingly.

Sect. 138. *Thirdly*, The *supreme power cannot take* from any man any part of his *property* without his own consent: for the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires, that the people should *have property*, without which they must be supposed to lose that, by entering into society, which was the end for which they entered into it; too gross an absurdity for any man to own. *Men therefore in society having property*, they have such a right to the goods, which by the law of the community are their's, that no body hath a right to take their substance or any part of it from them, without their own consent: without this they have no property at all; for I have truly no *property* in that, which another can by right take from me, when he pleases, against my consent. Hence it is a mistake to think, that the *supreme or legislative power* of any common-wealth, can do what it will, and dispose of the estates of the subject *arbitrarily*, or take any part of them at pleasure. This is not much to be feared in governments where the *legislative* consists, wholly or in part, in assemblies which are variable, whose members, upon the dissolution of the assembly, are subjects under the common laws of their country, equally with the rest. But in governments, where the *legislative* is in one lasting assembly always in being, or in one man, as in absolute monarchies, there is danger still, that they will think themselves to have a distinct interest from the rest of the community; and so will be apt to increase their own riches and power, by taking what they think fit from the people: for a man's *property* is not at all secure, tho' there be good and equitable laws to set the bounds of it between him and his fellow

subjects, if he who commands those subjects have power to take from any private man, what part he pleases of his *property*, and use and dispose of it as he thinks good.

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

Sect. 140. It is true, governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent, i.e. the consent of the majority, giving it either by themselves, or their representatives chosen by them: for if any one shall claim a *power to lay* and levy *taxes* on the people, by his own authority, and without such consent of the people, he thereby invades the *fundamental law of property*, and subverts the end of government: for what property have I in that, which another may by right take, when he pleases, to himself?

Sect. 141. *Fourthly*, The *legislative* cannot transfer the power of making laws to any other hands: for it being but a delegated power from the people, they who have it cannot pass it over to others. The people alone can appoint the form of the common-wealth, which is by constituting the legislative, and appointing in whose hands that shall be. And when the people have said, We will submit to rules, and be governed by *laws* made by such men, and in such forms, no body else can say other men shall make *laws* for them; nor can the people be bound by any *laws*, but such as are enacted by those whom they have chosen, and authorized to make *laws* for them. The power of the *legislative*, being derived from the people by a positive voluntary grant and institution, can be no other than what that positive grant conveyed, which being only to make *laws*, and not to make *legislators*, the *legislative* can have no power to transfer their authority of making laws, and place it in other hands.

Sect. 142. These are the *bounds* which the trust, that is put in them by the society, and the law of God and nature, have *set to the legislative power* of every common-wealth, in all forms of government.

--First, They are to govern by *promulgated established laws*, not to be varied in particular cases, but to have one rule for rich and poor, for the favourite at court, and the country man at plough.

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

--Thirdly, They must *not raise taxes on the property of the people, without the consent of the people*, given by themselves, or their deputies. And this properly concerns only such governments where the *legislative* is always in being, or at least where the people have not reserved any part of the legislative to deputies, to be from time to time chosen by themselves.

--Fourthly, The *legislative* neither must *nor can transfer the power of making laws* to any body else, or place it any where, but where the people have.

## CHAP. XII.

### Of the Legislative, Executive, and Federative Power of the Common-wealth.

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

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

Sect. 145. There is another *power* in every common-wealth, which one may call *natural*, because it is that which answers to the power every man naturally had before he entered into society: for though in a common-wealth the members of it are distinct persons still in reference to one another, and as such as governed by the laws of the society; yet in reference to the rest of mankind, they make one body, which is, as every member of it before was, still in the state of nature with the rest of mankind. Hence it is, that the controversies that happen between any man of the society with those that are out of it, are

managed by the public; and an injury done to a member of their body, engages the whole in the preparation of it. So that under this consideration, the whole community is one body in the state of nature, in respect of all other states or persons out of its community.

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

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

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

## C H A P. X I I I.

### Of the Subordination of the Powers of the Common-wealth.

Sect. 149. THOUGH in a constituted common-wealth, standing upon its own basis, and acting according to its own nature, that is, acting for the preservation of the community, there can be but *one supreme power*, which is *the legislative*, to which all the rest are and must be subordinate, yet the legislative being only a fiduciary power to act for certain ends, there remains still *in the people a supreme power to remove or alter the legislative*, when they find the *legislative* act contrary to the trust reposed in them: for all *power given with trust* for the attaining an *end*, being limited by that end, whenever that *end* is manifestly neglected, or opposed, the *trust* must necessarily be *forfeited*, and the power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security. And thus the *community* perpetually *retains a supreme power* of saving themselves from the attempts and designs of any body, even of their legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject: for no man or society of men, having a power to deliver up their preservation, or consequently the means of it, to the absolute will and arbitrary dominion of

another; when ever any one shall go about to bring them into such a slavish condition, they will always have a right to preserve, what they have not a power to part with; and to rid themselves of those, who invade this fundamental, sacred, and unalterable law of *self-preservation*, for which they entered into society. And thus the *community* may be said in this respect to be *always the supreme power*, but not as considered under any form of government, because this power of the people can never take place till the government be dissolved.

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

Sect. 151. In some commonwealths, where the *legislative* is not always in being, and the *executive* is vested in a single person, who has also a share in the legislative; there that single person in a very tolerable sense may also be called *supreme*: not that he has in himself all the supreme power, which is that of law-making; but because he has in him the *supreme execution*, from whom all inferior magistrates derive all their several subordinate powers, or at least the greatest part of them: having also no legislative superior to him, there being no law to be made without his consent, which cannot be expected should ever subject him to the other part of the legislative, *he* is properly enough in this sense *supreme*. But yet it is to be observed, that tho' *oaths of allegiance* and fealty are taken to him, it is not to him as supreme legislator, but as *supreme executor* of the law, made by a joint power of him with others; *allegiance* being nothing but an *obedience according to law*, which when he violates, he has no right to obedience, nor can claim it otherwise than as the public person vested with the power of the law, and so is to be considered as the image, phantom, or representative of the common-wealth, acted by the will of the society, declared in its laws; and thus he has no will, no power, but that of the law. But when he quits this representation, this public will, and acts by his own private will, he degrades himself, and is but a single private person without power, and without will, that has any right to *obedience*; the members owing no *obedience* but to the public will of the society.

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

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

Sec. 154. If the *legislative*, or any part of it, be made up of *representatives* chosen for that time by the people, which afterwards return into the ordinary state of subjects, and have no share in the legislature but upon a new choice, this power of choosing must also be exercised by the people, either at certain appointed seasons, or else when they are summoned to it; and in this latter case ' the power of convoking the legislative is ordinarily placed in the executive, and has one of these two limitations in respect of time: that either the original constitution requires their *assembling* and *acting* at certain intervals, and then the executive power does nothing but ministerial issue directions for their electing and assembling, according to due forms; or else it is left to his prudence to call them by new elections, when the occasions or exigencies of the public require the amendment of old, or making of new laws, or the redress or prevention of any inconveniences, that lie on, or threaten the people.

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

Sect. 156. The *power of assembling and dismissing the legislative*, placed in the executive, gives not the executive a superiority over it, but is a fiduciary trust placed in him, for the safety of the people, in a case where the uncertainty and variableness of human affairs could not bear a steady fixed rule: for it not being possible, that the first framers of the government should, by any foresight, be so much masters of future events, as to be able to

prefix so just periods of return and duration to the *assemblies of the legislative*, in all times to come, that might exactly answer all the exigencies of the common-wealth; the best remedy could be found for this defect, was to trust this to the prudence of one who was always to be present, and whose business it was to watch over the public good.

Constant frequent meetings of the legislative, and long continuations of their assemblies, without necessary occasion, could not but be burdensome to the people, and must necessarily in time produce more dangerous inconveniences, and yet the quick turn of affairs might be sometimes such as to need their present help: any delay of their convening might endanger the public; and sometimes too their business might be so great, that the limited time of their sitting might be too short for their work, and rob the public of that benefit which could be had only from their mature deliberation. What then could be done in this case to prevent the community from being exposed some time or other to eminent hazard, on one side or the other, by fixed intervals and periods, set to the meeting and acting of the legislative, but to entrust it to the prudence of some, who being present, and acquainted with the state of public affairs, might make use of this prerogative for the public good? and where else could this be so well placed as in his hands, who was intrusted with the execution of the laws for the same end? Thus supposing the regulation of times for the assembling and sitting of the legislative, not settled by the original constitution, it naturally fell into the hands of the executive, not as an arbitrary power depending on his good pleasure, but with this trust always to have it exercised only for the public weal, as the occurrences of times and change of affairs might require.

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

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

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

## CHAP. XIV.

### Of PREROGATIVE.

Sect. 159. WHERE the legislative and executive power are in distinct hands, (as they are in all moderated monarchies, and well-framed governments) there the good of the society requires, that several things should be left to the discretion of him that has the executive power: for the legislators not being able to foresee, and provide by laws, for all that may be useful to the community, the executor of the laws having the power in his hands, has by the common law of nature a right to make use of it for the good of the society, in many cases, where the municipal law has given no direction, till the legislative can conveniently be assembled to provide for it. Many things there are, which the law can by no means provide for; and those must necessarily be left to the discretion of him that has the executive power in his hands, to be ordered by him as the public good and advantage shall require: nay, it is fit that the laws themselves should in some cases give way to the executive power, or rather to this fundamental law of nature and government, viz. That as much as may be, *all* the members of the society are to be preserved: for since many accidents may happen, wherein a strict and rigid observation of the laws may do harm; (as not to pull down an innocent

man's house to stop the fire, when the next to it is burning) and a man may come sometimes within the reach of the law, which makes no distinction of persons, by an action that may deserve reward and pardon; 'tis fit the ruler should have a power, in many cases, to mitigate the severity of the law, and pardon some offenders: for the *end of government* being *the preservation of all*, as much as may be, even the guilty are to be spared, where it can prove no prejudice to the innocent.

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

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

Sect. 162. It is easy to conceive, that in the infancy of governments, when commonwealths differed little from families in number of people, they differed from them too but little in number of laws: and the governors, being as the fathers of them, watching over them for their good, the government was almost all prerogative. A few established laws served the turn, and the discretion and care of the ruler supplied the rest. But when mistake or flattery prevailed with weak princes to make use of this power for private ends of their own, and not for the public good, the people were fain by express laws to get prerogative determined in those points wherein they found disadvantage from it: and thus declared limitations of prerogative were by the people found necessary in cases which they and their ancestors had left, in the utmost latitude, to the wisdom of those princes who made no other but a right use of it, that is, for the good of their people.

Sec. 163. And therefore they have a very wrong notion of government, who say, that the people have *encroached upon the prerogative*, when they have got any part of it to be defined by positive laws: for in so doing they have not pulled from the prince any thing that of right belonged to him, but only declared, that that power which they indefinitely left in his or his ancestors hands, to be exercised for their good, was not a thing which they intended him when he used it otherwise: for the end of government being the good of the community, whatever alterations are made in it, tending to that end, cannot be an *encroachment* upon any body, since no body in government can have a right tending to any other end: and those only are *encroachments* which prejudice or hinder the public good. Those who say otherwise, speak as if the prince had a distinct and separate interest from the good of the community, and was not made for it; the root and source from which spring almost all those evils and disorders which happen in kingly governments. And indeed, if that be so, the people under his government are not a society of rational creatures, entered

into a community for their mutual good; they are not such as have set rulers over themselves, to guard, and promote that good; but are to be looked on as an herd of inferior creatures under the dominion of a master, who keeps them and works them for his own pleasure or profit. If men were so void of reason, and brutish, as to enter into society upon such terms, *prerogative* might indeed be, what some men would have it, an arbitrary power to do things hurtful to the people.

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

Sect. 165. And therefore he that will look into the *history of England*, will find, that *prerogative* was always *largest* in the hands of our wisest and best princes; because the people, observing the whole tendency of their actions to be the public good, contested not what was done without law to that end: or, if any human frailty or mistake (for princes are but men, made as others) appeared in some small declinations from that end; yet 'twas visible, the main of their conduct tended to nothing but the care of the public. The people therefore, finding reason to be satisfied with these princes, whenever they acted without, or contrary to the letter of the law, acquiesced in what they did, and, without the least complaint, let them enlarge their *prerogative* as they pleased, judging rightly, that they did nothing herein to the prejudice of their laws, since they acted conformable to the foundation and end of all laws, the public good.

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

Sect. 167. The power of *calling parliaments in England*, as to precise time, place, and duration, is certainly a *prerogative* of the king, but still with this trust, that it shall be

made use of for the good of the nation, as the exigencies of the times, and variety of occasions, shall require: for it being impossible to foresee which should always be the fittest place for them to assemble in, and what the best season; the choice of these was left with the executive power, as might be most subservient to the public good, and best suit the ends of parliaments.

Sect. 168. The old question will be asked in this matter of *prerogative*, But *who shall be judge* when this power is made a right use of ? I answer: between an executive power in being, with such a prerogative, and a legislative that depends upon his will for their convening, there can be no *judge on earth*; as there can be none between the legislative and the people, should either the executive, or the legislative, when they have got the power in their hands, design, or go about to enslave or destroy them. The people have no other remedy in this, as in all other cases where they have no judge on earth, but to *appeal to heaven*: for the rulers, in such attempts, exercising a power the people never put into their hands, (who can never be supposed to consent that any body should rule over them for their harm) do that which they have not a right to do. And where the body of the people, or any single man, is deprived of their right, or is under the exercise of a power without right, and have no appeal on earth, then they have a liberty to appeal to heaven, whenever they judge the cause of sufficient moment. And therefore, though the *people cannot be judge*, so as to have, by the constitution of that society, any superior power, to determine and give effective sentence in the case; yet they have, by a law antecedent and paramount to all positive laws of men, reserved that ultimate determination to themselves which belongs to all mankind, where there lies no appeal on earth, *viz.* to judge, whether they have just cause to make their appeal to heaven. And this judgment they cannot part with, it being out of a man's power so to submit himself to another, as to give him a liberty to destroy him; God and nature never allowing a man so to abandon himself, as to neglect his own preservation: and since he cannot take away his own life, neither can he give another power to take it. Nor let any one think, this lays a perpetual foundation for disorder; for this operates not, till the inconveniency is so great, that the majority feel it, and are weary of it, and find a necessity to have it amended. But this the executive power, or wise princes, never need come in the danger of: and it is the thing, of all others, they have most need to avoid, as of all others the most perilous.

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## CHAP. XV.

### Of Paternal, Political, and Despotical Power, considered together.

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

Sect. 170. First, then, *Paternal or parental power* is nothing but that which parents have over their children, to govern them for the children's good, till they come to the use of reason, or a state of knowledge, wherein they may be supposed capable to understand that rule, whether it be the law of nature, or the municipal law of their country, they are to govern themselves by: capable, I say, to know it, as well as several others, who live as freemen under that law. The affection and tenderness which God hath planted in the breast

of parents towards their children, makes it evident, that this is not intended to be a severe arbitrary government, but only for the help, instruction, and preservation of their offspring. But happen it as it will, there is, as I have proved, no reason why it should be thought to extend to life and death, at any time, over their children, more than over any body else; neither can there be any pretence why this *parental power* should keep the child, when grown to a man, in subjection to the will of his parents, any farther than having received life and education from his parents, obliges him to respect, honour, gratitude, assistance and support, all his life, to both father and mother. And thus, 'tis true, the *paternal* is a natural *government*, but not at all extending itself to the ends and jurisdictions of that which is political. The *power of the father doth not reach* at all to the property of the child, which is only in his own disposing.

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

Sect. 172. *Thirdly, Despotical power* is an absolute, arbitrary power one man has over another, to take away his life, whenever he pleases. This is a power, which neither nature gives, for it has made no such distinction between one man and another; nor compact can convey: for man not having such an arbitrary power over his own life, cannot give another man such a power over it; but it is the *effect only of forfeiture*, which the aggressor makes of his own life, when he puts himself into the state of war with another: for having quitted reason, which God hath given to be the rule betwixt man and man, and the common bond whereby human kind is united into one fellowship and society; and having renounced the way of peace which that teaches, and made use of the force of war, to compass his unjust ends upon another, where he has no right; and so revolting from his own kind to that of beasts, by making force, which is their's, to be his rule of right, he renders himself liable to be destroyed by the injured person, and the rest of mankind, that will join with him in the execution of justice, as any other wild beast, or noxious brute, with whom mankind can have neither society nor security\*. And thus *captives*, taken in a just and lawful war, and such only, are *subject to a despotical power*, which, as it arises not from compact, so neither is it capable of any, but is the state of war continued: for what compact can be made with a man that is not master of his own life? what condition can he perform? and if he be once allowed to be master of his own life, the *despotical, arbitrary power* of his master ceases. He

that is master of himself, and his own life, has a right too to the means of preserving it; so that *as soon as compact enters, slavery ceases*, and he so far quits his absolute power, and puts an end to the state of war, who enters into conditions with his captive.

--(\*Another copy corrected by Mr. Locke, has it thus, *Noxious brute that is destructive to their being.*)

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

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