DIVINE RIGHT AND DEMOCRACY

An Anthology of Political Writing in Stuart England

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CHAPTER THREE

PARLIAMENTARY CONSTITUTIONALISM

1 *The Petition of Right* (1628)

The main grievances which gave rise to the Petition of Right resulted from the king's efforts to organize a military expedition in support of the Huguenots in France (an expedition which failed disastrously in 1627). To finance the expedition unparliamentary taxation was imposed in the form of forced loans; those who refused to pay were imprisoned; when the Five Knights brought a test case to court the legality of this imprisonment was upheld; at the same time compulsory billeting of the troops gathered for embarkation and the use of martial law created further grievances. Worst of all the king was believed to have attempted to tamper with the legal record of the Five Knights' case in order to entrench the case as a precedent in law. The key to the Petition of Right is that it represents an attempt to find a parliamentary solution to what were seen as inadequacies of the common law. Where a generation had believed that the law provided an adequate safeguard for the rights of free citizens within an absolute monarchy, this no longer seemed to be the case. The Petition of Right itself proved an inadequate remedy, as the courts' willingness to uphold the king's right to collect ship-money demonstrated.

2 Charles I, *His Majesties Answer to the Nineteen Propositions of Both Houses of Parliament* (1642)

Parliament's Nineteen Propositions called on the king to agree to give parliament control of the army which had to be raised to suppress the Irish revolt and requested him to agree to appoint councillors approved by parliament. The king's reply was written in June by Colepepper and Falkland. It represented a radical shift in the

royalist position in that it denied that England was an absolute monarchy. This shift was designed to win moderate support away from Parliament as both sides prepared for Civil War. It went too far, however, not only for those willing to defend absolutism, but even for Hyde (later Clarendon), the leader of the constitutional royalists, who objected to the king being described as merely one of three estates. Traditionally the three estates were the clergy, peers and commons, represented in the two houses of parliament. Nevertheless the position adopted in the Answer to the Nineteen Propositions, although moderate and constitutionalist, was only likely to persuade those who were willing to trust to Charles I's good intentions should he find himself in command of a loyal army.

3 Philip Hunton, *A Treatise of Monarchy* (1643)

Hunton (*c.* 1604–82), a clergyman, had a successful career during the Interregnum, being appointed Master of Durham College in 1657, but was ejected from this office and from his livings at the Restoration. *A Treatise of Monarchy* was his most important publication and was one of several tracts which sought to take advantage of the terminology of His Majesty's Answer to the Nineteen Propositions. Hunton put forward a theory of corporate sovereignty where no one authority within the constitution could overrule the other. In doing so he was trying to find a middle way between the defence of absolute royal authority put forward by writers such as Hobbes and what amounted to a claim to parliamentary sovereignty put forward by writers such as Parker. His arguments were best designed to appeal to those who were genuinely undecided as to which side to support, but by making the conscience of each individual the final authority Hunton took an important step towards an idea of popular sovereignty.

1 *The Petition of Right* (1628)

The Petition exhibited to his Majesty by the Lords Spiritual and Temporal and Commons in this present Parliament assembled concerning divers rights and liberties of the subject

To the King's Most Excellent Majesty

I. Humbly show unto our Sovereign Lord the King, the Lords Spiritual and Temporal and Commons in Parliament assembled, that whereas it is declared and enacted by a statute made in the time of the reign of King Edward I commonly called *statutum de tallagio non concedendo*, that no tallage or aid should be laid or levied by the king or his heirs in this realm without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses and other the freemen of the commonalty of this realm; and by authority of parliament holden in the five and twentieth year of the reign of King Edward III it is declared and enacted that from henceforth no person should be compelled to make any loans to the king against his will because such loans were against reason and the franchise of the land, and by other laws of this realm it is provided that none should be charged by any charge or imposition called a benevolence nor by such like charge; by which the statutes before mentioned and other the good laws and statutes of this realm your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid or other like charge not set by common consent in parliament.

II. Yet, nevertheless, of late divers commissions directed to sundry commissioners in several counties with instructions have issued, by means whereof your people have been in divers places assembled and required to lend certain sums of money unto your Majesty, and many of them upon their refusal so to do have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound to make appearance and give attendance before your Privy Council and in other places; and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted, and divers other charges have been laid and levied upon your people in several counties by Lord Lieutenants, Deputy Lieutenants, Commissioners

for Musters, Justices of Peace and others by command or direction from your Majesty or your Privy Council against the laws and free customs of the realm.

III. And where also by the statute called the Great Charter of the Liberties of England it is declared and enacted that no freeman may be taken or imprisoned or be disseised of his freehold or liberties or his free customs or be outlawed or exiled or in any manner destroyed, but by the lawful judgement of his peers or by the law of the land.

IV. And in the eight and twentieth year of the reign of King Edward III it was declared and enacted by authority of Parliament that no man, of what estate or condition that he be, should be put out of his land or tenement, nor taken, nor imprisoned, nor disherited, nor put to death without being brought to answer by due process of law.

V. Nevertheless, against the tenor of the said statutes and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause shown; and when for their deliverance they were brought before your justices by your Majesty's writ of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command signified by the Lords of your Privy Council, and yet were returned back to several prisons without being charged with anything to which they might make answer according to the law.

VI. And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their will have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm and to the great grievance and vexation of the people.

VII. And whereas also by authority of Parliament in the five and twentieth year of the reign of King Edward III it is declared and enacted that no man should be forejudged of life and limb against the form of the Great Charter and the law of the land; and by the said Great Charter, and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm or by act of

parliament, and whereas no offender of what kind soever is exempted from the proceedings to be used and punishments to be inflicted by the laws and statutes of this your realm; nevertheless, of late time divers commissions under your Majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land according to the justice of martial law against such soldiers or mariners or other dissolute persons joining with them as should commit any murder, robbery, felony, mutiny or other outrage or misdemeanour whatsoever, and by such summary course and order as is agreeable to martial law and as is used in armies in time of war to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might and by no other ought to have been judged and executed.

And also sundry grievous offenders by colour thereof claiming an exemption have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes upon pretence that the said offenders were punishable only by martial law and by authority of such commissions as aforesaid. Which commissions and all others of like nature are wholly and directly contrary to the said laws and statutes of this your realm.

VIII. They do therefore humbly pray your most excellent Majesty that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax or such like charge without common consent by act of parliament, and that none be called to make answer or take such oath or to give attendance or be confined or otherwise molested or disquieted concerning the same or for refusal thereof. And that no freeman in any such manner as is before mentioned be imprisoned or detained. And that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come. And that the aforesaid commissions for proceeding by martial law may be revoked and

annulled. And that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchises of the land.

All which they most humbly pray of your most excellent Majesty as their rights and liberties according to the laws and statutes of this realm, and that your Majesty would also vouchsafe to declare that the awards, doings, and proceedings to the prejudice of your people in any of the premises shall not be drawn hereafter into consequence or example. And that your Majesty would be also graciously pleased for the further comfort and safety of your people to declare your royal will and pleasure, that in the thing aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm as they tender the honour of your Majesty and the prosperity of this kingdom.

2 Charles I, *His Majesties Answer to the Nineteen Propositions of Both Houses of Parliament* (1642)

. . . We call to God to witness that, as for our subjects' sake these rights are vested in us, so for their sakes, as well as for our own, we are resolved not to quit them, nor to subvert (though in a parliamentary way) the ancient, equal, happy, well-poised, and never enough commended Constitution of the Government of this Kingdom; nor to make ourself of a king of England, a duke of Venice; and this of a kingdom, a republic.

There being three kinds of government among men (absolute monarchy, aristocracy, and democracy), and all these having their particular conveniences and inconveniences, the experience and wisdom of your ancestors has so moulded this out of a mixture of these as to give to this kingdom (as far as human prudence can provide) the conveniences of all three, without the inconveniences of any one, as long as the balance hangs even between the three states, and they run jointly on in their proper channel (begetting verdure and fertility in the meadows on both sides), and the overflowing of either on either side raise no deluge or inundation. The ill of absolute

monarchy is tyranny; the ill of aristocracy is faction and division; the ills of democracy are tumults, violence and licentiousness. The good of monarchy is the uniting a nation under one head to resist invasion from abroad and insurrection at home; the good of aristocracy is the conjunction of council in the ablest persons of a state for the public benefit; the good of democracy is liberty, and the courage and industry which liberty begets.

In this kingdom, the laws are jointly made by a king, by a house of peers, and by a house of commons chosen by the people, all having free votes and particular privileges. The government, according to these laws, is trusted to the king. Power of treaties, of war and peace; of making peers, of choosing officers and counsellors for state, judges for law, commanders for forts and castles; giving commissions for raising men to make war abroad, or to prevent or provide against invasions or insurrections at home; benefit of confiscations, power of pardoning, and some more of the like kind, are placed in the king. And this kind of regulated monarchy, having this power to preserve that authority, without which it would be disabled to preserve the laws in their force, and the subjects in their liberties and properties, is intended to draw to him such a respect and relation from the great ones as may hinder the ills of division and faction; and such a fear and reverence from the people as may hinder tumults, violence, and licentiousness.

Again, that the prince may not make use of this high and perpetual power to the hurt of those for whose good he has it, and make use of the name of *public necessity* for the gain of his private favourites and followers to the detriment of his people, the House of Commons (an excellent conserver of liberty, but never intended for any share in government, or the choosing of them that should govern) is solely entrusted with the first propositions concerning the levies of moneys (which is the sinews as well of peace as of war), and the impeaching of those who, for their own ends, though countenanced by any surreptitiously gotten command of the king, have violated that law which he is bound (when he knows it) to protect; and to the protection of which they were bound to advise him, at least not to serve him in the contrary. And the lords, being trusted with a judicatory power, are an excellent screen and bank between the prince and people, to assist each against any encroachments of the other, and by just judgements to preserve that law which ought to be the rule of

every one of the three. For the better enabling them in this, beyond the examples of any of our ancestors, we were willingly contented to oblige our self both to call a parliament every three years, and not to dissolve it in fifty days, and for the present exigency, the better to raise money, and avoid the pressure (no less grievous to us than them) our people must have suffered by a longer continuance of so vast a charge as two great armies, and for their greater certainty of having sufficient time to remedy the inconveniences arisen during so long an absence of parliaments, and for the punishment of the causers and ministers of them, we yielded up our right of dissolving this parliament, expecting an extraordinary moderation from it, in gratitude for so unexampled a grace, and little looking that any malignant party should be encouraged or enabled to have persuaded them, first to countenance the injustices and indignities we have endured, and then, by a new way of satisfaction for what was taken from us, to demand of us at once to confirm what was so taken, and to give up almost all the rest.

Since, therefore, the power legally placed in both houses is more than sufficient to prevent and restrain the power of tyranny, and, without the power which is now asked from us, we shall not be able to discharge that trust which is the end of monarchy; since this would be a total subversion of the fundamental laws and that excellent constitution of this kingdom which has made this nation so many years both famous and happy to a great degree of envy; since to the power of punishing (which is already in your hands according to law) if the power of preferring be added, we shall have nothing left for us but to look on; since the encroaching of one of these states upon the power of the other is unhappy in the effects, both to them and all the rest; since this power of at most a joint government in us with our counsellors (or rather our guardians) will return us to the worst kind of minority, and make us despicable both at home and abroad, and beget eternal factions and dissensions (as destructive to public happiness as war) both in the chosen, and the houses that choose them, and the people who choose the choosers; since so new a power will undoubtedly intoxicate persons who were not born to it, and beget not only divisions among them as equals, but in them contempt of us, as become an equal to them, and insolence and injustice towards our people, as now so much their inferiors, which will be the more grievous unto them, as suffering from those who

were so lately of a nearer degree to themselves, and being to have redress only from those that placed them, and fearing they may be inclined to preserve what they have made, both out of kindness and policy; since all great changes are extremely inconvenient, and almost infallibly beget yet greater changes, which beget yet greater inconveniences.

Since as great an one in the church must follow this of the kingdom, since the second estate would in all probability follow the fate of the first, and by some of the same turbulent spirits jealousies would be soon raised against them, and the like propositions for reconciliation of differences would be then sent to them as they now have joined to send to us, till (all power being vested in the House of Commons, and their number making them incapable of transacting affairs of state with the necessary secrecy and expedition, those being retrusted to some close committee) at last the common people (who in the mean time must be flattered, and to whom license must be given in all their wild humours, how contrary soever to established law, or their own real good) discover this *arcanum imperii*, that all this was done by them, but not for them, grow weary of journey-work, and set up for themselves, call parity and independence liberty, devour that estate which had devoured the rest; destroy all rights and properties, all distinctions of families and merit; and by this means this splendid and excellently distinguished form of government end in a dark equal chaos of confusion, and the long line of our many noble ancestors in a Jack Cade, or a Wat Tyler.

For all these reasons to all these demands our answer is *nolumus leges Angliae mutari*; but this we promise, that we will be as careful of preserving the laws in what is supposed to concern wholly our subjects, as in what most concerns our self. For, indeed, we profess to believe that the preservation of every law concerns us, those of obedience being not secure when those of protection are violated; and we being most of any injured in the least violation of that by which we enjoy the highest rights and greatest benefits, and are therefore obliged to defend no less by our interest than by our duty, and hope that no jealousies to the contrary shall be any longer nourished in any of our good people by the subtle insinuations and secret practices of men who, for private ends, are disaffected to our honour and safety, and the peace and prosperity of our people. . . .

3 Philip Hunton, *A Treatise of Monarchy, Containing Two Parts: I. Concerning Monarchy in General. II. Concerning This Particular Monarchy. Wherein All the Maine Questions Occurrent in Both, are Stated, Disputed, and Determined. . . . Done by an Earnest Desirer of His Countries Peace* (1643)

Part I. Chapter I

Of political government, and its distinction into several kinds

Section I

Authority, how far from God, how far from men?

Government and subjection are relatives; so that what is said of the one, may in proportion be said of the other. Which being so, it will be needless to treat of both; because it will be easy to apply what is spoken of one to the other. Government is *potestatis exercitium*, the exercise of a moral power. One of these is the root and measure of the other; which, if it exceed, is exorbitant, is not government, but a transgression of it. This power and government is differenced with respect to the governed; to wit, a family, which is called economical; or a public society, which is called political, or magistracy. Concerning this magistracy we will treat: 1. In general. 2. Of the principal kind of it.

In general concerning magistracy, there are two things about which I find difficulty and difference, viz. the original, and the end.

First, for the original: there seem to be two extremes in opinion; while some amplify the divinity thereof, others speak so slightly of it, as if there were little else but human institution in it. I will briefly lay down my apprehensions of the evident truth in this point; and it may be, things being clearly and distinctly set down, there will be no real ground for contrariety in this matter. Three things herein must necessarily be distinguished, viz.: 1. The constitution or power of magistracy in general. 2. The limitation of it to this or that kind. 3. The determination of it to this or that individual person or line.

For the first of these: 1. It is God's express ordinance that, in the societies of mankind, there should be a magistracy or government. At first, when there were but two, God ordained it (Genesis 3: 16). St Paul affirms as much of the powers that be, none excepted (Romans 13: 1). 2. This power, wherever placed, ought to be respected as a participation of divine sovereignty (Psalm 82: 1, 6); and every soul ought to be subject to it for the Lord's sake (1 Peter 2: 13): that is, for conscience' sake of God's ordinance (Romans 13: 5), and under penalty of damnation (verse 2). These are truths, against which there is no colour of opposition. Indeed, this power may be claimed by them who have it not; and, where there is a limitation of this power, subjection may be claimed in cases which are without those limits, but to this ordinance of power, where it is, and when it requires subjection, it must be given, as before.

For the second: 1. In some particular communities the limitation of it to this or that kind is an immediate ordinance of God. So kingly power was appointed to the Jews, on their desire (1 Samuel viii: 9). Whether they had not a kind of monarchical government before, I will not stand on it; but it is evident that then, on their earnest desire, God himself condescended to an establishment of regality in that state. 2. But, for a general binding ordinance, God has given no word either to command or commend one kind above another. Men may, according to their relations, to the form they live under, to their affections and judgements in divers respects, prefer this or that form above the rest; but we have no divine limitation: and it were an absurdity to think so, for then we should uncharitably condemn all the communities which have not that form for violation of God's ordinance, and pronounce those other powers unlawful. 3. This then must have another and lower fountain to flow from, which can be no other than human. The higher power is God's ordinance. That it resides in one, or more, in such or such a way, is from human designment: for, when God leaves a matter indifferent, the restriction of this indifferency is left to secondary causes. And I conceive this is St Peter's meaning, when he calls magistracy ἀνθρωπινη κτίσις, human creature. St Paul calls it God's ordinance, because the power is God's. St Peter calls it human ordinance, because the specification of it to this or that form is from the societies of mankind. I confess it may be called a human creature, in regard of its subject, which is a man, or men; or its end, which is to rule over men for the good of

men; but the other seems more natural, and it induces no disparagement to authority, being so understood. But, however you take that place, yet the thing affirmed stands good: that God, by no word, binds any people to this or that form, till they, by their own act, bind themselves.

For the third: The same is to be said of it as of the second. Some particular men we find whom God was pleased, by his own immediate choice, to invest with this his ordinance of authority: Moses, Saul, David. Yea, God, by his immediate ordinance, determined the government of that people to David's posterity, and made it successive; so that that people (after his appointment and word was made known to them, and the room void by Saul's death) was as immediately bound by divine law to have David and his sons after him to be magistrates, as to magistracy itself. But God has not done so for every people: a *scriptum est* cannot be alleged for the endowing this or that person, or stock, with sovereignty over a community. They alone had the privilege of an extraordinary word. All others have the ordinary and mediate hand of God to enthrone them. They attain this determination of authority to their persons by the tacit and virtual, or else express and formal, consent of that society of men they govern, either in their own persons, or the root of their succession; as I doubt not in the sequel it will be made appear. But let no man think that it is any lessening or weakening of God's ordinance in them to teach that it is annexed to their persons by a human means: for though it be not so full a title to come to it by the simple providence of God as by the express precept of God, yet, when by the disposing hand of God's providence a right is conveyed to a person, or family, by the means of a public fundamental oath, contract and agreement of a state, it is equivalent then to a divine word; and, within the bounds of that public agreement, the conveyed power is as obligatory as if an immediate word had designed it. Thus it appears that they which say there is *divinum quiddam* in sovereigns, and that they have their power from God, speak, in some sense, truth; as also they which say that originally power is in the people may in a sound sense be understood. And in these things we have Dr Ferne's consent, in his late discourse upon this subject [*The Resolving of Conscience*, 1642] (Section III).

. . . . . .

Chapter II

Of the division of monarchy into absolute and limited

Section I

Whether absolute monarchy be a lawful government?

. . . Absolute monarchy is when the sovereignty is so fully in one that it has no limits or bounds under God, but his own will. It is when a people are absolutely resigned up, or resign up themselves, to be governed by the will of one man. Such were the ancient eastern monarchies, and that of the Persian and Turk at this day, as far as we know. This is a lawful government, and therefore where men put themselves into this utmost degree of subjection by oath and contract, or are born and brought unto it by God's providence, it binds them, and they must abide it because an oath to a lawful thing is obligatory. This, in Scripture, is very evident, as Ezekiel 17: 16, 18, 19, where judgement is denounced against the king of Judah, for breaking the oath made to the king of Babylon, and it is called God's oath: yet doubtless this was an oath of absolute subjection. And Romans xiii: the power, which then was, was absolute; yet the apostle, not excluding it, calls it 'God's ordinance', and commands subjection to it. So Christ commands tribute to be paid, and pays it himself: yet it was an arbitrary tax, the production of an absolute power. Also the sovereignty of masters over servants was absolute, and the same in economy as absolute monarchy is in policy: yet the apostle enjoins not masters called to Christianity to renounce that title as too great and rigid to be kept, but exhorts them to moderation in the exercise of it; and servants to remain contented in the condition of their servitude. More might be said to legitimate this kind of government, but it needs not in so plain a case.

Section II

Three degrees of absoluteness

This absolute monarchy has three degrees, yet all within the state of absoluteness. The first: when the monarch, whose will is the people's law, does set himself no stated rule or law to rule by, but by immediate edicts and commands of his own will governs them, as in his own council's judgement he thinks fit. Secondly: when he sets down a rule and law by which he will ordinarily govern, reserving to himself

liberty to vary from it, wherein and as often as in his discretion he judges fit. And in this the sovereign is as free as the former, only the people are at a more certainty what he expects from them in ordinary. Thirdly: when he not only sets down an express rule and law to govern by, but also promises and engages himself, in many cases, not to alter that rule. But this engagement is an after condescent and act of grace, not dissolving the absolute oath of subjection, which went before it; nor is intended to be the rule of his power, but of the exercise of it. This ruler is not so absolute as the former in the use of his power, for he has put a bond on that, which he cannot break without breach of promise; that is, without sin. But he is as absolute in his power, if he will sinfully put it forth into act. It has no political bounds, for the people still owe him absolute subjection, that not being dissolved or lessened by an act of grace coming afterwards.

Section III

Whether resistance be lawful in absolute monarchy?

Now, in governments of this nature, how far obedience is due, and whether any resistance be lawful, is a question which here must be decided; for the due effecting whereof we must premise some needful distinctions to avoid confusion. Obedience is twofold. First, positive and active, when in conscience of an authority we do the thing commanded. Secondly, negative and passive, when, though we answer not authority by doing, yet we do it by contented undergoing the penalty imposed. Proportionably, resistance is twofold. First, positive, by an opposing force. Secondly, negative, when only so much is done as may defend ourselves from force, without return of force against the assailant. Now, this negative resistance is also twofold. First, in inferior and sufferable cases. Secondly, or in the supreme case and last necessity of life and death. And then, too, it is first either of a particular person or persons; secondly, or of the whole community. And if of particular persons, then either under plea and pretence of equity assaulted; or else without any plea at all, merely for will and pleasure's sake; for to that degree of rage and cruelty some times the heart of man is given over. All these are very distinguishable cases, and will be of use either in this or the ensuing disputes.

To the question, I say: first, positive obedience is absolutely due to the will and pleasure of an absolute monarch in all lawful and

indifferent things; because in such a state the will of the prince is the supreme law, so that it binds to obedience in everything not prohibited by a superior, that is divine, law: for it is in such case the higher power, and is God's ordinance.

Secondly, when the will of an absolute monarch commands a thing forbidden to be done by God's law, then it binds not to active obedience; then is the apostle's rule undoubtedly true, 'It is better to obey God than men', for the law of the inferior gives place to the superior. In things defined by God, it should be all one with us for the magistrate to command us to transgress that, as to command us an impossibility; and impossibilities fall under no law. But on this ground no man must quarrel with authority, or reject its commands as unlawful, unless there be an open unlawfulness in the face of the act commanded. For, if the unlawfulness be hidden in the ground or reason of the action, inferiors must not be curious to inquire into the grounds or reasons of the commands of superiors; for such license of inquiry would often frustrate great undertakings, which must depend on speed and secrecy of execution. I speak all this of absolute government, where the will and reason of the monarch is made the higher power, and its expression the supreme law of a state.

Thirdly, suppose an absolute monarch should so degenerate into monstrous, unnatural tyranny as apparently to seek the destruction of the whole community, subject to him in the lowest degree of vassalage; then such a community may negatively resist such subversion. Yea, and if constrained to it by the last necessity, positively resist; and defend themselves by force against any instruments whatsoever employed for the effecting thereof. 1. David did so in his particular case, when pursued by Saul. He made negative resistance by flight; and, doubtless, he intended positive resistance against any instrument, if the negative would not have served the turn: else why did he so strengthen himself by forces? Sure not to make positive resistance, and lay violent hands upon the person of the Lord's anointed, as it appeared. Yet for some reason he did it, doubtless; which could be none other, but by that force of arms to defend himself against the violence of any misemployed inferior hands. If then he might do it for his particular safety, much rather may it be done for the public. 2. Such an act is without the compass of any of the most absolute potentates; and therefore to resist, in it, can be to resist no power, nor the violation of any due of

subjection. For, first, the most submiss subjection ever intended by any community, when they put themselves under another's power, was the command of a reasonable will and power: but to will and command the destruction of the whole body over which a power is placed were an act of will most unreasonable and self-destructive; and so not the act of such a will to which subjection was intended by any reasonable creatures. Secondly, the public good and being is aimed at in the utmost bond of subjection: for, in the constitution of unlimited sovereignty, though every particular man's good and being is subjected to the will of one supreme, yet certainly the conservation of the whole public was intended by it; which being invaded, the intent of the constitution is overthrown, and an act is done which can be supposed to be within the compass of no political power. So that did Nero, as it was reported of him, in his inhumanity, thirst for the destruction of whole Rome; and if he were truly what the senate pronounced him to be, *humani generis hostis*, then it might justify a negative resistance of his person; and a positive of any agent should be set on so inhuman a service. And the United Provinces are allowed in resisting Philip II, though he had been their absolute monarch, if he resolved the extirpation of the whole people, and the planting the country with Spaniards, as it is reported he did. And that assertion of some, that all resistance is against the apostle's prohibition – resistance by power of arms is utterly unlawful – cannot be justified in such a latitude. But of this more will be spoken in the current of this discourse.

Fourthly, suppose by such a power any particular person or person's life be invaded without any plea of reason or cause for it, I suppose it hard to deny him liberty of negative resistance of power; yea, and positive, of any agents, in such assault of murder. For, though the case be not so clear as the former, yet it seems to me justified by the fact of David, and the rescuing of Jonathan from the causeless cruel intent of his father's putting him to death: as also such an act of will, carrying no colour of reason with it, cannot be esteemed the act of a rational will, and so no will intended to be the law of sovereignty. Not that I think a monarch of such absoluteness is bound to yield a reason why he commands any man to be put to death before his command be obeyed; but I conceive the person so commanded to death may be justified before God and men for protecting himself by escape, or otherwise; unless some reason or cause be made known to him of such command.

Fifthly, persons subject to an unlimited dominion must, without resistance, subject their estates, liberties, persons to the will and pleasure of their lord, so it carry any plea or show of reason and equity. First, it seems to be evident, 1 Peter 2: 18, 19, 20: if well-doing be mistaken by the reason and judgement of the power for ill-doing, and we be punished for it, yet, the magistrate going according to his misguided reason, it is the command of a reasonable will, and so to be submitted to, because such a one suffers by law in a state where the lord's will is the law. Secondly, in commands of the power, where is the plea of reason and equity on the part of the commander? Whether it be such indeed, some power must judge; but the constitution of absolute monarchy resolves all judgement into the will of the monarch, as the supreme law. So that, if his will judicially censure it just, it must be yielded to; as if it were just without repeal of redressment by any created power. And let none complain of this as a hard condition when they or their ancestors have subjected themselves to such a power by oath or political contract. If it be God's ordinance to such, it must be subjected to, and its exorbitances borne (as he says in Tacitus) as men bear famine, pestilence, and other effects of God's displeasure.

Sixthly, in absolute monarchy the person of the monarch is above the reach of just force and positive resistance: for such a full resignation of men's selves to his will and power by the irrevocable oath and bond of political contract does make the person as sacred as the unction of Saul or David. In such a state all lawful power is below him; so that he is incapable of any penal hand, which must be from a superior, or it is unjust.

I have been the longer on this absolute monarchy because, though it does not concern us, yet it will give light to the stating of doubts in governments of a more restrained nature; for what is true here, in the full extent of power, is there also as true within the compass of their power.

Section IV

What makes a monarchy limited

In moderate or limited monarchy, it is an inquiry of some weight to know, what it is which constitutes it in the state of a limited monarchy?

First, a monarchy may be stinted in the exercise of its power and yet be an absolute monarchy (as appeared before, in our distinction of absolute monarchy) if that bounds be a subsequent act, and proceeding from free will and grace in the monarch. For it is not the exercise, but the nature and measure of power, wherewith he is radically invested, which denominates him a free, or conditionate monarch.

Secondly, I take it that a limited monarch must have his bounds of power *ab externo*, not from the free determination of his own will. And now kings have not divine words and binding laws to constitute them in their sovereignty, but derive it from ordinary providence; the sole means hereof is the consent and fundamental contract of a nation or men, which consent puts them in their power, which can be no more nor other than is conveyed to them by such contract of subjection. This is the root of all sovereignty individuated and existent in this or that person or family. Till this come and lift him up he is a private man, not differing in state from the rest of his brethren; but then he becomes another man, his person is sacred by that sovereignty conveyed to it, which is God's ordinance and image. The truth hereof will be more fully discovered when we come to speak of elective and successive monarchy.

Thirdly, he is then a limited monarch who has a law, beside his own will, for the measure of his power. First, the supreme power of the state must be in him, so that his power must not be limited by any power above his; for then he were not a monarch, but a subordinate magistrate. Secondly, this supreme power must be restrained by some law according to which this power was given, and by direction of which this power must act; else he were not a limited monarch, that is, a liege sovereign, or legal king. Now a sovereignty comes thus to be legal, or defined to a rule of law, either by original constitution, or by after condescent. By original constitution when the society public confers on one man a power by limited contract, resigning themselves to his government by such a law, reserving to themselves such immunities: in this case, they, which at first had power over themselves, had power to set their own terms of subjection; and he which has no title of power over them but by their act can, *de jure*, have no greater than what is put over to him by that act. By after condescent, viz. when a lord who, by conquest or other right, has an absolute arbitrary power, but, not liking to hold by

such a right, does either formally or virtually desert it and take a new legal right, as judging it more safe for him to hold by, and desirable of the people to be governed by. This is equivalent to that by original constitution; yea, is all one with it. For this is, in that respect, a secondary original constitution. But if it be objected that this, being a voluntary condescent, is an act of grace, and so does not derogate from his former absoluteness, as was said before of an absolute monarch who confines himself to govern by one rule: I answer this differs essentially from that; for there a free lord of grace yields to rule by such a law; reserving the fullness of power, and still requiring of the people a bond and oath of utmost indefinite subjection; so that it amounts not to a limitation of radical power; whereas here is a change of title, and a resolution to be subjected to in no other way than according to such a frame of government. And, accordingly, no other bond or oath of allegiance is required or taken, than according to such a law: – this amounts to a limitation of radical power. And therefore they speak too generally who affirm of all acts of grace proceeding from princes to people as if they did not limit absoluteness. It is true of acts of grace of that first kind; but yet you see an act of grace may be such a one as may amount to a resignation of that absoluteness into a more mild and moderate power, unless we should hold it out of the power of an absolute lord to be other; or that, by free condescent and act of grace, a man cannot as well part with, or exchange, his right and title to a thing as define himself in the use and exercise, which I think none will affirm.

Section V

How far subjection is due in a limited monarchy?

In all governments of this allay and legal constitution, there are three questions of special moment to be considered:

First, how far subjection is due? As far as they are God's ordinance, as far as they are a power; and they are a power as far as the contract fundamental, from which, under God, their authority is derived, does extend. As absolute lords must be obeyed as far as their will enjoins, because their will is the measure of their power, and their subjects' law; so these, in the utmost extent of the law of the land, which is the measure of their power, and their subjects' duty of

obedience. I say so far, but I do not say no further; for I believe, though on our former grounds it clearly follows that such authority transcends its bounds if it command beyond the law, and the subject legally is not bound to subjection in such case; yet, in conscience, a subject is bound to yield to the magistrate even when he cannot, *de jure*, challenge obedience, to prevent scandal, or any occasion of slighting the power, which may sometimes grow even upon a just refusal. I say, for these cases, a subject ought not to use his liberty, but *morem gerere*, if it be in a thing in which he can possibly without subversion, and in which his act may not be made a leading case, and so bring on a prescription against public liberty.

Section VI

How far it is lawful to resist

Secondly, how far is it lawful to resist the exorbitant illegal commands of such a monarch? 1. As before, in lighter cases, in which it may be done, for the reasons alleged and for the sake of public peace, we ought to submit and make no resistance at all, but *de jure recedere*.

2. In cases of a higher nature, passive resistance, viz. by appeal to law, by concealment, by flight, is lawful to be made; because such a command is politically powerless. It proceeds not from God's ordinance in him, and so we sin not against God's ordinance in such non-submission, or negative resistance.

3. For instruments or agents in such commands, if the strait be such, and a man be surprised, that no place is left for an appeal, nor evasion by negative resistance, I conceive against such positive resistance may be made; because, authority failing or [of?] this act in the supreme power, the agent or instrument can have none derived to him, and so is but in the nature of a private person, and his act as an offer of private violence, and so comes under the same rules for opposition.

4. For the person of the sovereign, I conceive it as well above any positive resistance as the person of an absolute monarch; yea, though by the whole community, except there be an express reservation of power in the body of the state, or any deputed persons, or court, to use (in case of intolerable exorbitance) positive resistance. Which, if there be, then such a governor is no monarch; for that fundamental

reservation destroys its being a monarchy, inasmuch as the supreme power is not in one. For wherever there is a sovereign politic power constituted, the person or persons who are invested with it are sacred, and out of the reach of positive resistance or violence; which, as I said, if just, must be from no inferior or subordinate hand.

But it will be objected that since every monarch has his power from the consent of the whole body, that consent of the whole body has a power above the power of the monarch, and so the resistance which is done by it is not by an inferior power; and to this purpose is brought that axiom: *quicquid efficit tale est magis tale*. I answer: that rule, even in natural causes, is liable to abundance of restrictions, and in the particular in hand, it holds not. Where the cause does bereave himself of that perfection by which it works, in the very act of causing, and convey it to that effect, it does not remain more such than the effect, but much less, and below it. As, if I convey an estate of land to another, it does not hold that after such conveyance I have a better estate remaining in me than that other, but rather the contrary; because what was in one is passed to the other. The servant who, at the year of jubilee, would not go free, but have his ear bored, and giving his master a full lordship over him; can we argue, that he had afterward more power over himself than his master, because he gave his master that power over him by that act of economical contract?

Thus the community, whose consent establishes a power over them, cannot be said universally to have an eminency of power above that which they constitute: sometimes they have, sometimes they have not; and to judge when they have, when not, respect must be had to the original contract and fundamental constitution of that state. If they have constituted a monarchy (that is, invested one man with a sovereignty of power, and subjected all the rest to him), then it were unreasonable to say they yet have it in themselves, or have a power of recalling that supremacy which, by oath and contract, they themselves transferred on another; unless we make this oath and contract less binding than private ones, dissoluble at pleasure, and so all monarchs tenants at will from their people. But if they, in such constitution, reserve a power in the body to oppose and displace the magistrate for exorbitances, and reserve to themselves a tribunal to try him in, that man is not a monarch, but the officer and substitute of him, or them, to whom such power over him is referred or conferred. The issue is this: if he be a monarch, he hath the *apex*, or

culmen potestatis; and all his subjects, *divisim* and *conjunctim*, are below him; they have divested themselves of all superiority, and no power left for a positive opposition of the person of him whom they have invested.

Section VII

Who shall be the judge of the excesses of the monarch?

Thirdly, who shall be the judge of the excesses of the sovereign lord in monarchies of this composure? I answer: a frame of government cannot be imagined of that perfection, but that some inconveniences there will be possible for which there can be provided no remedy: many miseries to which a people under an absolute monarchy are liable are prevented by this legal allay and definement of power. But this is exposed to one defect, from which that is free; that is, an impossibility of constituting a judge to determine this last controversy, viz. the sovereign's transgressing his fundamental limits. This judge must be either some foreigner, and then we lose the freedom of the state by subjecting it to an external power in the greatest case, or else within the body. If so, then, 1. either the monarch himself, and then you destroy the frame of the state, and make it absolute: for to define a power to a law, and then to make him judge of his deviations from that law, is to absolve him from all law. Or else, 2. the community and their deputies must have this power; and then, as before, you put the *apex potestatis*, the prime ἀρχεῖ in the whole body, or a part of it, and destroy the being of monarchy; the ruler not being God's immediate minister, but of that power (be it where it will) to which he is accountable for his actions. So that, I conceive, in a limited legal monarchy there can be no stated internal judge of the monarch's actions if there grow a fundamental variance betwixt him and the community. But you will say, it is all one way to absoluteness to assign him no judge, as to make him his own judge.

Answer. I say not simply in this case, there is no judge, but that there can be no judge legal and constituted within that frame of government. But it is a transcendent case beyond the provision of that government, and must have an extraordinary judge and way of decision.

In this great and difficult case, I will deliver my apprehensions

freely and clearly, submitting them to the censure of better judgements. Suppose the controversy to happen in a government fundamentally legal, and the people no further subjected than to government by such a law:

1. If the act in which the exorbitance and transgression is supposed to be, be of lesser moment, and not striking at the very being of that government, it ought to be borne by public patience, rather than to endanger the being of the state by a contention betwixt the head and body politic.

2. If it be mortal, and such as, suffered, dissolves the frame and life of the government and public liberty, then the illegality and destructive nature is to be set open, and redressment sought by petition; which, if failing, prevention by resistance ought to be. But first, that it is such must be made apparent; and if it be apparent, and an appeal made *ad conscientiam generis humani*, especially of those of that community, then the fundamental laws of that monarchy must judge and pronounce the sentence in every man's conscience, and every man (as far as concerns him) must follow the evidence of truth in his own soul, to oppose, or not oppose, according as he can in conscience acquit or condemn the act of [or] carriage of the governor. For, I conceive, in a case which transcends the frame and provision of the government they are bound to, people are unbound, and in state as if they had no government; and the superior law of reason and conscience must be judge, wherein every one must proceed with the utmost advice and impartiality. For if he err in judgement, he either resists God's ordinance, or puts his hand to the subversion of the state and policy he lives in.

And this power of judging argues not a superiority in those who judge over him who is judged; for it is not authoritative and civil, but moral, residing in reasonable creatures and lawful for them to execute, because never divested and put off by any act in the constitution of a legal government, but rather the reservation of it intended. For when they define the superior to a law, and constitute no power to judge of his excesses from that law, it is evident they reserve to themselves, not a formal authoritative power, but a moral power, such as they had originally before the constitution of the government; which must needs remain, being not conveyed away in the constitution.

Chapter III

Of the division of monarchy into elective and successive

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Section II

All monarchy whether originally from consent?

I do conceive that in the first original all monarchy, yea, any individual frame of government whatsoever, is elective: that is, is constituted, and draws its force and right from the consent and choice of that community over which it sways. And that triple distinction of monarchy into that which is gotten by conquest, prescription, or choice is not of distinct parts, unless by choice be meant full and formal choice. My reason is, because man, being a voluntary agent, and subjection being a moral act, it does essentially depend on consent; so that a man may by force and extremity be brought under the power of another, as unreasonable creatures are, to be disposed of, and trampled on, whether they will or no: but a bond of subjection cannot be put on him, nor a right to claim obedience and service acquired, unless a man become bound by some act of his own will. For suppose another, from whom I am originally free, be stronger than I, and so bring me under his mercy. Do I therefore sin, if I do not what he commands me? Or can that act of violence pass into a moral title without a moral principle?

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Section V

Monarchy by conquest. Whether conquest gives a just title?

But the main question is concerning monarchy achieved by conquest; where, at first sight, the right seems gotten by the sword, without the consent and choice of the people: yea, against it. Conquest is either, first, total, where a full conquest is made by a total subduing a people to the will of the victor. Or, secondly, partial, where an entrance is made by the sword. But the people, either because of the right claimed by the invader, or their unwillingness to suffer the miseries of war, or their apparent inability to stand out in a way of resistance, or some other consideration, submit to a composition and contract of subjection to the invader. In this latter it is evident the sovereign's power is from the people's consent; and the

government is such as the contract and fundamental agreement makes it to be, if it be the first agreement and the pretender has no former title which remains in force: for then this latter is invalid if it include not, and amount to, a relinquishing and disannulling of the old. But the difficulty is concerning a full and mere conquest, and of this I will speak my mind clearly. Such a war and invasion of a people which ends in a conquest: first, it is either upon the pretence or claim of a title of sovereignty over the people invaded. And then if the pretender prevail it is properly no conquest, but the vindication of a title by force of arms, and the government not original, but such as the title is by which he claims it. Secondly, or it is by one who has no challenge of right descending to him to justify his claim and invasion of a people. Then, if he subdue, he may properly be said to come to his government by conquest.

And there be who wholly condemn this title of conquest as unlawful, and take it for nothing else but a national and public robbery. So one of the answerers to Dr Ferne says in his p. 10. 'Conquest may give such a right as plunderers use, to take in houses they can master – It is inhuman to talk of right of conquest in a civil, in a Christian state.' But I cannot allow of so indefinite a censure: rather, I think, the right of conquest is such as the precedent war was. If that were lawful, so is the conquest, for a prince may be invaded, or so far injured by a neighbouring people, or they may be set on such a pernicious enmity against him and his people, that the safety of himself and people may compel to such a war. Which war, if it end in conquest, who can judge such title unlawful? Suppose then conquest may be a lawful way of acquisition, yet an immediate cause of right of sovereignty, that is, of a civil power of government to which obedience is due, it cannot be. I say, an immediate cause; for a remote impulsive cause it often is, but not an immediate formal cause, for that must ever be the consent of the people, whereby they accept of and resign up themselves to a government, and then their persons are morally bound, and not before. Thus far the force of conquest may go: it may give a man title over and power to possess and dispose of the country and goods of the conquered; yea, the bodies and lives of the conquered are at the will and pleasure of the conqueror. But it still is at the people's choice to come into a moral condition of subjection, or not. When they are thus at the mercy of the victor, if, to save life, they consent to a condition of servitude or

subjection, then that consent, oath or covenant, which they in that extremity make, being *in re licita*, binds them, and they owe moral duty. But if they would rather suffer the utmost violence of the conqueror, and will consent to no terms of subjection (as Numantia in Spain, and many other people have resolved), they die, or remain, a free people. Be they captived or possessed at pleasure, they owe no duty, neither do they sin in not obeying. Nor do they resist God's ordinance if at any time of advantage they use force to free themselves from such a violent possession: yea, perhaps, if before by contract they were bound to another, they should sin if, to avoid death or bondage, they should swear and covenant fealty to a conqueror; and it were more noble and laudable to die in the service and for the faith to their natural sovereign. Thus, I am persuaded, it will appear an uncontrollable truth in policy that the consent of the people, either by themselves or their ancestors, is the only mean in ordinary providence by which sovereignty is conferred on any person or family; neither can God's ordinance be conveyed, and people engaged in conscience, by any other means.

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Chapter IV

Of the division of monarchy into simple and mixed

Section I

Simple and mixed monarchy, what?

The third division is into simple and mixed. Simple is when the government, absolute or limited, is so entrusted in the hands of one that all the rest is by deputation from him, so that there is no authority in the whole body but his, or derived from him. And that one is either individually one person, and then it is a simple monarchy; or one associate body, chosen either out of the nobility, whence the government is called a simple aristocracy, or out of the community without respect of birth or estate, which is termed a simple democracy. The supreme authority, residing exclusively in one of these three, denominates the government simple, which ever it be.

Now experience teaching people that several inconveniences are in

each of these which is avoided by the other: as aptness to tyranny in simple monarchy, aptness to destructive factions in an aristocracy, and aptness to confusion and tumult in a democracy; as, on the contrary, each of them has some good which the others want: viz. unity and strength in a monarchy, counsel and wisdom in an aristocracy, liberty and respect of common good in a democracy. Hence the wisdom of men deeply seen in state matters guided them to frame a mixture of all three, uniting them into one form; that so the good of all might be enjoyed, and the evil of them avoided. And this mixture is either equal, when the highest command in a state, by the first constitution of it, is equally seated in all three; and then (if firm union can be in a mixture of equality) it can be called by the name of neither of them but by the general style of 'a mixed state'. Or, if there be priority of order in one of the three (as I think there must be, or else there can be no unity), it may take the name of that which has the precedency. But the firmer union is where one of the three is predominant, and in that regard gives the denomination to the whole: so we call it 'a mixed monarchy' where the primity of share in the supreme power is in one.

Section II

What it is which constitutes a mixed monarchy

Now I conceive to the constituting of mixed monarchy (and so proportionately it may be said of the other):

1. The sovereign power must be originally in all three, viz. if the composition be of all three, so that one must not hold his power from the other, but all equally from the fundamental constitution; for, if the power of one be original, and the other derivative, it is no mixture, for such a derivation of power to others is the most simple monarchy. Again, the end of mixture could not be obtained, for why is this mixture framed but that they might confine each other from exorbitance, which cannot be done by a derivative power? It being unnatural that a derivative power should turn back and set bounds to its own beginning.

2. A full equality must not be in the three estates, though they are all sharers in the supreme power; for, if it were so, it could not have any ground in it to denominate it a monarchy more than an aristocracy or democracy.

3. A power then must be sought, wherewith the monarch must be invested, which is not so great as to destroy the mixture, nor so titular as to destroy the monarchy; which I conceive may be in these particulars:

(a) If he be the head and fountain of the power which governs and executes the established laws, so that both the other estates, as well *conjunctim* as *divisim*, be his sworn subjects, and owe obedience to his commands, which are according to the established laws.

(b) If he has a sole or chief power in capacitating and putting those persons or societies in such estates and conditions, as whereunto such supreme power by the foundations of the government does belong and is annexed. So that though the aristocratical and democratical power which is conjoined to his be not from him, yet the definement and determination of it to such persons is from him by a necessary consecution.

(c) If the power of convocating, or causing to be put in existence, and dissolving such a court of meeting of the two other estates as is authoritative be in him.

(d) If his authority be the last and greatest, though not the sole, which must establish and add a consummation to every act.

I say, these, or any of these, put into one person, make that state monarchical, because the other, though they depend not on him *quoad essentiam et actus formales*, but on the prime constitution of the government, yet, *quoad existentiam et determinationem ad subjecta*, they do.

The supreme power being either the legislative or the gubernative, in a mixed monarchy sometimes the mixture is the seat of the legislative power, which is the chief of the two, the power of constituting officers for government by those laws being left to the monarch, or else the primacy of both these powers is jointly in all three. For if the legislative be in one, then the monarchy is not mixed but simple, for that is the superior; if that be in one, all else must needs be so too. By legislative, I mean the power of making new laws, if any new be needful to be added to the foundation, and the authentic power of interpreting the old, for I take it this is a branch of the legislative, and is as great and in effect the same power.

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Section IV

How far the prince's power extends in a mixed monarchy

Now concerning the extent of the prince's power and the subject's duty in a mixed monarchy, almost the same is to be said which was before in a limited. For it is a general rule in this matter: such as the constitution of government is, such is the ordinance of God; such as the ordinance is, such must our duty of subjection be. No power can challenge an obedience beyond its own measure; for if it might, we should destroy all rules and differences of government, and make all absolute and at pleasure. In every mixed principality:

First, look what power is solely entrusted and committed to the prince by the fundamental constitution of the state. In the due execution thereof all owe full subjection to him, even the other estates, being but societies of his subjects bound to him by oath of allegiance, as to their liege lord.

Secondly, those acts belonging to the power which is stated in a mixed principle, if either part of that principle, or two of the three, undertake to do them, it is invalid; it is no binding act. For in this case all three have a free negative voice; and take away the privilege of a negative voice so that, in case of refusal, the rest have power to do it without the third, then you destroy that third, and make him but a looker-on: so that in every mixed government, I take it, there must be a necessity of concurrence of all three estates in the production of acts belonging to that power which is committed in common to them. Else, suppose those acts valid which are done by any major part (that is, any two of the three), then you put it in the power of any two, by a confederacy at pleasure, to disannul the third, or suspend all its acts, and make it a bare cipher in government.

Thirdly, in such a composed state, if the monarch invade the power of the other two, or run in any course tending to the dissolving of the constituted frame, they ought to employ their power in this case to preserve the state from ruin; yea, that is the very end and fundamental aim in constituting all mixed policies: not that they, by crossing and jarring, should hinder the public good; but that, if one exorbitate, the power of restraint and providing for the public safety should be in the rest. And the power is put into divers hands that one should counterpoise and keep even the other: so that, for such other

estates, it is not only lawful to deny obedience and submission to illegal proceedings (as private men may), but it is their duty; and by the foundation of the government they are bound to prevent the dissolution of the established frame.

Fourthly, the person of the monarch, even in these mixed forms (as I said before in the limited) ought to be above the reach of violence in his utmost exorbitances. For, when a people have sworn allegiance, and invested a person or line with supremacy, they have made it sacred; and no abuse can divest him of that power, irrevocably communicated. And, while he has power in a mixed monarchy, he is the universal sovereign, even of the other limiting estates: so that, being above them, he is *de jure* exempt from any penal hand.

Fifthly, that one inconvenience must necessarily be in all mixed governments, which I showed to be in limited governments: there can be no constituted, legal, authoritative judge of the fundamental controversies arising betwixt the three estates. If such do arise, it is the fatal disease of these governments, for which no *salvo* can be prescribed. For the established being of such authority would, *ipso facto*, overthrow the frame, and turn it into absoluteness. So that, if one of these, or two, say their power is invaded, and the government assaulted by the other, the accused denying it, it does become a controversy. Of this question there is no legal judge: it is a case beyond the possible provision of such a government. The accusing side must make it evident to every man's conscience. In this case, which is beyond the government, the appeal must be to the community, as if there were no government; and as, by evidence, men's consciences are convinced, they are bound to give their utmost assistance. For the intention of the frame, in such states, justifies the exercise of any power conducing to the safety of the universality and government established.

Part II

Of this particular Monarchy

Chapter I

Whether the power wherewith our kings are invested be an absolute, or limited and moderated power?

Section I

Having thus far proceeded in general, before we can bring home this to a stating of the great controversy which, now, our sins, God's displeasure, and evil turbulent men have raised up in our lately most flourishing but now most unhappy kingdom, we must first look into the frame and composure of our monarchy. For till we fully are resolved of that, we cannot apply the former general truths, nor on them ground the resolution of this ruining contention.

Concerning the essential composure of this government, that it is monarchical, is by none to be questioned: but the inquiry must be about the frame of it. And so there are seven great questions to be prosecuted.

First, whether it be a limited monarchy, or absolute? Here the question is not concerning power in the exercise, but the root and being of it. For none will deny but that the way of government used, and to be used, in this realm is a defined way. Only some speak as if this definement was an act of grace from the monarchs themselves, being pleased, at the suit and for the good of the people, to let their power run into act through such a course and current of law. Whereas, if they at any time should think fit, on great causes, to vary from that way and use the full extent of their power, none ought to contradict or refuse to obey. Neither is it the question whether they sin against God if they abuse their power, and run out into acts of injury at pleasure, and violate those laws which they have, by public faith and oath, promised to observe. For none will deny this to be true, even in the most absolute monarch in the world. But the point controverted is punctually this, whether the authority which is inherent in our kings be boundless and absolute, or limited and determined; so that the acts which they do, or command to be done, without that compass and bounds, be not only sinful in themselves, but invalid and non-authoritative to others.

Section II

Now, for the determining hereof, I conceive . . . had we no other proof, yet that of prescription were sufficient. In all ages, beyond record, the laws and customs of the kingdom have been the rule of government. Liberties have been stood upon, and grants thereof, with limitations of royal power, made and acknowledged by *Magna*

Carta and other public and solemn acts; and no obedience acknowledged to be due, but that which is according to law; nor claimed, but under some pretext or title of law. . . .

Section III

Having set down those reasons on which my judgement is settled on this side, I will consider the main reasons whereby some have endeavoured to prove this government to be of an absolute nature, and will show their invalidity. Many divines (perhaps inconsiderately, perhaps wittingly for self ends) have been, of late years, strong pleaders for absoluteness of monarchical power in this land, and pressed obedience on the consciences of people in the utmost extremity which can be due in the most absolute monarchy in the world. But I seldom, or never, heard or read them make any difference of powers, but usually bring their proofs from those Scriptures where subjection is commanded to the higher powers, and all resistance of them forbidden, and from examples taken out of the manner of the government of Israel and Judah; as if any were so impious to contradict those truths, and they were not as well obeyed in limited government as in absolute. Or as if examples taken out of one government do always hold in another, unless their aim was to deny all distinction of governments, and to hold all absolute who have anywhere the supreme power conveyed to them. . . .

But let us come to the arguments. First, say they, our kings came to their right by conquest . . . it is an assertion most untrue in itself, and pernicious to the state. Our princes profess no other way of coming to the crown but by right of succession to rule free subjects in a legal monarchy. All the little show of proof these assertors have is from the root of succession: so William, commonly called 'The Conqueror'. For that of the Saxons was an expulsion, not a conquest; for, as our histories record, they, coming into the kingdom, drove out the Britons, and by degrees planted themselves under their commanders, and no doubt continued the freedom they had in Germany. Unless we should think that by conquering they lost their own liberties to the kings for whom they conquered and expelled the Britons into Wales. Rather, I conceive, the original of the subject's liberty was by those our forefathers brought out of Germany: where (as Tacitus reports) *nec regibus infinita aut libera potestas* (their kings

had no absolute, but limited power) and all weighty matters were dispatched by general meetings of all the estates. Who sees not here the antiquity of our liberties, and frame of government? So they were governed in Germany, and so here to this day. For by transplanting themselves they changed their soil, not their manners and government. Then that of the Danes was indeed a violent conquest; and, as all violent rules, it lasted not long. When the English expelled them, they recovered their countries and liberties together. Thus, it is clear, the English liberty remained to them till the Norman invasion, notwithstanding that Danish interruption.

Now for Duke William, I know nothing they have in him, but the bare style of conqueror, which seems to make for them. The very truth is (and every intelligent reader of the history of those times will attest it) that Duke William pretended the grant and gift of King Edward, who died without children; and he came with forces into this kingdom, not to conquer, but make good his title against his enemies. His end of entering the land was not to gain a new absolute title, but to vindicate the old limited one, whereby the English-Saxon kings, his predecessors, held this kingdom. Though his title was not so good as it should be, yet it was better than Harold's, who was the only son of Godwyn, steward of King Edward's house, whereas William was cousin to Emma, mother to the said King Edward, by whom he was adopted, and by solemn promise of King Edward was to succeed him. Of which promise Harold himself became surety, and bound by oath to see it performed. Here was a fair title; especially Edgar Atheling, the right heir, being of tender age, and disaffected by the people. Neither did he proceed to a full conquest, but after Harold, who usurped the crown, was slain in battle, and none to succeed him, the throne being void, the people chose rather to submit to William and his title than endure the hazard of ruining war, by opposing him, to set up a new king. It is not to be imagined that such a realm as England could be conquered by so few, in such a space, if the people's voluntary acceptance of him and his claim had not facilitated and shortened his undertaking.

Thus we have it related in Mr Camden that before Harold usurped the crown most men thought it the wisest policy to set the crown on William's head, that by performing the oath and promise a war might be prevented. And that Harold, by assuming the crown, provoked the whole clergy and ecclesiastical estate against him; and

we know how potent in those days the clergy were in state affairs. Also that, after one battle fought wherein Harold was slain, he went to London, was received by the Londoners, and solemnly inaugurated king; as unto whom, by his own saying, the kingdom was by God's providence appointed, and by virtue of a gift from his lord and cousin King Edward the Glorious granted. So that, after the battle, the remainder of the war was dispatched by English forces and leaders.

But suppose he did come in a conqueror; yet he did not establish the kingdom on these terms, but on the old laws, which he retained and authorized for himself and his successors to govern by. Indeed, after his settlement in the kingdom, some Norman customs he brought in, and (to gratify his soldiers) dispossessed many English of their estates, dealing in it too much like a conqueror. But the trial by twelve men, and other fundamentals of government, wherein the English freedom consists, he left untouched, which have remained till this day. On the same title he claimed and was inaugurated, was he king, which was a title of rightful succession to Edward. Therefore he was indeed king, not as conqueror, but as Edward's successor; and on the same right as he and his predecessors held the crown. As also, by the grant of the former laws and form of government, he did equivalently put himself and successors into the state of legal monarchs, and in that tenure have all the kings of this land held the crown till this day; when these men would rake up and put a title of conquest upon them, which never was claimed or made use of by him who is the first root of their succession.

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Chapter II

Supposing it to be in the platform limited, wherein, and how far forth it is limited and defined

I conceive it fundamentally limited in five particulars:

First, in the whole latitude of the nomothetical power; so that their power extends not to establish any act which has the being and state of a law of the land, nor give an authentic sense to any law of a doubtful and controverted meaning, solely and by themselves, but together with the concurrent authority of the two other estates in parliament.

Secondly, in the governing power there is a confinement to the fundamental common laws, and to the superstructive statute laws by the former concurrence of powers enacted, as to the rule of all their acts and executions.

Thirdly, in the power of constituting officers and means of governing: not in the choice of persons (for that is entrusted to his judgement, for aught I know), but in the constitution of courts of judicature. For, as he cannot judge by himself, or officers, but in courts of justice, so those courts of justice must have a constitution by a concurrence of the three estates; they must have the same power to constitute them as the laws which are dispensed in them.

Fourthly, in the very succession. For, though succession has been brought as a medium to prove the absoluteness of this government, yet, if it be more thoroughly considered, it is rather a proof of the contrary; and every one who is a successive monarch is so far limited in his power that he cannot leave it to whom he pleases, but to whom the fundamental law concerning that succession has designed it. And herein, though our monarchy be not so limited as that of France is said to be, where the king cannot leave it to his daughter, but to his heir male, yet restrained it is: so that should he affect another more, or judge another fitter to succeed, yet he cannot please himself in this, but is limited to the next heir born, not adopted, nor denominated; which was the case betwixt Queen Mary and the Lady Jane.

Lastly, in point of revenue; wherein their power extends not to their subjects' estates, by taxes and impositions to make their own what they please, as has been acknowledged by Magna Carta, and lately by the Petition of Right, the case of ship-money, conduct-money, etc., nor, as I conceive, to make an alienation of any lands or other revenues annexed by law to the crown. I meddle not with personal limitations (whereby kings, as well as private men, may limit themselves by promise and covenant), which, being particular, bind only themselves; but with those which are radical, and have continued during the whole current of succession, from unknown times. Other limitations, it is likely, may be produced by those who are skilful in the laws. But I believe they will be such as are reducible to some of these, which I take to be the principal and most apparent limitations of this monarchy, and are a most convincing induction to prove my assertion in the former chapter, 'That this

monarchy, in the very mould and frame of it, is of a limited constitution.'

Chapter III

Whether it be of a simple or mixed constitution?

Section I

When the government is simple, when mixed; also where the mixture must be, which denominates a mixed government, is explained [in] Part I, Chapter III. Now I conceive it a clear and undoubted truth that the authority of this land is of a compounded and mixed nature, in the very root and constitution thereof; and my judgement is established on these grounds:

First, it is acknowledged to be a monarchy mixed with aristocracy in the house of peers, and democracy in the house of commons. Now (as before was made appear, in the first part) it is no mixture which is not in the root and supremacy of power; for, though it have a subordination of inferior officers, and though the powers inferior be seated in a mixed subject, yet that makes it not a mixed government, for it is compatible to the simplest in the world to have subordinate mixtures.

Secondly, that monarchy, where the legislative power is in all three, is, in the very root and essence of it, compounded and mixed of those three; for that is the height of power to which the other parts are subsequent and subservient. So that, where this resides in a mixed subject (that is, in three distinct concurrent estates), the consent and concourse of all most free, and none depending on the will of the other, that monarchy is, in the most proper sense, and in the very model of it, of a mixed constitution. But such is the state of this monarchy, as appears in the former question, and is self-apparent.

Thirdly, that monarchy in which three estates are constituted to the end that the power of one should moderate and restrain from excess the power of the other is mixed in the root and essence of it. But such is this, as is confessed in the answer to the said propositions. The truth of the major will appear if we consider how many ways provision may be made, in a political frame, to remedy and restrain the excesses of monarchy. I can imgine but three ways: first, by constituting a legal power above it, that it may be regulated thereby;

as by an overruling power. Thus we must not conceive of our two houses of parliament as if they could remedy the exorbitances of the prince by an authority superior to his; for this were to subordinate him to the two houses, to set a superior above the sovereign; that is, to destroy the being of his monarchical power. Secondly, by an original conveyance to him of a limited and legal power, so that beyond it he can do no potestative act; yet constituting no formal legal power to refrain or redress his possible exorbitances. Here is limitation without mixture of another constituted power. As the former of these overthrows the power of the sovereign, so this makes no provision for the indemnity of the people. Thirdly, now, the never-enough-to-be-admired wisdom of the architects and contrivers of the frame of government in this realm (whoever they were) have found a third way, by which they have conserved the sovereignty of the prince, and also make an excellent provision for the people's freedom, by constituting two estates of men, who are for their condition subjects, and yet have that interest in the government that they can both moderate and redress the excesses and illegalities of the royal power. Which (I say) cannot be done but by a mixture, that is, by putting into their hands a power to meddle in acts of the highest function of government; a power not depending on his will, but radically their own, and so sufficient to moderate the sovereign's power.

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Chapter V

How far forth the two estates may oppose and resist the will of the monarch

Section I

This question is, in the general, already handled in the first part; so that it will be easy to draw those answers there to this particular here. Therefore, conformably to what I then affirmed, I will answer this question by divers positions.

First, the monarch working according to his power, not exceeding the authority which God and the laws have conferred on him, is no way to be opposed either by any or all his subjects, but in conscience to God's ordinance obeyed. This is granted on all sides.

Secondly, if the will and command of the monarch exceed the limits of the law, it ought for the avoidance of scandal and offence to be submitted to, so it be not contrary to God's law, nor bring with it such an evil to ourselves, or the public, that we cannot be accessory to it by obeying. This also will find no opposition. Disobedience in light cases, in which we are not bound, makes an appearance of slighting the power, and is a disrespect to the person of the magistrate. Therefore Christ, to avoid such offence, would pay tribute, though he tells Peter, he was free, and need not have done it.

Thirdly, if he command a thing which the law gives him no authority to command, and if it be such as would be inconvenient to obey, in this case obedience may lawfully be denied. This also finds allowance from them which stand most for royal power. Dr Ferne, in his preface, acknowledges obedience to be limited and circumscribed by the established laws of the land, and accordingly to be yielded or denied. In section i, says he, 'We may and ought to deny obedience to such commands of the prince as are unlawful by the law of God; yea, by the established laws of the land.' Here he says more than we say, yea more than should be said, as appears in the second position: it is not universally true that we ought.

Fourthly, if he exceed the limits of the law, and proceed in courses illegal, means there are which it is agreed upon the subjects may use to reduce him to legal government; so much Dr Ferne allows, section iv: Cries to God, petition to the prince, denial of obedience, denial of subsidy, etc.

Fifthly, but the point in controversy is about positive and forcible resistance; the lawfulness of which some do utterly deny, and others do as confidently maintain. But yet this point might be brought to a narrower state than, in the confused handling of it, it usually is: by distinguishing betwixt forcible resistance used against the king's own person, or against inferior officers and instruments, advising to or executing the illegal commands.

Section II

For the first, as I have before expressed myself, force ought not to be used against the person of the sovereign on any pretence whatever, by any or all his subjects, even in limited and mixed monarchies. For if they be truly monarchs, they are irrevocably invested with

sovereignty, which sets their persons above all lawful power and force. . . .

Section III

Whether resistance of instruments of will be lawful?

Now concerning this case of forcible resistance of inferior persons misemployed to serve the illegal, destructive commands of the prince, I will do two things. 1. I will maintain my assertion by convincing arguments. 2. I will show the invalidity of what is said against it.

This, then, is my assertion. The two estates in parliament may lawfully, by force of arms, resist any persons, or number of persons, advising or assisting the king in the performance of a command illegal and destructive to themselves or the public.

First, because that force is lawful to be used for the public conservation which is no resistance of the ordinance of God, for that is the reason condemning the resistance of the powers. Now, this is no resistance of God's ordinance; for, by it, neither the person of the sovereign is resisted nor his power. Not his person, for we speak of agents employed, not of his own person. Nor his power, for the measure of that, in our government, is acknowledged to be the law. And therefore he cannot confer authority beyond law; so that those agents, deriving no authority from him, are mere instruments of his will, unauthorized persons, in their assaults robbers, and (as Dr Ferne calls them) cut-throats. If the case be put, 'What if the sovereign himself, in person, be present with such assailants, joining his personal assistance in the execution of his commands?' It is much to be lamented that the will of the prince should be so impetuous in any subverting act as to hazard his own person in the prosecution of it: yet, supposing such a case, all counsels and courses must be taken that no violence be offered to his person, and profession of none intended. But no reason the presence of his person should privilege ruining instruments from suppression, and give them an impunity to spoil and destroy subjects better than themselves. His person being secured from wrong, his power cannot be violated in such an act, in which none of it can be conferred on the agents. And sure David, though he avoided laying hands, or using any violence against the person of Saul, and on no extremity would have done it; yet, for the cut-throats about him, if no other means would have secured him, he

would have rescued himself by force from their outrage, though Saul was in their company; else what intended he by all the force of soldiers, and his inquiry of God at Keilah? By which it is plain, he had an intent to have kept the place by force, if the people would have stuck to him. . . .

Secondly, because, without such power of resistance in the hands of subjects, all distinction and limitation of government is vain, and all forms resolve into absolute and arbitrary. For that is so which is unlimited, and that is unlimited not only which has no limits set, but also which has no sufficient limits; for to be restrained from doing what I will by a power which can restrain me no longer, nor otherwise, than I will, is all one as if I were left at my own will. I take this to be clear. Now it is as clear that, unless this forcible resistance of instruments of usurped power be lawful, no sufficient limits can be to the prince's will, and all laws bounding him are to no purpose. This appears by enumerating the other means: prayer to God, petition to the prince, denial of obedience, denial of subsidy, a moderate use of the power of denying, as Dr Ferne calls it. These are all. But what are these to hinder, if a prince be minded to overthrow all and bring the whole government to his own will? For prayer and petition, these are put in to fill up the number: they are no limitations; they may be used in the most absolute monarchy. For denial of obedience, that may keep me from being an instrument of public servitude. But princes' wills never want them which will yield obedience, if I deny it: yea, enough to destroy all the rest if nothing be left them but to suffer. Then, for denial of subsidy, if he may, by thousands of instruments, take all, or what he or they please, and I must not resist, what need he care whether the people deny or grant, if a prince be taught that he may do it? Cases and reasons will soon be brought to persuade him that in them he may lawfully do it, as late experiences have given us too much testimony. Thus it is apparent that the denial of this power of resistance of instruments overthrows and makes invalid all government but that which is absolute, and reduces the whole world *de jure* to an absolute subjection, that is, servitude. For the end of all constitution of moderated forms is not that the supreme power might not lawfully exorbitate, but that it might have no power to exorbitate. . . .

Thirdly, because such power is due to a public state for its preservation as is due to a particular person. But every particular person

may lawfully, by force, resist illegal destructive ministers, though sent by the command of a legal sovereign, provided no other means of self-preservation be enough. This assumption the doctor seems to grant: he denies it to be lawful against the person of the prince, but, in effect, yields it against subordinate persons. But the main is against the proposition; and the doctor is so heavy a friend to the state that he thinks it not fit to allow it that liberty he gives every private man. But whose judgement will concur with his herein I cannot imagine; for sure the reason is greater: the public safety being far more precious and able to satisfy the damages of a public resistance than one particular man's is of a private. . . .

Chapter VI

In what cases the other estates may, without or against the king's personal consent, assume the arms of the kingdom?

Section I

Whether it be lawful to take up arms against the magistrate, perverting his power to a wrong end?

Whoever were the authors of that book lately published, styled *Scripture and Reason Pleaded for Defensive Arms*, have laid new and over-large grounds for resistance. Two assertions they endeavour to maintain: first, 'Those governors (whether supreme, or others) who, under pretence of authority from God's ordinance, disturb the quiet and peaceable life in godliness and honesty, are far from being God's ordinance, in so doing' (section iii). Secondly, 'This tyranny not being God's ordinance, they which resist it even with arms, resist not the ordinance of God' (hereon, section iv). They free Christians, even in the apostle's time, and so under the Roman emperors, or any other government, from a necessity of passive subjection in case of persecution, affirming that the Christians, in those first persecutions, had they been strong enough, might have used arms for defence against the tyranny of their emperors . . . I approve the received doctrine of the saints in ancient and modern times . . . and do concur with master Burroughs, professing against resistance of authority, though abused: 'If those (says he, in his answer to Dr Ferne, section ii) who have power to make laws, make sinful laws, and so give authority to any to force obedience; we say, here there must be either flying, or passive obedience.' And again: 'We acknowledge, we must

not resist for religion, if the laws of the land be against it.' But what do they say against this? In making such laws against religion, the magistrates are not God's ordinance; and therefore to resist is not to resist God's ordinance. As an inferior magistrate who has a commission of power for such ends is resistible if he exceed his commission and abuse his power for other ends, so princes, being God's ministers, and having a deputed commission from him to such ends (viz. the promotion of godliness, peace and justice), if they pervert their power to contrary ends, may be resisted without violation of God's ordinance. That I may give a satisfactory answer to this, which is the sum of their long discourse, I must lay it down in several assertions:

First, I acknowledge, God's ordinance is not only power, but power for such ends, scil. the good of the people.

Secondly, it is also God's ordinance that there should be in men by public consent called thereto, and invested therein, a power to choose the means, the laws and rules of government conducing to that end; and a judging, in relation to those laws, who be the well-doers which ought to be praised, and who the evil-doers who ought to be punished. This is as fully God's ordinance as the former; for, without this, the other cannot be performed.

Thirdly, when they who have this final civil judicature shall censure good men as evil-doers, or establish iniquity by a law, to the encouragement of evil-doers; in this case, if it be a subordinate magistrate that does it, appeal must be made (as St Paul did) to the supreme. If it be the supreme, which through mistake, or corruption, does miscensure, from whom there lies no civil appeal, then, without resistance of that judgement, we must passively submit. And he who, in his own knowledge of innocency or goodness of his cause, shall by force resist, that man erects a tribunal in his own heart against the magistrate's tribunal, clears himself by a private judgement against a public, and executes his own sentence by force against the magistrate's sentence, which he has repealed and made void in his own heart. In unjust censures by the highest magistrate, from whom there is no appeal but to God, the sentence cannot be opposed till God reverse it, to whom we have appealed. In the meantime we must suffer, as Christ did, notwithstanding his appeal (1 Peter 2: 23), and so must we, notwithstanding our appeal (1 Peter 4: 19), for he did so for our example. If an appeal to God, or a censure in the

judgement of the condemned, might give him power of resistance, none would be guilty, or submit to the magistrate's censure any further than they please. . . .

Section II

1. When arms ought not to be assumed

2. When they may be assumed

Now to the proposed question I answer, first, negatively: scil. First, it ought not to be done against all illegal proceedings, but such which are subversive and insufferable. Secondly, not public resistance, but in excesses inducing public evils. For to repel private injuries of the highest nature with public hazard and disturbance will not quit cost, unless in a private case the common liberty be struck at. Thirdly, not when the government is actually subverted and a new form (though never so injuriously) set up, and the people already engaged in an oath of absolute subjection. For the remedy comes too late, and the establishment of the new makes the former irrevocable by any justifiable power, within the compass of that oath of God. This was the case of the senate of Rome in St Paul's time. Secondly, affirmatively: I conceive three cases when the other estates may lawfully assume the force of the kingdom, the king not joining, or dissenting, though the same be by law committed to him. First, when there is invasion actually made, or imminently feared, by a foreign power. Secondly, when by an intestine faction the laws and frame of government are secretly undermined or openly assaulted. In both these cases, the being of the government being endangered, their trust binds, as to assist the king in securing, so to secure it by themselves, the king refusing. In extreme necessities the liberty of voices cannot take place, neither ought a negative voice to hinder in this exigence, there being no freedom of deliberation and choice when the question is about the last end. Their assuming the sword, in these cases, is for the king, whose being (as king) depends on the being of the kingdom; and, being interpretatively his act, is no disparagement of his prerogative. Thirdly, in case the fundamental rights of either of the three estates be invaded by one or both the rest, the wronged may lawfully assume force for its own defence; because else it were not free, but dependent on the pleasure of the other. Also the suppression of either of them, or the diminishing of their fundamental

rights, carries with it the dissolution of the government: and therefore those grounds, which justify force to preserve its being, allow this case, which is a direct innovation of its being and frame.

Chapter VII

Where the legal power of final judging in these cases does reside, in case the three estates differ about the same?

Section I

The question stated. Determination of the question

In this question (for our more distinct proceeding) some things are necessarily to be observed: first, that we meddle not here with the judicature of questions of an inferior nature, viz. such as are betwixt subject and subject, or the king and a subject, in a matter of particular right, which may be decided another way without detriment of the public frame, or diminution of the privileges of either of the three estates. Secondly, difference is to be made even in the questions of utmost danger. 1. For it may be alleged to be either from without, by invasion of foreign enemies, or by a confederacy of intestine subverters, in which neither of the three estates are alleged to be interested; and so the case may be judged without relation to either of them, or detriment to their privileges. Here I conceive a greater latitude of power may be given to some to judge without the other, for it infers not a subordinating of any of the three to the other. 2. Or else it may be alleged by one or two of the estates against the other that, not contenting itself with the powers allowed to it by the laws of the government, it seeks to swallow up or entrench on the privileges of the other, either by immediate endeavours, or else by protecting and interesting itself in the subversive plots of other men. 3. In this case we must also distinguish betwixt, i. authority of raising forces for defence against such subversion, being known and evident; ii. and authority of judging and final determining that the accused estate is guilty of such design and endeavour of subversion, when it is denied and protested against. This last is the particular in this question to be considered. Not whether the people are bound to obey the authority of two or one of the legislative estates, in resisting the subversive essays of the other, being apparent and self-evident, which I take in this treatise to be clear. But, when such plea of subversion is more obscure and

questionable, which of the three estates has the power of ultimate and supreme judicature, by vote or sentence to determine it against the other, so that the people are bound to rest in that determination, and accordingly to give their assistance, *eo nomine*, because it is by such power so noted and declared?

For my part, in so great a case, if my earnest desire of public good and peace may justify me to deliver my mind, I will prescribe to the very question, for it includes a solecism. In government of a mixed temperature, to demand which estate may challenge this power of final determination of fundamental controversies arising betwixt them is to demand which of them shall be absolute. For I conceive that, in the first part hereof, I have made it good that this final utmost controversy, arising betwixt the three legislative estates, can have no legal constituted judge in a mixed government. For, in such difference, he who affirms that the people are bound to follow the judgement of the king against that of the parliament destroys the mixture into absoluteness. And he who affirms that they are bound to cleave to the judgement of the two houses against that of the king resolves the monarchy into an aristocracy or democracy, according as he places this final judgement. Whereas I take it to be an evident truth that, in a mixed government, no power is to be attributed to either estate which, directly or by necessary consequence, destroys the liberty of the other.

Section II

Dissolution of the arguments placing it in the king; and of the arguments placing it in the two houses

Yet it is strange to see how, in this epidemical division of the kingdom, the abettors of both parts claim this unconcessible judgement. . . .

Section III

What is to be done in such a contention?

If it be demanded, then, how this case can be decided and which way must the people turn in such a contention, I answer: if the non-decision be tolerable, it must remain undecided whilst the principle of legal decision is thus divided, and by that division each suspends the other's power. If it be such as is destructive, and necessitates a

determination, this must be evident; and then every person must aid that part which, in his best reason and judgement, stands for public good against the destructive. And the laws and government which he stands for, and is sworn to, justify and hear him out in it; yea, bind him to it.

If any wonder I should justify a power in the two houses to resist and command aid against any agents of destructive commands of the king, and yet not allow them power of judging when those agents or commands are destructive, I answer, I do not simply deny them a power of judging and declaring this; but I deny them to be a legal court ordained to judge of this case authoritatively, so as to bind all people to receive and rest in their judgement for conscience of its authority, and because they have voted it. It is the evidence, not the power of their votes, must bind our reason and practice in this case. We ought to conceive their votes the discoveries made by the best eyes of the kingdom, and which in likelihood should see most: but, when they vote a thing against the proceedings of the third and supreme estate, our consciences must have evidence of truth to guide them, and not the sole authority of votes; and that for the reason so often alleged.

NOTES ON THE TEXTS

1. *The Petition of Right:* There are seventeenth-century editions in 1628 (despite royal opposition), 1642, 1659 and 1660, as well as in collections of the Statutes of the Realm. It is frequently reproduced in collections of constitutional documents: e.g. J. P. Kenyon, *The Stuart Constitution, 1603–88* (Cambridge, 1966).

2. *His Majesties Answer to the Nineteen Propositions:* D. Wing's *Short-Title Catalogue, 1641–1700* lists five separate editions of this text in 1642. It is reproduced in the various editions of J. Rushworth, *Historical Collections*, vol. v (1659–1701, 1703–8, 1718, 1721–2). Selections from it are frequently reprinted, e.g. Kenyon, *The Stuart Constitution*, op. cit.

3. Hunton, *Treatise of Monarchy:* Published anonymously in 1643, with further editions in 1680 and 1689 (two editions). Reprinted in the various editions of the *Harleian Miscellany* (1744–6; 1753; 1808–11; 1808–13, vol. VI). There has been no modern edition of this text.

FURTHER READING

The political and institutional context within which the Petition of Right should be viewed is a matter of heated controversy. The traditional view, expressed in W. Notestein, *The Winning of the Initiative by the House of Commons* (London, 1924), that it is part of a pattern of growing self-assertiveness on the part of the Commons, has been questioned by a number of recent scholars, most notably C. Russell, whose *Parliaments and English Politics, 1621–29* (Oxford, 1979) represents a new orthodoxy. The recent literature is reviewed by J. H. Hexter in 'The Early Stuarts and Parliament', *Parliamentary History*, I (1982), pp. 181–215. On the immediate background to the Petition of Right itself there is a valuable article by J. A. Guy: 'The Origins of the Petition of Right Reconsidered', *Historical Journal*, XXV (1982), pp. 289–312 (which should be read in conjunction with the comment by M. B. Young, *Historical Journal*, XXVII (1984), pp. 449–52). It is interesting to compare the Petition of Right to the Declaration of Rights of 1689, on which see L. G. Schwoerer, 'The Contributions of the Declaration of Rights to Anglo-American Radicalism', in M. Jacob and J. Jacob (eds.), *The Origins of Anglo-American Radicalism* (London, 1984).

The constitutional debate of the opening phase of the Civil War is discussed both in M. A. Judson, *Crisis of the Constitution* (New Brunswick, 1949) and in J. W. Allen, *English Political Thought, 1603–44* (London, 1938). There is a useful selection of texts in A. Sharp, *Political Ideas of the English Civil Wars, 1641–49* (London, 1983).

The 'mixed monarchy' theory adopted by the king in 1642 has been the subject of a number of studies by C. C. Weston, of which the first was 'The Theory of Mixed Monarchy under Charles I and After', *English Historical Review*, LXXV (1960), pp. 426–43, and the most recent is 'Co-ordination: a Radicalising Principle in Stuart Politics', in M. Jacob and J. Jacob (eds.), *The Origins of Anglo-American Radicalism* (London, 1984).

The two leading parliamentary publicists who sought to respond to the royalist propagandists were Henry Parker and Philip Hunton. There is a facsimile reprint of Parker's *Observations* in W. Haller (ed.), *Tracts on Liberty in the Puritan Revolution* (three vols., New York, 1934, 1965), and a substantial selection in H. Erskine-Hill and G. Storey (eds.), *Revolutionary Prose of the English Civil War* (Cambridge, 1983). On Parker see M. A. Judson, 'Henry Parker and the Theory of Parliamentary Sovereignty', in *Essays in Honor of C. H. McIlwain* (Cambridge, Mass., 1936), and W. K. Jordan, *Men of Substance: Henry Parker and Henry Robinson* (Chicago, 1942). On Hunton see the articles by C. H. McIlwain, in his *Constitutionalism and the Changing World* (Cambridge, 1939), and T. Sanderson: 'Philip Hunton's "Appeasement": Moderation and Extremism in the English Civil War', *History of Political Thought*, III (1982), pp. 447–61. Hunton's importance is stressed by J. H. Franklin in *John Locke and the Theory of Sovereignty* (Cambridge, 1978). It is

useful to compare his position with that of a moderate royalist, for which purpose there is J. W. Daly, 'John Bramhall and the Theoretical Problems of Royalist Moderation', *Journal of British Studies*, XI (1971), pp. 26–44.