

## CHAP. VI. Of Paternal Power.

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

Sect. 53. Had but this one thing been well considered, without looking any deeper into the matter, it might perhaps have kept men from running into those gross mistakes, they have made, about this power of parents; which, however it might, without any great harshness, bear the name of absolute dominion, and regal authority, when under the title of *paternal power* it seemed appropriated to the father, would yet have founded but oddly, and in the very name shewn the absurdity, if this supposed absolute power over children had been called *parental*; and thereby have discovered, that it belonged to the *mother* too: for it will but very ill serve the turn of those men, who contend so much for the absolute power and authority of the *fatherhood*, as they call it, that the mother should have any share in it; and it would have but ill supported the *monarchy* they contend for, when by the very name it appeared, that that fundamental authority, from whence they would derive their government of a single person only, was not placed in one, but two persons jointly. But to let this of names pass.

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

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

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

Sect. 57. The law, that was to govern *Adam*, was the same that was to govern all his posterity, the *law of reason*. But his offspring having another way of entrance into the world, different from him, by a natural birth, that produced them ignorant and without the use of *reason*, they were not presently *under* that law; for no body can be under a law, which is not promulgated to him; and this law being promulgated or made known by *reason* only, he that is not come to the use of his *reason*, cannot be said to be *under this law*; and *Adam's* children, being not presently as soon as born *under this law of reason*, were not presently *free*: for *law*, in its true notion, is not so much the limitation as *the direction of a free and intelligent agent* to his proper interest, and prescribes no farther than is for the general good of those under that law: could they be happier without it, the *law*, as an useless thing, would of itself vanish; and that ill deserves the name of confinement which hedges us in only from bogs and precipices. So that, however it may be mistaken, *the end of law* is not to abolish or restrain, but *to preserve and enlarge freedom*: for in all the states of created beings capable of laws, *where there is no law, there is no freedom*: for *liberty* is, to be free from restraint and violence from others; which cannot be, where there is no law: but freedom is not, as we are told, *a liberty for every man to do what he lists*: (for who could be free, when every other man's humour might domineer over him?) but a *liberty* to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own.

Sect. 58. The *power*, then, that *parents have* over their children, arises from that duty which is incumbent on them, to take care of their off-spring, during the imperfect state of childhood. To inform the mind, and govern the actions of their yet ignorant nonage, till reason shall take its place, and ease them of that trouble, is what the children want, and the parents are bound to: for God having given man an understanding to direct his actions, has allowed him a freedom of will, and liberty of acting, as properly belonging thereunto, within the bounds of that law he is under. But whilst he is in an estate, wherein he has not *understanding* of his own to direct his *will*, he is not to have any *will* of his own to follow: he that *understands* for him, must *will* for him too; he must prescribe to his will, and regulate his actions; but when he comes to the estate that made his *father a freeman*, the *son is a freeman* too.

Sect. 59. This holds in all the laws a man is under, whether natural or civil. Is a man under the law of nature? *What made him free* of that law? what gave him a free disposing of his property, according to his own will, within the compass of that law? I answer, a state of maturity wherein he might be supposed capable to know that law, that so he might keep

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

Sect. 60. But if, through defects that may happen out of the ordinary course of nature, any one comes not to such a degree of reason, wherein he might be supposed capable of knowing the law, and so living within the rules of it, he is *never capable of being a free man*, he is never let loose to the disposal of his own will (because he knows no bounds to it, has not understanding, its proper guide) but is continued under the tuition and government of others, all the time his own understanding is incapable of that charge. And so *lunatics* and *ideots* are never set free from the government of their parents; *children, who are not as yet come unto those years whereat they may have; and innocents which are excluded by a natural defect from ever having; thirdly, madmen, which for the present cannot possibly have the use of right reason to guide themselves, have for their guide, the reason that guideth other men which are tutors over them, to seek and procure their good for them*, says Hooker, Eccl. Pol. lib. i. sec. 7. All which seems no more than that duty, which God and nature has laid on man, as well as other creatures, to preserve their offspring, till they can be able to shift for themselves, and will scarce amount to an instance or proof of *parents* regal authority.

Sec. 61. Thus we are *born free*, as we are born rational; not that we have actually the exercise of either: age, that brings one, brings with it the other too. And thus we see how *natural freedom* and *subjection to parents* may consist together, and are both founded on the same principle. A *child is free* by his father's title, by his father's understanding, which is to govern him till he hath it of his own. The *freedom of a man at years of discretion*, and the *subjection* of a child to his *parents*, whilst yet short of that age, are so consistent, and so distinguishable, that the most blinded contenders for monarchy, *by right of fatherhood*, cannot miss this *difference*; the most obstinate cannot but allow their consistency: for were their doctrine all true, were the right heir of *Adam* now known, and by that title settled a monarch in his throne, invested with all the absolute unlimited power *Sir Robert Filmer* talks of; if he should die as soon as his heir were born, must not the *child*, notwithstanding he were never so free, never so much sovereign, be in subjection

to his mother and nurse, to tutors and governors, till age and education brought him reason and ability to govern himself and others? The necessities of his life, the health of his body, and the information of his mind, would require him to be directed by the will of others, and not his own; and yet will any one think, that this restraint and subjection were inconsistent with, or spoiled him of that liberty or sovereignty he had a right to, or gave away his empire to those who had the government of his nonage? This government over him only prepared him the better and sooner for it. If any body should ask me, when my son is *of age to be free*? I shall answer, just when his monarch is of age to govern. *But at what time*, says the judicious *Hooker*, Eccl. Pol. l. i. sect. 6. *a man may be said to have attained so far forth the use of reason, as sufficeth to make him capable of those laws whereby he is then bound to guide his actions: this is a great deal more easy for sense to discern, than for any one by skill and learning to determine.*

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

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

Sect. 64. But what reason can hence advance this care of the *parents* due to their off-spring into an *absolute arbitrary dominion* of the father, whose power reaches no farther, than by such a discipline, as he finds most effectual, to give such strength and health to their bodies, such vigour and rectitude to their minds, as may best fit his children to be most useful to themselves and others; and, if it be necessary to his condition, to make them work, when they are able, for their own subsistence. But in this power the *mother* too has her share with the *father*.

Sect. 65. Nay, this *power* so little belongs to the *father* by any peculiar right of nature, but only as he is guardian of his children, that when he quits his care of them, he loses his power over them, which goes along with their nourishment and education, to which it is inseparably annexed; and it belongs as much to the *foster-father* of an exposed child, as to the natural father of another. So little power does the bare *act of begetting* give a man over his issue; if all his care ends there, and this be all the title he hath to the name and authority of a father. And what will become of this *paternal power* in that part of the world, where one woman hath more than one husband at a time? or in those parts of *America*, where, when the husband and wife part, which happens frequently, the children are all left to the mother, follow her, and are wholly under her care and provision? If the father die whilst the children are young, do they not naturally every where owe the same obedience to

their mother, during their minority, as to their father were he alive? and will any one say, that the mother hath a legislative power over her children? that she can make standing rules, which shall be of perpetual obligation, by which they ought to regulate all the concerns of their property, and bound their liberty all the course of their lives? or can she enforce the observation of them with capital punishments? for this is the proper *power of the magistrate*, of which the father hath not so much as the shadow. His command over his children is but temporary, and reaches not their life or property: it is but a help to the weakness and imperfection of their nonage, a discipline necessary to their education: and though a *father* may dispose of his own possessions as he pleases, when his children are out of danger of perishing for want, yet *his power* extends not to the lives or goods, which either their own industry, or another's bounty has made their's; nor to their liberty neither, when they are once arrived to the enfranchisement of the years of discretion. The *father's empire* then ceases, and he can from thence forwards no more dispose of the liberty of his son, than that of any other man: and it must be far from an absolute or perpetual jurisdiction, from which a man may withdraw himself, having license from divine authority to *leave father and mother, and cleave to his wife*.

Sect. 66. But though there be a time when a *child* comes to be as *free* from subjection to the will and command of his father, as the father himself is free from subjection to the will of any body else, and they are each under no other restraint, but that which is common to them both, whether it be the law of nature, or municipal law of their country; yet this freedom exempts not a son from that *honour* which he ought, by the law of God and nature, to pay his *parents*. God having made the parents instruments in his great design of continuing the race of mankind, and the occasions of life to their children; as he hath laid on them an obligation to nourish, preserve, and bring up their offspring; so he has laid on the children a perpetual obligation of *honouring their parents*, which containing in it an inward esteem and reverence to be shewn by all outward expressions, ties up the child from any thing that may ever injure or affront, disturb or endanger, the happiness or life of those from whom he received his; and engages him in all actions of defence, relief, assistance and comfort of those, by whose means he entered into being, and has been made capable of any enjoyments of life: from this obligation no state, no freedom can absolve children. But this is very far from giving parents a power of command over their children, or an authority to make laws and dispose as they please of their lives or liberties. It is one thing to owe honour, respect, gratitude and assistance; another to require an absolute obedience and submission. The *honour due to parents*, a monarch in his throne owes his mother; and yet this lessens not his authority, nor subjects him to her government.

Sect. 67. The subjection of a minor places in the father a temporary government, which terminates with the minority of the child: and the *honour due from a child*, places in the parents a perpetual right to respect, reverence, support and compliance too, more or less, as the father's care, cost, and kindness in his education, has been more or less. This ends not with minority, but holds in all parts and conditions of a man's life. The want of distinguishing these two powers, *viz.* that which the father hath in the right of *tuition*, during minority, and the right of *honour* all his life, may perhaps have caused a great part of the mistakes about this matter: for to speak properly of them, the first of these is rather the privilege of children, and duty of parents, than any prerogative of paternal power. The nourishment and education of their children is a charge so incumbent on parents for their children's good, that nothing can absolve them from taking care of it: and though the *power*

of *commanding and chastising* them go along with it, yet God hath woven into the principles of human nature such a tenderness for their off-spring, that there is little fear that parents should use their power with too much rigour; the excess is seldom on the severe side, the strong byass of nature drawing the other way. And therefore God almighty when he would express his gentle dealing with the *Israelites*, he tells them, that though he chastened them, *he chastened them as a man chastens his son*, Deut. viii. 5. i.e. with tenderness and affection, and kept them under no severer discipline than what was absolutely best for them, and had been less kindness to have slackened. This is that power to which *children* are commanded *obedience*, that the pains and care of their parents may not be increased, or ill rewarded.

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

Sect. 69. The first part then of *paternal power*, or rather duty, which is *education*, belongs so to the father, that it terminates at a certain season; when the business of education is over, it ceases of itself, and is also alienable before: for a man may put the tuition of his son in other hands; and he that has made his son an *apprentice* to another, has discharged him, during that time, of a great part of his obedience both to himself and to his mother. But all the *duty of honour*, the other part, remains never the less entire to them; nothing can cancel that: it is so inseparable from them both, that the father's authority cannot dispossess the mother of this right, nor can any man discharge his son from *honouring* her that bore him. But both these are very far from a power to make laws, and enforcing them with penalties, that may reach estate, liberty, limbs and life. The power of commanding ends with nonage; and though, after that, *honour* and respect, support and defence, and whatsoever gratitude can oblige a man to, for the highest benefits he is naturally capable of, be always due from a son to his parents; yet all this puts no scepter into the father's hand, no sovereign power of commanding. He has no dominion over his son's property, or actions; nor any right, that his will should prescribe to his son's in all things; however it may become his son in many things, not very inconvenient to him and his family, to pay a deference to it.

Sect. 70. A man may owe *honour* and respect to an ancient, or wise man; defence to his child or friend; relief and support to the distressed; and gratitude to a benefactor, to such a degree, that all he has, all he can do, cannot sufficiently pay it: but all these give no authority, no right to any one, of making laws over him from whom they are owing. And it is plain, all this is due not only to the bare title of father; not only because, as has been said, it is owing to the mother too; but because these obligations to parents, and the degrees of

what is required of children, may be varied by the different care and kindness, trouble and expence, which is often employed upon one child more than another.

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

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

Sect. 73. This is no small tie on the obedience of children: and there being always annexed to the enjoyment of land, a submission to the government of the country, of which that land is a part; it has been commonly supposed, that a *father could oblige his posterity to that government*, of which he himself was a subject, and that his compact held them; whereas, it being only a necessary condition annexed to the land, and the inheritance of an estate which is under that government, reaches only those who will take it on that condition, and so is no natural tie or engagement, but a voluntary submission: for *every man's children* being by nature as *free* as himself, or any of his ancestors ever were, may, whilst they are in that freedom, choose what society they will join themselves to, what commonwealth they will put themselves under. But if they will enjoy the *inheritance* of their ancestors, they must take it on the same terms their ancestors had it, and submit to all the conditions annexed to such a possession. By this power indeed fathers oblige their children to obedience to themselves, even when they are past minority, and most commonly too subject them to this or that political power: but neither of these by any peculiar right of *fatherhood*, but by the reward they have in their hands to inforce and recompence such a compliance; and is no more power than what a *French man* has over an *English man*, who by the hopes of an estate he will leave him, will certainly have a strong tie on his obedience: and if, when it is left him, he will enjoy it, he must certainly take it upon the conditions annexed to the *possession of land* in that country where it lies, whether it be *France* or *England*.

Sect. 74. To conclude then, tho' the *father's power* of commanding extends no farther than the minority of his children, and to a degree only fit for the discipline and government of that age; and tho' that *honour* and *respect*, and all that which the *Latins* called *piety*, which they indispensably owe to their parents all their life-time, and in all estates, with all that support and defence is due to them, gives the father no power of governing, i.e. making laws and enacting penalties on his children; though by all this he has no dominion over the property or actions of his son: yet it is obvious to conceive how easy it was, in the first ages of the world, and in places still, where the thinness of people gives families leave to separate into unpossessed quarters, and they have room to remove or plant themselves in yet vacant habitations, for the *father of the family* to become the prince of\* it; he had been a ruler from the beginning of the infancy of his children: and since without some government it would be hard for them to live together, it was likeliest it should, by the express or tacit consent of the children when they were grown up, be in the father, where it seemed without any change barely to continue; when indeed nothing more was required to it, than the permitting the *father* to exercise alone, in his family, that executive power of the law of nature, which every free man naturally hath, and by that permission resigning up to him a monarchical power, whilst they remained in it. But that this was not by any *paternal right*, but only by the consent of his children, is evident from hence, that no body doubts, but if a stranger, whom chance or business had brought to his family, had there killed any of his children, or committed any other fact, he might condemn and put him to death, or other-wise have punished him, as well as any of his children; which it was impossible he should do by virtue of any paternal authority over one who was not his child, but by virtue of that executive power of the law of nature, which, as a man, he had a right to: and he alone could punish him in his family, where the respect of his children had laid by the exercise of such a power, to give way to the dignity and authority they were willing should remain in him, above the rest of his family.

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

Sect. 75. Thus it was easy, and almost natural for children, by a tacit, and scarce avoidable consent, to make way for the *father's authority and government*. They had been accustomed in their childhood to follow his direction, and to refer their little differences to him, and when they were men, who fitter to rule them? Their little properties, and less covetousness, seldom afforded greater controversies; and when any should arise, where could they have a fitter umpire than he, by whose care they had every one been sustained and brought up, and who had a tenderness for them all? It is no wonder that they made no distinction betwixt minority and full age; nor looked after one and twenty, or any other age that might

make them the free disposers of themselves and fortunes, when they could have no desire to be out of their pupilage: the government they had been under, during it, continued still to be more their protection than restraint; and they could no where find a greater security to their peace, liberties, and fortunes, than in the *rule of a father*.

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

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## CHAP. VII. Of Political or Civil Society.

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

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

Sect. 79. For the end of *conjunction, between male and female*, being not barely procreation, but the continuation of the species; this conjunction betwixt male and female ought to last, even after procreation, so long as is necessary to the nourishment and support of the young ones, who are to be sustained even after procreation, who are to be sustained by those that got them, till they are able to shift and provide for themselves. This rule, which the infinite wise maker hath set to the works of his hands, we find the inferior creatures steadily obey. In those viviparous animals which feed on grass, the *conjunction between male and female* lasts no longer than the very act of copulation; because the teat of the dam being sufficient to nourish the young, till it be able to feed on grass, the male only begets, but concerns not himself for the female or young, to whose sustenance he can contribute nothing. But in beasts of prey the *conjunction* lasts longer: because the dam not being able

well to subsist herself, and nourish her numerous off-spring by her own prey alone, a more laborious, as well as more dangerous way of living, than by feeding on grass, the assistance of the male is necessary to the maintenance of their common family, which cannot subsist till they are able to prey for themselves, but by the joint care of male and female. The same is to be observed in all birds, (except some domestic ones, where plenty of food excuses the cock from feeding, and taking care of the young brood) whose young needing food in the nest, the cock and hen continue mates, till the young are able to use their wing, and provide for themselves.

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

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

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

Sect. 83. For all the ends of *marriage* being to be obtained under politic government, as well as in the state of nature, the civil magistrate cloth not abridge the right or power of either naturally necessary to those ends, viz. procreation and mutual support and assistance whilst they are together; but only decides any controversy that may arise between man and wife about them. If it were otherwise, and that absolute *sovereignty* and power of life and death naturally belonged to the husband, and were *necessary to the society between man and wife*, there could be no matrimony in any of those countries where the husband is allowed no such absolute authority. But the ends of matrimony requiring no such power in the husband, the condition of *conjugal society* put it not in him, it being not at all necessary to that state. *Conjugal society* could subsist and attain its ends without it; nay, community of goods, and the power over them, mutual assistance and maintenance, and other things belonging to *conjugal society*, might be varied and regulated by that contract which unites man and wife in that society, as far as may consist with procreation and the bringing up of children till they could shift for themselves; nothing being necessary to any society, that is not necessary to the ends for which it is made.

Sect. 84. The *society betwixt parents and children*, and the distinct rights and powers belonging respectively to them, I have treated of so largely, in the foregoing chapter, that I shall not here need to say any thing of it. And I think it is plain, that it is far different from a politic society.<?P>

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

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

Sect. 87. Man being born, as has been proved, with a title to perfect freedom, and an uncontrouled enjoyment of all the rights and privileges of the law of nature, equally with any other man, or number of men in the world, hath by nature a power, not only to preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men; but to judge of, and punish the breaches of that law in others, as he is persuaded the offence deserves, even with death itself, in crimes where the heinousness of the fact, in his opinion, requires it. But because no political society can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto, punish the offences of all those of that society; there, and there only is political society, where every one of the members hath quitted this natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for protection to the law established by it. And thus all private judgment of every particular member being excluded, the community comes to be umpire, by settled standing rules, indifferent, and the same to all parties; and by men having authority from the community, for the execution of those rules, decides all the differences that may happen between any members of that society concerning any matter of right; and punishes those offences which any member hath committed against the society, with such penalties as the law has established: whereby it is easy to discern, who are, and who are not, in *political society* together. Those who are united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them, and punish offenders, are in *civil society* one with another: but those who have no such common appeal, I mean on earth, are still in the state of nature, each being, where there is no other, judge for himself, and executioner; which is, as I have before shewed it, the perfect *state of nature*.

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

Sect. 89. Where-ever therefore any number of men are so united into one society, as to quit every one his executive power of the law of nature, and to resign it to the public, there and there only is a *political*, or *civil society*. And this is done, where-ever any number of men, in the state of nature, enter into society to make one people, one body politic, under one supreme government; or else when any one joins himself to, and incorporates with any

government already made: for hereby he authorizes the society, or which is all one, the legislative thereof, to make laws for him, as the public good of the society shall require; to the execution whereof, his own assistance (as to his own decrees) is due. And this *puts men* out of a state of nature *into* that of a *common-wealth*, by setting up a judge on earth, with authority to determine all the controversies, and redress the injuries that may happen to any member of the commonwealth; which judge is the legislative, or magistrates appointed by it. And where-ever there are any number of men, however associated, that have no such decisive power to appeal to, there they are still in *the state of nature*.

Sect. 90. Hence it is evident, that *absolute monarchy*, which by some men is counted the only government in the world, is indeed *inconsistent with civil society*, and so can be no form of civil-government at all: for the *end of civil society*, being to avoid, and remedy those inconveniencies of the state of nature, which necessarily follow from every man's being judge in his own case, by setting up a known authority, to which every one of that society may appeal upon any injury received, or controversy that may arise, and which every one of the\* society ought to obey; where-ever any persons are, who have not such an authority to appeal to, for the decision of any difference between them, there those persons are still *in the state of nature*; and so is every *absolute prince*, in respect of those who are under his *dominion*.

--(\*The public power of all society is above every soul contained in the same society; and the principal use of that power is, to give laws unto all that are under it, which laws in such cases we must obey, unless there be reason shewed which may necessarily inforce, that the law of reason, or of God, doth enjoin the contrary, *Hook. Eccl. Pol. l. i. sect. 16.*)

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

(\*To take away all such mutual grievances, injuries and wrongs, i.e. such as attend men in the state of nature, there was no way but only by growing into composition and agreement amongst themselves, by ordaining some kind of government public, and by yielding themselves subject thereunto, that unto whom they granted authority to rule and govern, by them the peace, tranquillity and happy estate of the rest might be procured. Men always knew that where force and injury was offered, they might be defenders of themselves; they knew that however men may seek their own commodity, yet if this were done with injury

unto others, it was not to be suffered, but by all men, and all good means to be withstood. Finally, they knew that no man might in reason take upon him to determine his own right, and according to his own determination proceed in maintenance thereof, in as much as every man is towards himself, and them whom he greatly affects, partial; and therefore that strifes and troubles would be endless, except they gave their common consent, all to be ordered by some, whom they should agree upon, without which consent there would be no reason that one man should take upon him to be lord or judge over another, *Hooker's Eccl. Pol. l. i. sect. 10.*)

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

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

Sect. 94. But whatever flatterers may talk to amuse people's understandings, it hinders not men from feeling; and when they perceive, that any man, in what station soever, is out of the bounds of the civil society which they are of, and that they have no appeal on earth against any harm, they may receive from him, they are apt to think themselves in the state of nature, in respect of him whom they find to be so; and to take care, as soon as they can,

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

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

--(\*\*Civil law being the act of the whole body politic, cloth therefore over-rule each several part of the same body. *Hooker, ibid.*)

## CHAP. VIII. Of the Beginning of Political Societies.

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

Sect. 96. For when any number of men have, by the consent of every individual, made a *community*, they have thereby made that *community* one body, with a power to act as one body, which is only by the will and determination of the *majority*: for that which acts any community, being only the consent of the individuals of it, and it being necessary to that which is one body to move one way; it is necessary the body should move that way whither the greater force carries it, which is the *consent of the majority*: or else it is impossible it should act or continue one body, *one community*, which the consent of every individual that united into it, agreed that it should; and so every one is bound by that consent to be concluded by the *majority*. And therefore we see, that in assemblies, empowered to act by positive laws, where no number is set by that positive law which empowers them, the *act of the majority* passes for the act of the whole, and of course determines, as having, by the law of nature and reason, the power of the whole.

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

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

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

Sect. 100. To this I find two objections made.

--First, *That there are no instances to be found in story, of a company of men independent, and equal one amongst another, that met together, and in this way began and set up a government.*

--Secondly, *It is impossible of right, that men should do so, because all men being born under government, they are to submit to that, and are not at liberty to begin a new one.*

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

Sect. 102. He must shew a strange inclination to deny evident matter of fact, when it agrees not with his hypothesis, who will not allow, that shew a strange inclination to deny evident matter of fact, when it agrees not with his hypothesis, who will not allow, that the *beginning of Rome* and *Venice* were by the uniting together of several men free and independent one of another, amongst whom there was no natural superiority or subjection. And if *Josephus Acosta's* word may be taken, he tells us, that in many parts of *America* there was no government at all. *There are great and apparent conjectures*, says he, *that these men*, speaking of those of *Peru*, *for a long time had neither kings nor commonwealths, but lived in troops, as they do this day in Florida, the Cheriquanas, those of Brazil, and many other nations, which have no certain kings, but as occasion is offered, in peace or war, they choose their captains as they please*, 1. i. c. 25. If it be said, that every man there was born subject to his father, or the head of his family; that the subjection due from a child to a father took not away his freedom of uniting into what political society he thought fit, has been already proved. But be that as it will, these men, it is evident, were actually *free*; and whatever superiority some politicians now would place in any of them, they themselves claimed it not, but by consent were all *equal*, till by the same consent they set rulers over themselves. So that their *politic societies* all began from a voluntary union, and the mutual agreement of men freely acting in the choice of their governors, and forms of government.

Sect. 103. And I hope those who went away from *Sparta* with *Palantus*, mentioned by *Justin*, 1. iii. c. 4. will be allowed to have been *freemen independent* one of another, and to

have set up a government over themselves, by their own consent. Thus I have given several examples, out of history, of *people free and in the state of nature*, that being met together incorporated and *began a commonwealth*. And if the want of such instances be an argument to prove that *government* were not, nor could not be so *begun*, I suppose the contenders for paternal empire were better let it alone, than urge it against natural liberty: for if they can give so many instances, out of history, of *governments begun* upon paternal right, I think (though at best an argument from what has been, to what should of right be, has no great force) one might, without any great danger, yield them the cause. But if I might advise them in the case, they would do well not to search too much into the *original of governments*, as they have begun *de facto*, lest they should find, at the foundation of most of them, something very little favourable to the design they promote, and such a power as they contend for.

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

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

Sect. 106. Thus, though looking back as far as records give us any account of peopling the world, and the history of nations, we commonly find the *government* to be in one hand; yet it destroys not that which I affirm, *viz.* that the *beginning of politic society* depends upon

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

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

Sect. 108. Thus we see, that the *kings of the Indians in America*, which is still a pattern of the first ages in Asia and Europe, whilst the inhabitants were too few for the country, and want of people and money gave men no temptation to enlarge their possessions of land, or contest for wider extent of ground, are little more than *generals of their armies*; and though they command absolutely in war, yet at home and in time of peace they exercise very little

dominion, and have but a very moderate sovereignty, the resolutions of peace and war being ordinarily either in the people, or in a council. Tho' the war itself, which admits not of plurality of governors, naturally devolves the command into the *king's sole authority*.

Sect. 109. And thus in *Israel* itself, the *chief business of their judges, and first kings*, seems to have been *to be captains in war*, and leaders of their armies; which (besides what is signified by *going out and in before the people*, which was, to march forth to war, and home again in the heads of their forces) appears plainly in the story of *Jephtha*. The *Ammonites* making war upon *Israel*, the *Gileadites* in fear send to *Jephtha*, a bastard of their family whom they had cast off, and article with him, if he will assist them against the *Ammonites*, to make him their ruler; which they do in these words, *And the people made him head and captain over them*, Judg. xi, ii. which was, as it seems, all one as to be *judge*. *And he judged Israel*, judg. xii. 7. that is, was their *captain-general six years*. So when *Jotham* upbraids the *Shechemites* with the obligation they had to *Gideon*, who had been their *judge* and ruler, he tells them, *He fought for you, and adventured his life far, and delivered you out of the hands of Midian*, Judg. ix. 17. Nothing mentioned of him but what he did as a *general*: and indeed that is all is found in his history, or in any of the rest of the judges. And *Abimelech* particularly is called *king*, though at most he was but their *general*. And when, being weary of the ill conduct of *Samuel's sons*, the children of *Israel* desired a *king, like all the nations to judge them, and to go out before them, and to fight their battles*, I. Sam viii. 20. God granting their desire, says to *Samuel*, *I will send thee a man, and thou shalt anoint him to be captain over my people Israel, that he may save my people out of the hands of the Philistines*, ix. 16. As if the only *business of a king* had been to lead out their armies, and fight in their defence; and accordingly at his inauguration pouring a vial of oil upon him, declares to *Saul*, that *the Lord had anointed him to be captain over his inheritance*, x. 1. And therefore those, who after *Saul's* being solemnly chosen and saluted *king by the tribes at Mispah*, were unwilling to have him their king, made no other objection but this, *How shall this man save us?* v. 27. as if they should have said, this man is unfit to be our *king*, not having skill and conduct enough in war, to be able to defend us. And when God resolved to transfer the government to *David*, it is in these words, *But now thy kingdom shall not continue: the Lord hath sought him a man after his own heart, and the Lord hath commanded him to be captain over his people*, xiii. 14. As if the whole *kingly authority* were nothing else but to be their *general*: and therefore the *tribes* who had stuck to *Saul's* family, and opposed *David's* reign, when they came to *Hebron* with terms of submission to him, they tell him, amongst other arguments they had to submit to him as to their king, that he was in effect their *king* in *Saul's* time, and therefore they had no reason but to receive him as their *king* now. *Also* (say they) *in time past, when Saul was king over us, thou wast he that reddest out and broughtest in Israel, and the Lord said unto thee, Thou shalt feed my people Israel, and thou shalt be a captain over Israel*.

Sect. 110. Thus, whether a *family* by degrees grew up into a *common-wealth*, and the fatherly authority being continued on to the elder son, every one in his turn growing up under it, tacitly submitted to it, and the easiness and equality of it not offending any one, every one acquiesced, till time seemed to have confirmed it, and settled a right of succession by prescription: or whether several families, or the descendants of several families, whom chance, neighbourhood, or business brought together, uniting into society, the need of a general, whose conduct might defend them against their enemies in war, and the great

confidence the innocence and sincerity of that poor but virtuous age, (such as are almost all those which begin governments, that ever come to last in the world) gave men one of another, made the first beginners of commonwealths generally put the rule into one man's hand, without any other express limitation or restraint, but what the nature of the thing, and the end of government required: which ever of those it was that at first put the rule into the hands of a single person, certain it is no body was intrusted with it but for the public good and safety, and to those ends, in the infancies of commonwealths, those who had it commonly used it. And unless they had done so, young societies could not have subsisted; without such nursing fathers tender and careful of the public weal, all governments would have sunk under the weakness and infirmities of their infancy, and the prince and the people had soon perished together.

Sect. 111. But though the *golden age* (before vain ambition, and *amor sceleratus habendi*, evil concupiscence, had corrupted men's minds into a mistake of true power and honour) had more virtue, and consequently better governors, as well as less vicious subjects, and there was then *no stretching prerogative* on the one side, to oppress the people; *nor* consequently on the other, any *dispute about privilege*, to lessen or restrain the power of the magistrate, and so no contest betwixt rulers and people about governors or government: yet, when ambition and luxury in future ages\* would retain and increase the power, without doing the business for which it was given; and aided by flattery, taught princes to have distinct and separate interests from their people, men found it necessary to examine more carefully *the original and rights of government*; and to find out ways *to restrain the exorbitances*, and *prevent the abuses* of that power, which they having intrusted in another's hands only for their own good, they found was made use of to hurt them. --(\*At first, when some certain kind of regiment was once approved, it may be nothing was then farther thought upon for the manner of governing, but all permitted unto their wisdom and discretion which were to rule, till by experience they found this for all parts very inconvenient, so as the thing which they had devised for a remedy, did indeed but increase the sore which it should have cured. They saw, that to live by one man's will, became the cause of all men's misery. This constrained them to come unto laws wherein all men might see their duty before hand, and know the penalties of transgressing them. *Hooker's Eccl. Pol. l. i. sect. 10.*)

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

Sect. 113. *That all men being born under government, some or other, it is impossible any of them should ever be free, and at liberty to unite together, and begin a new one, or ever be able to erect a lawful government.*

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

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

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

Sect. 115. For there are no examples so frequent in history, both sacred and profane, as those of men withdrawing themselves, and their obedience, from the jurisdiction they were born under, and the family or community they were bred up in, and *setting up new governments* in other places; from whence sprang all that number of petty commonwealths in the beginning of ages, and which always multiplied, as long as there was room enough, till the stronger, or more fortunate, swallowed the weaker; and those great ones again breaking to pieces, dissolved into lesser dominions. All which are so many testimonies against paternal sovereignty, and plainly prove, that it was not the natural right of the *father* descending to his heirs, that made governments in the beginning, since it was impossible, upon that ground, there should have been so many little kingdoms; all must have been but only one universal monarchy, if men had not been at *liberty to separate* themselves from their families, and the government, be it what it will, that was set up in it, and go and make distinct commonwealths and other governments, as they thought fit.

Sect. 116. This has been the practice of the world from its first beginning to this day; nor is it now any more hindrance to the freedom of mankind, that they are *born under constituted and ancient polities*, that have established laws, and set forms of government, than if they were born in the woods, amongst the unconfined inhabitants, that run loose in them: for those, who would persuade us, that *by being born under any government, we are naturally subjects to it*, and have no more any title or pretence to the freedom of the state of nature, have no other reason (bating that of paternal power, which we have already answered) to produce for it, but only, because our fathers or progenitors passed away their natural liberty, and thereby bound up themselves and their posterity to a perpetual subjection to

the government, which they themselves submitted to. It is true, that whatever engagements or promises any one has made for himself, he is under the obligation of them, but *cannot*, by any *compact* whatsoever, *bind his children or posterity*: for his son, when a man, being altogether as free as the father, any *act of the father can no more give away the liberty of the son*, than it can of any body else: he may indeed annex such conditions to the land, he enjoyed as a subject of any common-wealth, as may oblige his son to be of that community, if he will enjoy those possessions which were his father's; because that estate being his father's property, he may dispose, or settle it, as he pleases.

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

Sect. 118. But, it is plain, *governments* themselves understand it otherwise; they claim *no power over the son, because of that they had over the father*; nor look on children as being their subjects, by their fathers being so. If a subject of *England* have a child, by an *English* woman in *France*, whose subject is he? Not the king of *England's*; for he must have leave to be admitted to the privileges of it: nor the king of *France's*; for how then has his father a liberty to bring him away, and breed him as he pleases? and who ever was judged as a *traytor* or *deserter*, if he left, or warred against a country, for being barely born in it of parents that were aliens there? It is plain then, by the practice of governments themselves, as well as by the law of right reason, that *a child is born a subject of no country or government*. He is under his father's tuition and authority, till he comes to age of discretion; and then he is a freeman, at liberty what government he will put himself under, what body politic he will unite himself to: for if an *Englishman's* son, born in *France*, be at liberty, and may do so, it is evident there is no tie upon him by his father's being a subject of this kingdom; nor is he bound up by any compact of his ancestors. And why then hath not his son, by the same reason, the same liberty, though he be born any where else? Since the power that a father hath naturally over his children, is the same, where-ever they be born, and the ties of natural obligations, are not bounded by the positive limits of kingdoms and commonwealths.

Sect. 119. *Every man* being, as has been shewed, *naturally free*, and nothing being able to put him into subjection to any earthly power, but only his own *consent*; it is to be considered, what shall be understood to be a *sufficient declaration* of a man's *consent*, to *make him subject* to the laws of any government. There is a common distinction of an express and a tacit consent, which will concern our present case. No body doubts but an express *consent*, of any man entering into any society, makes him a perfect member of that society, a subject of that government. The difficulty is, what ought to be looked upon as a *tacit consent*, and how far it binds, i.e. how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of

it at all. And to this I say, that every man, that hath any possessions, or enjoyment, of any part of the dominions of any government, cloth thereby give his *tacit consent*, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it; whether this his possession be of land, to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and in effect, it reaches as far as the very being of any one within the territories of that government.

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

Sect. 121. But since the government has a direct jurisdiction only over the land, and reaches the possessor of it, (before he has actually incorporated himself in the society) only as he dwells upon, and enjoys that; the obligation any one is under, by virtue of such enjoyment, to *submit to the government, begins and ends with the enjoyment*; so that whenever the owner, who has given nothing but such a *tacit consent* to the government, will, by donation, sale, or otherwise, quit the said possession, he is at liberty to go and incorporate himself into any other common-wealth; or to agree with others to begin a new one, *in vacuis locis*, in any part of the world, they can find free and unpossessed: whereas he, that has once, by actual agreement, and any *express* declaration, given his *consent* to be of any common-wealth, is perpetually and indispensably obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of nature; unless, by any calamity, the government he was under comes to be dissolved; or else by some public act cuts him off from being any longer a member of it.

Sect. 122. But submitting to the laws of any country, living quietly, and enjoying privileges and protection under them, *makes not a man a member of that society*: this is only a local protection and homage due to and from all those, who, not being in a state of war, come within the territories belonging to any government, to all parts whereof the force of its laws extends. But this no more *makes a man a member of that society*, a perpetual subject of that common-wealth, than it would make a man a subject to another, in whose family he found it convenient to abide for some time; though, whilst he continued in it, he were obliged to comply with the laws, and submit to the government he found there. And thus we see, that *foreigners*, by living all their lives under another government, and enjoying the

privileges and protection of it, though they are bound, even in conscience, to submit to its administration, as far forth as any denison; yet do not thereby come to be *subjects or members of that common-wealth*. Nothing can make any man so, but his actually entering into it by positive engagement, and express promise and compact. This is that, which I think, concerning the beginning of political societies, and that *consent which makes any one a member of any common-wealth*.