

*Extraordinary Rights in Cases of Necessity,
and the Common Rights of Mankind.*

I. It has been already frequently shewn that an immediate sense generally points out and recommends our several duties; and that there are different degrees of them, in a certain subordination, some more, some less honourable; that the later should give place to the former, when they are inconsistent [some, though amiable for themselves, should give place to such as are more amiable and conducive to a greater amount of publick good]; and that the supreme beauty appeared in these affections of soul which are most extensive{, which should therefor controul the narrower}; and that in consequence of this, all the rights of individuals, and all the special rules of life [laws] should be postponed to the universal interest of all.¹ Altho' therefor these practical conclusions <of right reason> called the *special laws* of nature, which we are sacredly bound in all ordinary cases to observe, point out what is almost continually the virtuous part; yet by an extraordinary change of circumstances, it may become our duty to act in a different manner; and such singular cases are to be deemed excepted in these special laws.² We never should speak thus, that in cases of singular necessity, we may justly violate the law of nature, or act unjustly or vitiously{: such expressions are contradictions}. But it is truly obeying the law to take the benefit of any exceptions appointed in it; or to follow the more sacred law when it derogates any thing from <242> one of less importance. Now of all the social laws that is the most sacred, which prefers the general interest and safety to that of individuals or small parties.

1. Cf. *System* 2.17.1, vol. II, pp. 117–19.

2. A new paragraph in the Latin text.

II. Quum vero hominis cujusque probi sensus, legum specialium vim et majestatem conservandam moneat; ab iis levi de causa minimè discedendum: neque levis est necessitas quae iis quicquam derogare [putanda est] [debet]. Non solum igitur, quae incommoda ex iis servatis continuò sequerentur, quaeque commoda praesentia ab iisdem deflectere suadeant, cautissimè circumspiciendum; verum praecipuè, sintne quaedam incommoda graviora, ex ea in causis similibus licentia omnibus permissa, <forent> in posterum metuenda. Ponamus, exempli gratia, aliquid quod latius pateat: quum tanta sit fidei et veritatis, sive in sermone, sive in commerciis rebusque contractis, religiosè observatae utilitas; et tanta pariter, ex conservato domini jure, liberâque rerum suarum possessione et administratione cuique permissâ, oriatur vitae securitas et mutua fiducia; oportet gravissimae sint causae, ingentia mala avertenda, aut bona consequenda, quae justitiae <251> regulis hisce quicquam derogabunt. Neque ad causas leviores extendi debet necessitatis favor: {etenim} prospicienda {etiam} graviora longè incommoda, quamvis remota, quae ex earum legum auctoritate de causa quavis leviore imminuta, sunt tandem nascitura. Excipiendi igitur casus tantùm gravissimi, ubi mala his omnibus incommodis graviora sunt avertenda; quibus casibus, qui leviores et magis consuetos annumeraret, improbus planè sit oportet et sceleratus.

Frustra dixeris, nullius utilitatis causâ facienda turpia et inhonesta. Nemo negat. Sed quaerimus, num casu quodam rariore, haec turpia sint et inhonesta? [Neque deliberandum,] [Non] an propter utilitatem deserenda sit honestas; sed, an non magnam utilitatem honestas nonnunquam sequatur? Neque magis attinet dicere, legi divinae semper adhaerendum; caetera, {rerum} eventus nempe, casusque futuros, judicii nostri non esse, eaque Deo permittenda. Haec {Philosophi} quidam minime mali, sed non satis acuti. Quaerimus enim, an in ipsa Dei lege hi casus excipiantur? et numnam exceptiones, eadem ratione, qua ipsae leges innotescant? Si nostri

II. But as the sense of every good man must shew it to be of high importance to preserve the authority of all the special laws {and that they should be religiously regarded}; we cannot be justified in departing from their appointment upon any light causes: the necessity must be great and manifest which will justify it. We must <therefore> not only consider cautiously what present advantages may ensue in this case from such a singular step; or what present inconveniences from following the ordinary law; but much more what greater and heavier {and more general} evils may follow from such a liberty allowed to all. Let us take an example or two, which may illustrate other cases. As the maintaining of veracity and faith in our conversation and dealings is of the highest importance to society; as is also the maintaining the rights of property, and leaving to each one the free administration of his own, for the mutual confidence and security of men in society: the causes must be of the highest nature, some terrible evils to be avoided or exceeding great advantages to be obtained which can be allowed to make exceptions from these important rules. Nor ought this plea of necessity to be extended to lighter matters: for we should consider all the <far heavier evil> consequences, even of a remoter kind which must ensue upon diminishing the deep reverence men should have for these laws. No cases therefor but those of the highest nature are to be deemed excepted; when evils superior to all these evil consequences are to be <243> averted: and none will reckon among these, any ordinary ones of a lighter nature, unless he is plainly wicked and impious{, void of any conscience of duty}.

'Tis to no purpose to argue here, that we are to do nothing vitious <and dishonourable> for any prospects of advantage. In this all agree. But the question is, whether such extraordinary conduct be vitious in these circumstances, or not? It should not be matter of hesitation, whether we may abandon the conscientious part for the advantageous: but whether some great utility to ensue don't make some extraordinary steps lawful or honourable? Nor is it more to the purpose to allege, that we should always adhere to the divine laws, and that we are no judges of future events, but should commit them to providence. Such things are pleaded by some very good men [some philosophers], tho' not very acutely in this point. For the very question is, are not these cases to be deemed exceptions in the divine laws? and made known to us by the same use of reason by which the law

judicii non sint rerum eventus; neque sunt ipsae leges; quippe quas rerum eventus vitae hominum amicos aut inimicos prospiciendo indagamus. Primos <252> enim animi impetus quosque, non esse solos vitae duces, inter omnes constat.

Hoc {quidè} necessitatis obtentu, <forte> abutentur homines improbi, utilitati inhiantes, aut voluptatibus unicè dediti: non tamen sine ea morum pravitate et nequitia, quae nulla legum religione contineri posset. Homines itidem iracundi, ultionisque cupidiores, omni de violenta sui defensione doctrina abutentur. Non tamen idcirco vituperanda est omnis violenta sui defensio; neque magis vituperanda {igitur} omnis, a legum{, quibus plerumque parendum,} normâ, {in casibus rarioribus} declinatio. Temporibus saepius cedunt dominii privati jura: re alienâ, domino inconsulto, aut invito, uti licet, vel abuti, quum id exigit plurium conservatio; ut in jacturis faciendis, aedibusque incendii sistendi causa diruendis. Temporibus etiam nonnunquam cedunt jura sanctora. Civibus fortissimis rectè imperatur ut, ad patriam tutandam, certae morti se objiciant. Ponte dejecto, aut portâ clausâ, quibus plerumque defendendi sunt omnes cives, hosti vel saevissimo objiciendi cives hectoridae. Splendido reique Romanae salutari mendacio nobilis est rex Hostilius. At plurimas habet lubrica haec doctrina cautiones.

III. {I.} In legibus duabus primariis de <253> Deo colendo, et communi omnium utilitate promovenda, nullae sunt exceptiones. Immo quae in legibus specialibus valent exceptiones, in hac altera generali fundantur. Dei

itself is made known? If we are no competent judges of future tendencies, we are no judges about the ordinary natural laws; which are no otherways discovered than by our reasoning upon the tendencies of certain methods of action, as they appear conducive to the publick interest or detrimental: for no man can allege that our sole rule of life are the impulses of each particular passion {which we may generally approve in ordinary cases}.³

No doubt wicked selfish men devoted wholly to their own interests or pleasures will abuse this plea; but not without such impiety and unfairness of mind as would <244> break through any bonds of laws. The passionate and revengeful often abuse the doctrine of self-defence{, and that about prosecuting the injurious}: but we don't therefore {quit this doctrine, and} prohibit [condemn] all violence in defence or prosecution of our rights. Nor should we any more condemn all departure in singular cases from what the special laws of nature require in ordinary ones. Men seem agreed that the common rules of property yield to some singular exigences. One may use or destroy the goods of another without his consent, when 'tis necessary for the preservation of multitudes, as in the lightening of ships in a storm, or blowing up of a house to stop a raging fire. Nay some higher laws give way to singular necessities. The bravest and best citizens are exposed [are rightly ordered to expose] to certain death for their country{, in services where there can be no hopes of their escaping}. By drawing a bridge or shutting the gates, by which all the citizens have a right to be protected, the bravest men are sometimes [the bravest Romans were] exposed to the most cruel enemies. *Tullus Hostilius* is renowned to all ages for presence of mind in delivering a false account, by which the Roman people were preserved.⁴ But this doctrine so liable to misapplication needs always the following cautions.

III. First of all: the two general laws about loving God and {our neighbour, or} of promoting the general good of all, admit of no exceptions: nay in this later are founded all the exceptions which lye against any of the more

3. See *System* I.17.6, vol. II, p. 128.

4. In his *History of Rome* (I.27) Titus Livius tells how during a battle the Roman king Tullus Hostilius makes his enemies and his own troops believe that the Albans, his treacherous allies, are not fleeing but going to attack the enemy from behind.

quidem cultus externus, nulli certo tempori necessariò alligatur.

2. Quo honestius est cujusque ingenium, eo minus ad exceptiones in levioze quavis causa sua admittendas, aut necessitatis veniam sibi arrogandam, erit proclivis.

3. Omnium quae ex juris hujusmodi insoliti usu, sive consecutione naturali, sive ex hominum pravitate et temeritate nascuntur, ratio habenda. Non tamen ut hominibus denegentur omnia jura, quorum speciem fallacem opponunt improbi. Verum haec ipsa mala, ab hominum improbitate metuenda, ad calculos sunt vocanda: causisque tantum gravissimis exceptiones dandae; quibus, in rebus levioribus abutetur nemo, nisi ea sit pravitate et nequitia, ut legem quamvis notissimam violaturus esset.

4. Quo sanctior, vitaeque hominum utilior est lex, eo graviores oportet esse causas, ob quas danda exceptio.

5. Causae quae ex aliorum utilitate, aut omnium {communi} petuntur, iis quas quisquam ex sua aut suorum utilitate petit, longe sunt honestiores. De sua utilitate suoque jure aliquid remittere, viro bono saepe licet, <254> saepe honestum est: communem vero utilitatem deserere non licet. "Temporibus igitur prudenter parendum."

6. Nulla necessitas tanta est, ut cuius, mala sibi imminetia, in alios immeritos conjicere, iisve avertendis, alios paribus aut gravioribus malis implicare liceat: huic enim adversatur utilitas communis.

7. Quaecunq;e damna, ad mala graviora a nobis nostrisque avertenda, in alios non consentientes conjicimus [damus], ea omnia praestare sanctissimè tenemur. Juri huic {mala nostra graviora aliorum levioribus redimen-

special laws. But the external acts of worship are not necessarily annexed to any one time{, and therefor yield to urgent exigencies}.⁵ <245>

2. The more honourable any person's temper is, the less apt will he be to allow to himself exceptions for any smaller interest of his own, or to claim any privileges of necessity.⁶

3. We must bring into account all the effects probably to ensue from any extraordinary steps, whether by natural consequence, or from the unfairness or rashness of others. Not that men are to be excluded from every right which unjust persons may make a pretence of in improper cases: but even these bad consequences are to come into the general account, to prevent our allowing exceptions in any but the most weighty cases. So that no man can plead exceptions in lighter ones, without that depravity of mind which would break any acknowledged law{, without any such pretence}.

4. The more sacred and important any law is, the greater must the causes be which can found any exception.

5. Causes of a publick nature [seeking the interest of others or of all] are far more honourable than those of a man's own <and of his friends'> advantage. A good man often may quit part of his own <and his friends'> right; and 'tis often honourable not to take the advantages he might. But he is not thus master of the publick interests, and must act according to what the exigence of the times require.

6. No plea of necessity will justify a man in freeing himself from any threatening evil, by casting the like or greater upon any innocent person. This is plainly not subservient to any publick utility.

7. Whatever smaller damages we cast on others who do not consent to suffer them gratuitously, in <246> order to free ourselves from any great danger, we are sacredly bound to repair. To this right in natural liberty, of warding off some great danger by actions detrimental to others, there cor-

5. Here Hutcheson repeats what was said by Carmichael at the beginning of his comment on Pufendorf's exposition of "the case of necessity" in *De officio* I.5. 18 (*Notes on Puf.*, p. 71).

6. For the same points established in this section, see *System* 1.17.9, vol. II, pp. 136–40.

di} in libertate, extra ordinem singulis competenti, respondet in vita civili, *imperii jus eminens*; de quo aliàs.

IV. Ex communi hominum cognatione et caritate, jura quaedam communia nascuntur, quae non unius aut paucorum, sed omnium communi utilitati inserviunt [prospiciunt]: haec igitur, occasione datâ, cuique tuenda sunt et persequenda. {Ante} *juris publici* [explicationem haec ideo exponenda] [explicationi, horum explicatio ideo praemittenda], quod haec in libertate, ante civitates constitutas, {aequè} vigeant. Eorum pauca ponemus exempla quae latius pateant.

1. Cuique, occasione oblata, totique adèd humano generi, jus est prohibendi ne quisquam, sine justa causa e vita excedens, officia, humano generi, ejusve parti cuivis, <255> debita defugiat. Prohibendum igitur [item], ne quis se ipse interimat; aut corpus mutilando vitae muneribus ineptum reddat.

2. Jus {omnium commune} est, perniciosos pessimique exempli mores coercendi [prohibendi], quamvis nemo quisquam, prae aliis, iis laedatur. Coercenda venus naturae repugnans et nefanda; partuum etiam abactiones, artesque omnes humano generi inimicae.

3. Impediendum {item}, ne quis res suas, quae vitae hominum plurimum prodesse possunt maligno perdat animo, aut inutiles perire sinat.

4. Omnibus et singulis jus est, injuriam alii cuivis inferendam propulsandi, illatamque vindicandi: poenas item in eos qui injuriam intenterunt irrogandi, quarum terrore isti, caeterique omnes, ad injurias tardiores reddantur.

5. Humano generi jus est prohibendi, ne, qui arcanum aliquod hominibus salutare invenerit, ejus notitiam secum interire sinat; eumque vel poenâ proposita cogendi, ut aequis legibus id cum aliis communicet, cunctisque quibus sit opus ejusdem usum impertiat.

responds in civil society an *eminent right in the supreme powers*, of which hereafter.{*}

IV. From the common bond of all with all, by which all mankind are constituted by nature one great society, {with some common laws binding them,} there arise certain common rights, not specially regarding the utility of any one, or a few, but that of all in general; which therefor every one as he has opportunity should maintain and prosecute. These rights as they obtain also in natural liberty, should be considered previously to those of civil societies. We shall give a few instances, which will also lead us to others.⁷

1. Mankind as a body, and each one as he has occasion, have a right to hinder any one to quit life without a just cause, or thus desert the duties incumbent on him. Suicide should therefor be prevented, or such self-maiming as may make one unfit for the duties of life.

2. There's also a common right of all, to prevent certain vitious practices of most pernicious example, which yet cannot be said to injure any one person more than another: such as monstrous lusts, procuring abortion, or any other practices which are hurtful to mankind in general.

3. We are likewise to hinder any man to destroy such goods of his own as may be very useful in life, <247> out of any caprice or ill-nature: nay they should not be allowed to perish of themselves without being used.

4. There's also a like common right of one and all, to prevent injuries, and to punish such as are done; so [and to inflict such evils to the offender] that by the terror of the punishment, others also may be restrained from like attempts.

5. Mankind have a right also to compell any person, who has discovered any secret of great use in life, to divulge it upon reasonable compensations, and not suffer it to perish with himself; that such as need it may also enjoy the benefit.

* {Book III. Ch. v. 4.} [In the much larger chapter on "the rights of necessity" in *System* (2.17.5, vol. II, pp. 124–25), however, Hutcheson admonishes that "were there no justifying pleas of necessity in natural liberty, there is no accounting for this eminent right of magistrates in civil polity."]

7. The same points are treated in *System* (2.16.1–6, vol. II, pp. 104–10).

6. Hoc etiam abs quovis hominum, cui vires suppetunt, jure exigit humanum genus, nisi ipsi suppetat etiam rerum copia; ne se ignaviae dedat, liberalium et munificorum <256> eleemosynam, iis qui se alere nequeunt, in suos usus iniquè praerepturus. Ad victum et amictum, arte aliqua licita, aut laboribus, parandum, istiusmodi fuci cogendi.

Perfecta videntur haec {quae diximus} jura, quae humano generi tanquam populo aut *universitati* competunt. Alia sunt imperfecta; quibus quae respondent officia, pudori cujusque et honestati permittenda; quae satis intelligi poterunt, ex iis quae de virtutibus diximus.*

* {Vid. Lib. I. Cap. III et V.}

6. Mankind in general, and every society, may justly require it of all such as enjoy ordinary health and strength, unless they otherways have a fund for their support, that they should maintain themselves by their own labour, and not intercept the liberality or charity of good men; which is due only to the weak who cannot support themselves. Such slothful wretches are to be compelled to labour <or to any lawful art for supporting themselves>.

The instances we have given are rights of the perfect kind belonging to mankind as a body. Imperfect rights of this class answer to the general duties of humanity and beneficence (above explained in treating of the nature of virtue) which must be left free to the honour and conscience of men.<*>

* <See book I, chapters iii and v.>

CAPUT XVII

De Juris <abolitione sive> interitu. De Litibus in Libertate dirimendis, et Interpretatione.

I. Tribus modis tolluntur obligationes: *solutione* illius quod debebatur; *cessione* in debitoris gratiam, idque vel gratis, vel ex causa onerosa; et *conditionis defectu*.

Rectè solvit vel ipse debitor, vel alius quilibet ipsius mandato, ipsiusve nomine, ita ut ipsius manifestè intersit, dummodo loco et tempore constituto fiat. Ubi {quidem} debitoris non interest; creditor alteri cuiquam, fortè inhumano, solvere volenti, actionem <257> suam adversus debitorem cedere neutiquam tenetur. Haec tenenda [obtinent] ubi vel res certa, vel pecunia numeranda, vel opera quaevis vulgaris debebatur: quippe in quibus creditoris haud interest quis solvat. In iis autem, quae honoris causa praestantur operis, aut in quibus ingenii spectatur elegantia, secus se res habet.

In rebus item *fungibilibus*, iisve quarum pretia ad certam rei istiusmodi mensuram rediguntur, si [quidem utriusque] [modo] solutionis dies adest aut praeteriit, *compensatio* admittenda, ubi ad aequalem summam duo sibi mutuo creditores sunt{: immo pro concurrentis summae ratione, ex majore deducendum; ut tantum id quod reliquum est deberi censeatur}.

The Rights of Masters and Servants.

I. When mankind were considerably multiplied, there would be many who had no other fund of support than their labours; and others of greater opulence, who for their ease would need much of the labours and services of others. And hence the relation of master and servant would arise, founded on some contract.¹ Nor is it of consequence whether such contracts at first were for life, or only for a certain term: since excepting the point of duration, the rights and obligations were the very same.² The points following are of more consequence.

1. The labours <and services> of any person sound in body and mind, are of much more value than the bare simple food and clothing of a servant; as we plainly see that such can purchase all this by their labours, and something further for the support of a family, and even for some pleasure and ornament. If any one therefor has incautiously insisted for no more in his contract; yet as the contract is plainly onerous, he has a right to have this inequality redressed.*

2. Where the labours were not specified, the servant is deemed to have engaged only for such as men of humanity in such stations commonly exact from their servants; and to have submitted only to such coercion <273> of his master as is necessary for the good order of a family, if he should neglect his work or misbehave. But he retains all other natural or acquired rights.

3. If indeed the custom is known to have obtained, that <separate> heads of families assume a sort of civil power over their domesticks; the servant is justly deemed to have consented to this also, as far as it is managed consistently with humanity. The servant is <justly> bound to perform his work; but retains all the rights of subjects under civil government; particularly all

* Book II. xii. 4. [See Book II, chapt. ix.5 and chapt. xiii.4. The section referred to by the translator is wrong.]

quae alienari nequeunt: et ad omnem vim iis defendendis necessariam, <281> contra herum ea violaturum, recte procurrit.

4. Ubi de certis tantum operis pactum fuit, ad has solas obligatur servus. Quin imo, licet quascunque praestare posset operas susceperit, easque perpetuas; non tamen idcirco dominus eum invitum alteri emancipare poterit: quum servi plurimum intersit cui serviat domino, et in quâ domo. Servorum autem huiusmodi omnium libera nascitur proles.

II. Hactenus de servitute sponte contracta. Deterior longe istiusmodi servorum conditio, qui ob grave damnum a se datum, quod alia nequeunt pensare [compensare] ratione, aut qui ob delictum atrox, poenae nomine, ad perpetuas operas <praestandas> addicuntur.

Neque tamen vel hi omnia hominum amittunt jura: ea enim sola, quae damno reparando inserviunt, quibusve ne similes in posterum injuriae inferantur caveri poterit, ipsis adimenda. In sceleratissimos, si modo ipsorum vitae parcat, postquam, ad omnes a similibus delictis deterrendos, publicas poenas pertulerunt, non est ultra saeviendum, quum labores ipsis impositos non detrectant. Immo juris quicquid ipsis manet, recte per vim defendent. Quum vero in servitute his de causis constituenda, aliorum tantum spectetur utilitas, herus istiusmodi servum invitum, ad alterum transferre potest. <282> Nulla vero de causa, ex hominum numero, in belluarum, aut rerum inanimatarum ordinem, servi jure detrudi possunt, ita ut nullius juris sint participes.

In hanc deterrimam conditionem, omnes in bello captos detruserunt olim gentes haud caetera barbarae, {temerè in semet legem sancientes iniquissimam, atque} mirum in modum conspirantes ad gravissimas contu-

such as are naturally unalienable: and may justly defend them, even by violence, against any invasions of them by his master.

4. Where the services have been specified in the contract, the servant is bound to no other. Nay tho' they were not, and the contract was perpetual or for life, yet the master cannot transfer him to another without his own consent; since 'tis of high importance to the servant what master he is subjected to, and in what family.³ And for the children of such servants they are all born free.⁴

II. Hitherto we have treated of service founded on contract. But there is a far worse kind, to wit, of those who for some great damage done, which they can no other way repair; or on account of some great crime, are adjudged by way of punishment unto perpetual labours to others.

And yet even in these cases, they don't lose all the rights of mankind, but only such as are naturally fit to compensate the damage, or are necessary to give security to the publick against like injuries for the future. <274> If the lives even of the worst criminals are spared; after they have endured all such publick punishments as the safety of society may require, 'tis unjust to treat them with any further cruelty; provided they are willing to perform the labours they are condemned to. And they have a right to defend themselves even by violence, against {new injuries, or} violations of any rights still remaining to them.⁵ But as slavery of this kind is constituted solely for the behoof of others; the master may transfer to another such a slave without his own consent. But no cause whatsoever can degrade a rational creature from the class of men into that of brutes or inanimate things, so as to become {wholly the property of another,} without any rights of his own.

<In times past> Nations in other respects not barbarous, condemned all captives in war into this most miserable condition; establishing an inhuman law even against themselves, and strangely conspiring to subject themselves and their posterity, upon many very possible contingencies, to the most

3. See Pufendorf, *De officio* 2.4.3.

4. Hutcheson, with Carmichael (*Notes on Puf.*, pp. 142–44 and note) and against Pufendorf and Barbeyrac rejects the idea of the slave as property and children born by a mother-slave as her fruit. See also *System* 3.3.1, vol. II, pp. 199–201.

5. See *System* 3.3.1, vol. II, p. 201.

melias et aerumnas, sibi fortè, aut posteris, olim arcessendas. Qua de re hi veri videntur aphorismi.{*}

1. Qui injustam in bello causam tuetur, nullum in res aut homines captos jus acquirit, quo salva fide et iustitia uti possit, quamvis rebus captis impune frui liceat; quod jure quodam munitur externo; de quo alias.{†}

2. Qui justam habuit belli causam, intra justos tamen petendi fines se continere debet: neque quicquam a victis exigere <potest> nisi vel poenae nomine, vel damni reparandi; vel ut in posterum de non laedendo caveatur.{‡}

3. Poenae nomine nihil ab iis exigi potest qui nihil ad bellum attulerunt, vel faciendo vel non faciendo secus quam debebant; quae longe plurimum civium adulatorum est causa: ne de uxoribus dicamus et liberis, qui duas aut tres conficiunt civitatis cujusque <28> partes; quibusque honorum omnium dominium cum patribus familias est commune. Nec, si tributa in belli sumptus pependerant patres familias, ullo ob id crimine sunt obstricti. Haec sub gravi solverant necessitate, per vim alias et supplicia extorquenda. Quamvis etiam, speciosis permoti rationibus a principibus suis denunciatis, bello consenserant; invicta erat ferè eorum ignorantia: neque quicquam eorum consensus ad bellum attulit, neque dissensus bellum prohibuisset: neque adeo arcta est conjunctio quaevis politica, ut unius delictum in alterum non consentientem transferri debeat.

4. [6.]¹ Quod ad ipsos attinet milites, qui consiliorum publicorum neque participes, neque fautores, speciosis illecti causis nomina dederunt; illis ob

* Hac de re vid. annot. *Carmichael*. in *Puffend.* lib. ii.c.4. et *Lockium* ibid. citatum.

† Vid. cap. ix. hujus libri, 4, 5.

‡ Vid. L. II.c.xv.5, 8.

i. The whole item was the sixth one in 1742 edn.

* See the following ch. ix. 4. <and 5>.

† See Book II. xv. 5, 8. On this subject of slavery many just reasonings are to be found in Mr. *Locke's* 2d. book on government; and Mr. *Carmichael's* notes on *Puffendorf*; Book II. ch. iv. [In the Latin text "On this subject . . . etc" is a distinct note placed before Hutcheson's list. So Hutcheson acknowledges that all his "maxims" (not just the second

miserable and ignominious treatment. Upon which subject the following maxims seem just.

1. Whoever makes war without a just cause acquired no right by such violence, over either persons or goods taken, which he can use with a good conscience, tho' he may detain them with external impunity, <granted by some external right> as we shall shew hereafter.*

2. One who has a just cause, yet should set just bounds to his demands: nor can he demand any thing from the conquered except either under the name of <275> *punishment, reparation of damage* done, or *precaution* against future injuries.†

3. None are punishable but such as either by some action or omission, contrary to their duty, have occasioned and contributed toward {these injuries done to us by} the war. {And 'tis plain,} this is seldom ever the case of the far greater part of the adult subjects of any state{, who are capable of a share in publick affairs}; not to speak of women and children, who make <two or> three fourths of every people, and ought to be deemed joint proprietors with the heads of families in their private properties. And tho' all heads of families payed tributes toward maintaining the war: this can't be deemed a crime in them, as they were under the immediate distress of their governors, who would otherways have levied these taxes by force{, and punished the refractory}. Grant they had consented to the war, following some specious reasons published by their governors; their ignorance generally was invincible: nor was their consent of such importance as to cause the war, nor would their dissent have prevented it. Nor can we ever suppose that any political union <is so close that it> can transfer the guilt of one person upon another who did not concur with him.⁶

. . . Nay the very soldiets, all such at least as had no share of influence in the publick councils, as they enlisted upon presumption of being em-

one) are based on Locke, *Two Treatises* 2. 16 and Carmichael's notes on Pufendorf. In fact from Locke, Hutcheson derives the idea that even in a just war, the conquerors have not the right to enslave a nation, but only the governors and, even in that case, they cannot deprive their females and children of their land and property. From Carmichael, who quotes Locke approvingly, stem the ideas that most of the conquered are innocent, that a slave is not to be considered a property or a merchandise, that children of slave are born free.

6. See *System* 3.3.3, vol. II, pp. 204–5.

ignorantiam, et parendi necessitatem, venia danda. Conscriptis enim imperata detrectare facinus est capitale. Ab illis igitur, poenae nomine, quicquam gravius exigere inhumanum esset; si modo ab iisdem in posterum satis caveri possit: quod, illaesa eorum libertate, eos apud se detinendo, aut in civitatem suam aut colonias adscribendo, victor semper sibi poterit praestare. Quae omnia suaderet humanitas, {bellique casus ancipites,} et fortunae bellicae maxima inconstantia.

5. [4.] Non alio juris fundamento quicquam <284> a civibus innoxiiis postulat victor, damni reparandi nomine, quam quod substernitur *actionibus noxalibus et de pauperie*; quod scil. qui quaedam suae utilitatis praesidia sibi adscivit, ex quibus alii nullâ suâ culpâ damnum sunt passi, is vel damnum sarcire, vel, si malit, rem damnosam laeso dedere teneatur. Jure igitur aliquando a victis civibus id exigit victor, ut ipsorum deserant principes, belli injusti auctores; aut eos damna reparare cogant, aut ipsi ea reparent. Horum autem victis danda optio. Haec quidem de iis civibus qui imperia {civilia} primi constituerunt; aut de potentioribus, quorum auctoritate et consilio injustum bellum erat susceptum; quique poterant principes injusta molientes cohibuisse, apertius tenent: caeterorum, qui parum in Republica possunt, favorabilior est in ipso damno praestando causa.

6. [5.] Ubi primum vero hostes vel sponte victori damna data repararunt, vel ipse victor, rebus eorum per vim occupatis, damnorum compensationem est consecutus, una cum cautione in posterum, ad viri probi arbitrium; nihil amplius a civibus devictis exigere potest. Haec vero omnia, leniore multò ratione assequi possunt victores, quam adempta civibus innoxiiis libertate. Ad damna [haec] autem praestanda primò tenentur qui imperio praesunt; his vero cessantibus, tenentur cives. <285>

ployed only in <276> just causes, or persuaded by such reasons as their governors publish; they are excusable entirely, both on account of ignorance and necessity. To men once enlisted 'tis a capital crime to disobey orders.⁷ It must therefore be exceedingly inhuman to inflict any thing severe upon them by way of punishment, provided we can be secured against further dangers from them: and this we always may be from captives, by keeping them in our own country, and mixing them with our citizens or our colonies, without depriving them any way of their liberty. All this not only humanity will recommend, but a consideration of the uncertain accidents of war, and the <greatest> inconstancy of fortune <in war>.

5. Under pretence of repairing damages, the conqueror can demand nothing from the innocent citizens, except upon the same grounds that one demands it for damage done by another's slaves or cattle, to wit this, "that, whoever contrives or procures any thing for his own utility, by which others without their fault receive hurt, is bound either to repair the damage, or deliver up the goods, or contrivance whatever it was, to the person injured." The conqueror may therefore justly demand from the conquered citizens, that they abandon their unjust governors the causes of the war; or that they oblige these governors to repair the damages; or that they repair them themselves: and these three should be left to their choice. This holds most evidently as to these first citizens who at first constituted the government: or those who have great power in the state, by whose council the war was <wrongly> undertaken; or who have it in their power to restrain <277> their princes in their unjust designs. As to others who are of no weight in publick affairs, their plea against even compensating of damages is more favourable.

6. But as soon as the defeated have repaired all damages, or the conqueror has obtained reparation to himself by force and military execution; and has also obtained security against future injuries, such as a wise arbiter judges sufficient, he has no further demand upon the innocent citizens. Now he may obtain all this in a {much easier, and} more merciful way, without depriving the innocent citizens of their liberty. The governors are in the first place bound to repair all damages, and the citizens only in the second place when their governors cannot do it, or decline it.

7. See *System* 3.3.4, vol. II, p. 208.

7. Servorum omnium sobolem esse naturâ liberam, satis antea ostendimus.*}

8. Qui hominem [servum] emit, aut <eum> emptum {in servitute} vi detinet, ipsius est ostendere eum jure libertatem amisisse. {Rei de qua disceptatur} antiquus semper adest dominus; quum adultos quosque sui juris constituat natura. Possessoris igitur violenti est probare se jure possidere; non [liberale iudicium implorantis, ostendere] [servi, probare propositionem negantem] se non jure libertatem amisisse.

9. Neque dixeris, captivos nisi vendi possent, interemptum iri, ideoque vitam ipsam emptoribus debere. Esto. Hinc tamen non alia emptoribus nascuntur jura, quam quae negotium utile gerenti, aut vitam civis contra latrones defendenti, aut captum a piratis redimenti, aut morbos et vulnera graviora, sine ope medicâ lethalia, sananti. His omnibus impensae, et laborum curaeque pretia, quodque *aequius melius*, sunt persolvenda: nullum tamen imperii herilis jus inde nasci potest.

III. Ut servi cujusque, qui jure alteri subjiunt, officium est, strenuam et fidam, domino, aut heri potius, operam praestare; Deumque communem omnium dominum, omnia intuentem, in omni ministerio praecipuè respicere: ita domini est, nihil ultra <286> juris sui limites a servo exigere, atque ab omni abstinere saevitia, ut decet hominem, communis cognitionis, humanaeque conditionis instabilis memorem; quique novit animos servorum et corpora, eâdem, qua nostra, materiâ constare, et paribus elementis; Deoque, communi omnium parenti, et domino, vitae actae rationem esse reddendam.

* L. II.c.xiv.3.

* Book II. xiv. 3. {See Mr. Locke on govern. Book II. as also *Hooker's. Eccles. Polity*, and *Sidney on Government.*} [Richard Hooker, *Of the Laws of Ecclesiastical Polity* (London, 1593); Algernon Sidney, *Discourses Concerning Government* (London, 1698).]

7. The children of slaves of any sort are all born free,* as we shewed above.

8. Whoever purchases a person for a slave, or detains him as such, is always bound to shew that this person was deprived of his liberty upon some just ground. The original proprietor of the matter in question is always at hand: since nature made every man master of himself, or of his own liberty. 'Tis plainly therefor incumbent upon the violent possessor to prove his title; and not upon the person {deforced, and} claiming his liberty, to prove {a negative⁸}, that he did not lose, or forfeit his liberty. {[Without a previous inquiry of this kind no man can in this case be a fair purchaser.]}⁹

9. Nor is it justly pleaded here, that captives would <278> be put to death if they could not be made slaves and sold as such: and that therefor they owe their lives and all to the purchasers. But sure no higher sort of title arises to the purchasers in this case, than to such as have done any other useful service of equal importance; such as, rescuing a fellow-citizen from robbers or murderers, ransoming them from pyrates, curing diseases or wounds which without the aid of art would have been deadly.¹⁰ All such persons should have all expences refunded to them, and a generous compensation for their labours and art. But who ever alleged that they could claim the persons they thus served as their slaves?

III. As it is the duty of servants who are justly subjected to others, to perform their work with diligence and fidelity <to heir lord or rather masters>; regarding God the common master of all, who is ever present with us: so 'tis the duty of masters to exact no more from servants than what they have a right to, and to abstain from all cruelty and insolence; as it becomes those who remember that all are of one blood, and naturally allied to each other, and that fortune is inconstant, that the souls and bodies of servants are of the same stuff with our own, and of a like constitution; and that all of us must give an account of our conduct to God the common Parent and Lord of all.

8. See Carmichael, *Notes on Puf.*, p. 141 for the same argument. See also *System* 3.3.6, vol. II, pp. 210–11.

9. Square parenthesis in the original text.

10. See *System* 3.3.5, vol. II, p. 210.

CAPUT IV

De Civitatum Origine et Causis.

I. De domesticis societatibus [hactenus.] [satis dictum:] ad civitatum causas et jura explicanda progredimur. Per societates et conjunctiones jam memoratas, si nemo suo deesset officio, copiosa satis esset hominum vita et jucunda. Ad civitates igitur et imperia civilia constituenda [impulit metus] [permoti fuerunt homines metu] malorum quae vel ex hominum imbecillitate vel improbitate oriri possent. Haud tamen idcirco naturae contraria dicenda est vita civilis: quicquid enim monstrabit ea ratio quam nobis natura inseruit, ad mala prohibenda, aut commoda consequenda, necessarium esse aut utile, illud omne est maxime secundum animantis providi et sagacis naturam. Jure igitur dicuntur homines φύσει ζῶα πολιτικά.

Fingamus autem omnes ita esse probos, ut ea sola consultò velint <aut cupiant>, quae ipsis justa videntur; erroribus tamen de suo et aliorum <287> jure, suae utilitatis appetitione et perturbationum impetu {deceptos}, saepe esse obnoxios: lites hinc saepe exsurgere necesse esset. Fingamus et plures esse ita suspiciosos, ut lites ortas arbitris permittere nollent, timentes quisque alterius gratiam, aut artes, quibus arbitros corrumpere posset. Huc si accedat nimia utrinque virium suarum fiducia, et in sua sententiâ

The Original of Civil Government.

I. Having finished the account of domestick society, we proceed to shew the origin and rights of civil society [states], {[in which 'tis universally understood, there is included a right vested in some person or council to decide all controversies arising amongst large numerous bodies, to direct the actions of all for the common interest, and to compell all by force to obey their orders.]}¹ By the associations <and conjunctions> already explained, if all men were faithful in discharging their duties, human life must have sufficient affluence and pleasure. It must therefore have been some fear of mischiefs to arise either from the weakness or vices of men, which has moved them to subject themselves to civil power [to constitute states and civil power]. But we must not therefor, call civil society *unnatural* or contrary to nature. For whatever that reason, nature has endued us with, shews to be necessary or very conducive to obtain those advantages we naturally desire, or avert the contrary evils, must plainly be deemed natural to a creature endued naturally with reason and forethought. Men therefor are justly called “creatures [animals] fitted by nature for civil polity.”²

Let us suppose all men so just that none would do to others any thing he judged injurious, but that they are pretty liable to mistakes about their own and others rights, through their strong selfish desires, and the <280> byass of impetuous passions: this would frequently occasion controversies among them. Let us further suppose that many honest men are yet too suspicious, so that they won't submit their disputes to the arbitration of others, each fearing perhaps the interest of his adversary with the arbiters, or his art in seducing them:³ if there be added to this, too much confidence

1. Square parenthesis in the original text. This definition is not in the *Institutio*.

2. Aristotle, *Politica*, 1253a.3, 1278b.19. See *System* 3.4.1, vol. II, p. 212.

3. Cf. *System* 3.4.2, vol. II, p. 214.

tuendâ pervicacia, non sine saevis belli malis lites in libertate dirimentur.

Quin et imperia civilia hominibus propius commendavit ipsa natura. Mortalium nonnulli caeteris multo sunt solertiores; quod et caeteri non raro fatebuntur: poterunt hi solertiores et sagaciores plurima in communem excogitare utilitatem, omnium viribus exsequenda; poterunt et optimas monstrare rationes, quibus sibi quisque et suis consulere posset, si modo eorum monitis paruerint. Quod si {his ingenii viribus et} solertiae conjunctae sint virtutes praeclarae, bonitas, justitia, fortitudo; earum significatio fidem apud omnes conciliabit, et omnium accendet studia, ad viros his ornatos virtutibus, honoribus et potestate ornandos et amplificandos; hisque auctoribus, foelicia omnia et laeta arbitrabuntur se consecuturos. Ad civitates igitur constituendas non solum injuriarum metus, verum et virtutes hominum egregiae, <288> et naturalis virtutum comprobatio, plurimum contulisse videtur.

II. Si vero etiam spectetur plurium improbitas, morumque depravationes, avaritia, ambitio, luxuries; tum vero patebit sine potestate civili, hominum non modo utilitati, et foelicitati, sed nedum saluti, satis consuli posse: eâque solâ, malis hisce ab hominum vitiis oriundis, optimum, et in improvidi et incauti cujusque oculos incurrens, remedium adhiberi. In magno enim concilio, quamvis ita vigeat injustitia, ut occasione oblata, quisque sui causa, injusta ageret; idem tamen alium {sui ordinis} moribus parem, eademque peragentem, si modo ipse nullum inde capiat fructum, odio habebit et damnabit. Ab istiusmodi igitur hominum concilio, alius cujusque improbitatem damnantium, quamvis suae quisque secretò indulgeret, nunquam leges condentur iniquae. Quemque suam profiteri injustitiam pudebit; et sibi quisque ab aliorum metuet improbitate, nisi justis et aequis

on both sides in their own force, and obstinacy in opinion; their controversies in natural liberty can be decided no other way than by {violence and} all the mischiefs of war.

But there's something in our nature which more immediately recommends civil power to us. Some of our species are manifestly superior in wisdom to the vulgar, as the vulgar are often sensible. These of superior <skills and> sagacity, {as all must own,} are capable of contriving and inventing many things of consequence to the common utility {of multitudes}, and of pointing out more effectual methods for each one to promote his own interest, if their directions are complied with. If to these abilities be added also eminent moral virtues, goodness, justice, fortitude; the appearance of such excellencies obtains the trust and confidence of all, and kindles their zeal to promote such persons to honour and power; as they conclude that under their direction all may obtain every sort of prosperity.⁴ 'Tis highly probable therefor that not only the dread of injuries, but eminent virtues, and our natural high approbation of them have engaged men at first to form civil societies.

II. But if we consider how much injustice, depravation of manners, avarice, ambition, and luxury prevail among men: it will be manifest, that without civil <281> power, men cannot be preserved in safety, not to speak of any high advantages or pleasures to be enjoyed in society: and that it is by civil power alone an effectual remedy, and such a one as must strike the senses of the most inconsiderate, can be found for the evils to be dreaded from these vices of men. For tho' all the members of a large assembly were so unjust, that upon a fit opportunity each one for his own interest would do injuries to others; yet each one would abhor like injustice done by his fellow, when he had no share in the gain of it. An assembly therefor of such men, of whom each condemned that injustice in his neighbour which he would indulge in himself, will never make unjust decrees for their whole body.⁵ Each one will be ashamed to own his dishonesty, and will live in dread of

4. See *System* 3.4.1, vol. II, p. 213.

5. See *System* 3.4.2, vol. II, p. 215.

legibus, et poenâ repraesentata, coërceantur.

Neque alia ratione hominibus satis caveri poterit. Licet enim non adeo depravati essent homines, plurimosque incitaret humanitas et recti honestique sensus, ad vicinos ab injuriis defendendos; <illi> ex metu tamen aut ignavia saepe hoc desererent officium, ubi <289> cum periculo esset conjunctum. Quinetiam ipsorum fortium et proborum multitudo, nisi uno regatur consilio, pro diversis, de opis ferendae ratione, sentiis, et quorundam pertinaciâ, in diversa omnia abiret; disjunctaque et discors, paucioribus et minus strenuis conjunctis praedae esset et ludibrio.

His {libertatis solutae} incommodis perspectis, credibile est, prudentiores et sagaciores hoc praecipuum excogitasse remedium, ut magnus hominum numerus inter se paciscantur, de societate ineunda, in singulorum, communemque omnium salutem et utilitatem, communi prudentiorum consilio regenda: cujus commoditatibus palam expositis, alios etiam sibi socios adscivisse{, iisque societatis arctioris ineundae auctores extitisse}.

III. Qui civitatum originem ambitiosorum adscribunt violentiae; id [quidem] [jam antea, alia ratione] factum statuunt, [ante eam vim, quam ejusdem causam esse volunt] [cujus de prima origine & causa anquirunt]. Nemo enim unus, sine plurium antea sibi subjectorum ope, hominum multitudinem, civitati constituendae idoneam, sibi poterat subijcere. Constituta igitur fuit civitas, ante eam vim cui primum civitatum ortum adscribunt.

6. Cf. *System* 3.4.2, vol. II, pp. 216–17.

7. See Carmichael, *Notes on Puf.*, pp. 146–47, for the same argument directed against Titius and Barbeyrac, who rejected Pufendorf's idea of general agreement as

receiving injuries from others, unless they are all restrained by equal laws enforced by proper punishments.

Nor is there any other way of preserving society in safety. For altho' men were not generally so depraved, and that even humanity and conscience [the sense of what is right and honourable] {restrained the generality from injuries, and} inclined them to give aid to any who happened to be wronged: yet multitudes would omit this duty through fear and cowardice, if it exposed themselves to danger. Nay further: a sufficient number of honest brave men, if they were not directed by some head, and that united in their efforts, would run into the most different measures, according to their different sentiments (and obstinacy); and when thus disjoined would become a prey <and laughing-stock> even to a smaller number of less bravery, who were united in their counsels.

'Tis therefor very probable that some of the wiser <282> and more sagacious, observing these inconveniences of a state of anarchy, fell upon this as the only remedy, that a large number of men should covenant with each other about entering into a firm society, to be regulated by the counsel of the wiser few, in all matters relating to the safety and advantage either of individuals or the whole body. And discerning the many conveniencies to ensue upon such a project, have explained it to others, and persuaded them to put it in execution.⁶

III. They who ascribe the first origin of all civil power [states] to the violence of ambitious men, plainly presuppose that already existing, whose original they are searching for [before the force that are claiming to be its cause]: as no one man could have force enough, without a large number of others already subjected {to his direction and government,} to compell a multitude sufficient to form a state, to submit themselves to his power. A civil power therefor was constituted previously to that conquest they suppose to have produced the first civil power.⁷

the origin of civil society, and ascribed it to the violence of ambitious and cunning men (cf. Titius, *Observationes*, nos. 547 and 555, and Pufendorf, *De iure nat.* 7.1.6, Barbeyrac's note 1).

Si quis dixerit, patremfamilias opulentum, suis et domesticorum viribus vicinos sibi subjicere potuisse: Esto. At non nomina, sed <290> res ipsae sunt spectandae. Regio enim imperio nonnunquam utebantur patresfamilias opulentiores: atque insuper, justas nos imperii justas causas quaerimus, non injusti violentas.

IV. Ad communem utilitatem plurimum hoc conferre, quod imperitorum multitudo prudentiorum regatur consilio et ratione, negaverit nemo. Quod si ex inepta Reipub. forma eveniat, ut parum prudentibus, aut improbis nimia permittatur potestas, hoc etiam plurimum obesse posse, fatebuntur omnes; prout in aliis rebus, rei optimae cujusque pessima poterit esse depravatio. Nihil tamen hinc vitae civilis utilitati aut dignitati detrahetur. {Etenim} ingenii vires hominibus a Deo sunt datae, ut optimas, ex innumeris quae excogitari possunt, imperii formas sibi eligant.

Est igitur civitas “liberorum hominum coetus, sub uno imperio in communem omnium utilitatem consociatus.” Communem omnium utilitatem potestatis civilis finem esse, inter omnes convenit. Hoc contendit populus; in hoc se jactant Reges omnes, qui non insano scelere, humanae conditionis obliti, Dei opt. max. jura sibi arrogant, aut iis etiam ampliora. Quicquid est civile, id toto coelo, ut aiunt, distat a dominatione *despotica*. Ea sola igitur potestas civilis <291> est justa, quae communi inservit utilitati. Quae huic obstat, utcunque populi hebetioris et incauti consensu constituta, nullo munitur jure. Vitium contractui inhaesit; quia in iis erratum est, quae hic praecipue spectari omnibus est notissimum.

Should one allege that a potent head of a family, with his numerous domesticks, might have {conquered and thus} compelled his neighbours around to submit to him {as their prince}. This may have happened no doubt. But we are not to regard names, but things themselves. Heads of families no doubt sometimes had a proper regal power over their domesticks. And further, we are not inquiring into the possible injurious methods of usurpation, but into the probable just causes of just power.⁸

IV. That it must conduce much to the interest of a multitude to be governed by a council of the wise, <283> no man can deny. And altho' under some foolish plans of government, power [too much authority] may often be intrusted to bad hands, and thence great mischiefs arise, as the corruptions of the best things may be most pernicious; yet this is no dishonour to civil government, as if it were in general of little use or pernicious. For God has given men sufficient powers of reason to choose some of the more prudent convenient forms out of the innumerable multitudes conceivable.

A state or civil society is, "a society of free men united under one government for their common interest." That the common interest of the whole body is the end of all civil polity, is owned by all. This all subjects insist upon; and all governors [kings] glory in it as their dignity; except some vain monsters, who forgetting their mortal state, arrogate to themselves the rights of almighty God, or even powers more extensive. The very notion of civil life, or polity, is opposite to despotism{, or the power of masters over slaves}.⁹ That civil power therefor alone is just which is naturally adapted to this end: other power tho' granted by the rash deed of an ignorant people, has no foundation of right. There was an essential defect in the deed granting it, as it was founded in an error about what is owned by all to be most essential in such contracts.

8. Cf. *System* 3.4.6, vol. II, pp. 224–25.

9. Cf. *System* 3.4.4, vol. II, p. 221.

{Hic} mirari subit, quorundam{*} non indoctorum orationes, in vitae civilis incommodis et oneribus molestis depingendis, ita nonnunquam exultare, ac si ab ea vita ineundâ homines vellent deterrere; quod tamen ne fiat, libertatis statum, pari modo, deformant, [in larvam] [larvarum] omnium maxime horribilem. Utrique quidem statui sua sunt commoda et incommoda. Non levia in libertate solutâ mala sunt subinde metuenda; atqui non continua. Malis {quidem} in vita civili metuendis, nisi in civitate constituenda aberat omnino prudentia, [paria, immo majora, eademque crebriora, in homines solutos cadere possunt: atque etiam, in vita civili,] [graviora quidem & craebriora, in libertate sunt metuenda,] contra ea mala, aliorum auxilia certius quisque sibi polliceri potest.

* Notatur hic *Puffendorfi* opus et majus et minus, una cum *Hobbessio*, quem plane secutus videtur *Puffendorfius*.

One can scarce avoid wondering how some* ingenious authors seem to pique themselves upon aggravating and exaggerating all the burdens of civil subjection, <284> as if they designed to deter men from entering into it; but then least they should do so, they paint a state of liberty {and anarchy} as the most frightful monster of all. Whereas 'tis plain both states have both their advantages and disadvantages. There are no doubt many dangers [not light evils to be repeatedly feared] in a state of liberty, but these not continual: generally they are <equal and even> greater and more frequent than in civil life; unless a people have been exceedingly incautious in the plan of power they constituted: as in civil life we have a much surer prospect of protection from injuries by the united force of all. {Nor are there any evils peculiar to a civil life under regular government; the like or worse, men were also† exposed to in liberty: [as it will appear by considering the several parts of civil power in the following chapter.]}

* The author has here in view *Hobbes*; and *Puffendorf*; both in his greater and lesser book, who has too blindly followed Hobbes {, nay even transcribed his very words}. [The translator, as well Hutcheson, may have in mind those passages of Puffendorf, such as *De iure nat.* 2.2.2 or *De officio* 2.1.9, where Puffendorf is echoing Hobbes, *De cive* 1.13.]

† {Thus subjects are bound to pay taxes, for the common interest, for fortifying or defending the state. But each one in liberty must on his part be at greater charges, either for his own conveniency, for fortifying his house and arming his domesticks, or for hiring assistance. Each subject may be obliged to hazard his life for the state. But so each one in anarchy may more frequently for his own defence. Subjects submit to a power of life and death over themselves in criminal jurisdictions. But so each one in anarchy is subjected to a worse power of any iraged person who alleges he is injured by him, and intituled to use force for redress. If by a power of life and death one means an arbitrary power in a governor, upon any caprice, without a crime alleged, to take mens lives away; no such power is in any wise polity; nor can any human deed constitute it.} [The translator derives the added text and this note from what Hutcheson says in *System* 3.4.5, vol. II, pp. 222–23.]

CAPUT V

De interna Civitatum Structura, et summi Imperii Partibus.

I. Quum imperatorum nemo suum sibi populum progenuit, neque, si progenisset, <292> potestatem parentis in fratres adultos, ad haerodem transmittere posset; {()quippe quae parentum *στοργή*}, et immaturo liberorum iudicio, tanquam unico fundamento, innitatur;{)} a *parentali* neutiquam deducenda est potestas civilis{, quamvis ejusdem exemplum quoddam adumbratum fuerit}. Neque, in populum universum justius arrogari potest potestas herilis; quod ex jam dictis satis constat. Neque deinde oraculo Deus reges, aut alios creat magistratus, modumve imperii certum, aut fines constituit. Nec denique vires nullo jure innixae justam potestatem tribuere possunt. {Restat} igitur {ut ipsius} Populi conventionem et decreto verum omne jus imperii constituatur.

In casibus forte rarioribus, res aliter se habere potest. Quum enim populi salus et foelicitas sit unicus imperii finis; ubi satis huic consulitur, a viro prudente et praepotente, {eâ scil.} formâ imperii praescripta, quam omnes periculo <tandem> facto libenter sunt amplexuri; poterit idem, non inique, populum rudem et rerum civilium imperitum, licet nondum consentientem, imperii [forma continere legitima] [formam praeferibere legitimam], communi foelicitati inserviente, quam omnes {eidem assueti} suffragiis suis mox sunt comprobaturi. Quum vero nemo de sua salute dubius et metuens, cui praecipua hominum jura, minime contra potentiorum <293> vim tuta esse et munita videntur, beatus esse possit; {idcirco} nisi vel antecedit populi

*The Internal Structure of States:
and the Several Parts of Supreme Power.*

I. As no governors are the natural parents or progenitors of their people, nor if they were, could they transmit to any one heir the parental power over his adult brethren: as this power is founded solely upon the parental affection, and the weakness of immature years: the parental power can never be the foundation of the civil, tho' it be a natural sketch or emblem of it. Nor can any person have such power over a whole people as masters have over slaves; as appears from what was already said.¹ Nor has God by any revelation nominated magistrates, shewed the nature or extent of their powers, or given a plan of civil polity for mankind. Nor lastly can mere force without some foundation of right constitute any just power. It must therefor remain that some *deed* or *contract* of a people must be the sole natural origin of all just power.²

In some extraordinary circumstances the case may be otherways. For since the good [safety and happiness] of the whole body, {as all allow,} is the sole end of all civil power; if any person of eminent wisdom and great power consults this end sufficiently, in prescribing a legal plan <for the common good>, which all upon trial shall soon heartily embrace, he may perhaps without any iniquity impose this plan upon a rude and unexperienced people, which upon experience they <286> shall soon approve, tho' he could not obtain their previous consent to it. But as no people can be happy while they live in perpetual doubts and fears, as to the security of their highest interests [rights] from the invasions of men in power; we may pronounce in general that there can be no right to power except what is

1. Cf. Locke, *Two Treatises* 2.15.

2. Cf. Locke, *Two Treatises* 2.16.175. See also *System* 3.5.1, vol. II, pp. 225–26.

consensus, vel subsequatur, justum esse nequit imperium.

II. In potestate civili, ratione et via constituendâ, haec tria ut concurrant est necesse; primo, Pactum omnium inter se, quo convenit, ut <in> unum populum, communi regendum consilio, conficiant [coalescant]: deinceps sequitur populi decretum, imperii formam modumque constituens, rectoresque designans. <Tertio> denique, pactum inter rectores designatos, et populum, hunc ad obsequium, illos ad imperii sibi in communem utilitatem {permissi} administrationem fidelem adstringens. In primis quidem civitatibus constituendis, vix est credibile populum rudem et incautum, egregias quorundam virtutes suspicientem, haec omnia hoc ordine disertis transexisse verbis. In omni tamen justa imperii civilis constitutione, {*} actum est aliquid, quod horum omnium vim in se continet; quum omnibus satis notus sit unicus potestatis deferendae et suscipiendae finis.

Qua autem ratione in posteros eorum qui primi civitatem constituerunt, transmittatur haec obligatio civilis, ex his monitis constabit.

I. Civium quisque non sibi solum, verum <294> et liberis, a civitate defensionem stipulatur, et omnia vitae civilis commoda. Liberis gestum est negotium utilissimum; unde {et} citra suum consensum, ad ea omnia, pro ipsorum viribus, facienda praestanda adstringuntur, quae ob istiusmodi commoda ab adultis jure flagitari poterant. Nihil autem aequius quam ut singuli, pro virili parte, eam tueantur civitatem, neque ab ea intempestive discedant, cujus beneficio diu protecti, innumeris potiti fuerant vitae ex-

* Vid. *Carmichael*. annotat. ad *Puffend.* L. II.c.vi.9.

* See Mr. Carmichael's notes on Puffendorf, Lib. II. vi. 9. [*Notes on Puf.*, pp. 148–49.]

3. See Puffendorf, *De officio* 2.6.7–9, *De iure nat.* 7.2.6–8. Cf. also *System* 3.5.2, vol. II, pp. 227–28.

4. Locke, on the contrary, says that no one can “by any *Compact* whatsoever, bind his *Children* or *Posterity*” (*Two Treatises* 2.8.116). The difference from Locke is slightly

either founded upon, or speedily obtains, the hearty consent of the body of the people.

II. To constitute a state or civil polity {in a regular manner} these three deeds are necessary; first a *contract* of each one with all, that they shall unite into one society to be governed by one counsel. And next a *decree* or *ordinance* of the people, concerning the plan of government, and the nomination of the governors; and lastly another *covenant* or *contract* between these governors and the people, binding the rulers to a faithful administration of their trust [of the granted power for the common good], and the people to obedience. 'Tis true that in the first constitutions of power [of states], 'tis scarce credible that a rude and incautious multitude, full of admiration of the shining virtues of some more eminent characters, took these three formal steps. But then in every just constitution of <civil> power,* something was originally done which plainly included the whole force of these three transactions; since the end known and professed by all sides in this constitution of power was the common good of the whole body [since is well known to all the only end of bestowing and receiving authority].³

As to the transmitting of these civil obligations to posterity, the following observations will explain it.

1. Each citizen in subjecting himself to civil power <287> stipulated protection from the whole body, with all the other advantages of a civilized life, not only for himself but for his posterity: and in this{, tho' uncommissioned,} did them a most important service.⁴ They are bound therefore,{†} whether they consent or not, to perform to the body of the state, as far as their power goes, all that which could reasonably be demanded from persons adult for such important benefits received. Now 'tis highly reasonable that all such should on their parts contribute to the defence and support of that state, by which they have been so long protected <and profited>

more explicit in the corresponding paragraph of *System* 3.5.3, vol. II, pp. 228–31. In his letter to Hutcheson of Jan. 10th, 1743, p. 48, Hume writes: "You imply a Condemnation of Locke's Opinion, which being the receiv'd one, I cou'd wisht the Condemnation had been more express."

† {This is an obligation *quasi ex contractu*. See Book II. xiv. 2.} This added note is suggested by *System* 3.5.3, point 2, vol. II, pp. 229.

cultae commodis; utque haec a majoribus accepta ad posteros transmittant.

2. Quum non sine gravi periculo, manerent agri intra civitatis fines ab ipsius imperio immunes, hosti aut fugitivis recipiendis patentes; jure censentur omnes cives agros suos ita imperio subjecisse civili, ut eorum dominium {aut usus}, nemini qui non civitati subjectus degat, cedere possit.

3. Libero tamen quovis tempore, iniquum videtur cives prohibere, ne, solo mutato agrisque venditis, civitate etiam mutari possint. Reipub. enim, singuli plerumque, per tributa, aliaque ipsis onera {quotannis} imposita, [beneficia accepta pensant:] [beneficiorum acceptorum compensationem praestant.] neque aequum fuerit eos impedire, quo minus alibi melius sibi consulant. Nec metus ne civitas ulla penitus deseratur, nisi quae vel pessime sit instituta vel administrata: qua quidem in <295> causa, potiore jure cives postulant ut civitate mutari liceat, neque in civitate inviti manere cogantur.

III. Civitas in hunc modum constituta personae unius rationem subit, cui jura competunt ab omni privatorum jure [disjuncta] [diversa]; quin et obligationibus, quibus tenetur nemo privatus, adstringitur: rerumque omnium administrationem certis hominibus aut conciliis committit. Inter diversas istiusmodi civitates, in libertate quippe naturali degentes, idem fere jus, eademque leges naturales, quae inter singulos in primaeva libertate vigeabant; eadem, aut iis simillima, sunt civitatum jura perfecta; eadem debentur mutuo officia humana; similis est pactorum obligatio; idem se suaque per vim defendendi jus: eadem {denique inter se} ratio est omnium

in a civilized life, and not desert it unseasonably; but transmit that association {with its beneficent influence} <received from the ancestors> to posterity.

2. As it must be extremely dangerous to any political body settled in any district, that any lands within the same should remain exempt from the civil power of the united body, to be a receptacle to fugitives or foreign enemies; 'tis justly presumed that {when any body of men possessing such a district of land constitute a civil power}, each one thus subjects his lands to it, that no person can hold the same without also subjecting himself to it, and uniting with the body politick [that its property or use can not be transferred to anybody that is not subjected to the state].⁵

3. And yet, in times of ease and peace, it would seem unjust and dishonourable to any state to hinder its citizens from selling their lands, removing to any other state they please, and freeing themselves from their former political relation. For the several subjects by the taxes or tributes they pay annually, compensate <288> all the ordinary advantages they receive from the community; and it would be unjust to hinder them to consult better their own interest if they can elsewhere.⁶ Nor is there danger that any state will be deserted by many of its subjects, unless it be either miserably constituted or administered; and in such cases the citizens have a better right to quit it, and cannot be compelled to remain its subjects.

III. A state constituted in this manner becomes as *one person* in law,⁷ holding *rights* different from those of the several members; and under *obligations*, which bind no individual; and committing to certain persons or councils the management of its common interests. Among several states thus constituted, as they are all with respect to each other in natural liberty {and independence}, the like rights and laws obtain as among individuals in liberty. States have their [the same or very similar] perfect rights, and obligations to each other, and are bound to offices of humanity, in a like manner as individuals in natural liberty: and have like rights of self-defence <by

5. Cf. Locke, *Two Treatises* 2.8.117 and 120.

6. Cf. Locke, *Two Treatises* 2.8.121.

7. See Pufendorf, *De officio* 2.6.10, *De iure nat.* 7.2.13.

civitatum, quae non sub vicinae cujuspian ditione tenentur, sive eae majores sint sive minores; quocunque demum nomine vocentur, sive humili, sive glorioso. Facili igitur nominum et personarum mutatione, *jus naturale privatum* sit jus fere omne *publicum*, cujus necessaria est obligatio. De *voluntario jure publico*, aliàs.

IV. Potestatis quae ad civitatem regendam exigitur, partes, aut summi jura imperii, sunt vel *majora* vel *minora*. Majora, intra civitatis fines exsequenda, *immanentia*, <296> a quibusdam appellantur: quae exteros respiciunt, *transeuntia* dicuntur. Prioris generis sunt, primò, *jura legum jubendarum* quibus civium actiones sunt regendae, et jura ipsis tuenda, legum naturalium habita semper ratione.

2. Jus deinde *exigendi tributa* {ea} omnia, aut redditus publicos, quos prudens exigerit reipublicae administratio: quod jus in priori contineri potest. *Tributa* dixerunt Romani quae a civibus persolvebantur; *vectigalia*, quae a provinciis subactis. Ex quibus omnibus, quae ad principum familias sustinendas destinantur, *res Fisci* dicuntur; quae vero in Reipub. usus impendenda sunt, ad *aerarium* deferuntur. In priora, principibus electione nova creatis, jus est quale *usufructuariis*; {in regnis} haereditariis vero, jus {regis idem ferè quod} *feudatarii*: neutris licet privatis suis debitis imperii successores onerare. Aerarii autem in Reipub. usus administratio sola rectoribus quibusvis commissa intelligitur.

3. Tertium est jus *legum exsequendarum*, quae *executiva* dicitur potestas; jurisdictionem omnem continens ad lites dirimendas, et jus magistratus creandi et ministros, ad rempublicam administrandam, et tributa exigenda.

Jura *transeuntia* ad haec reducuntur capita. <297> I. *Jus belli*, quod in se omne belli gerendi arbitrium continet, in [militibus conscribendis] [exercitu conscribendo], ducibusque sive summis sive inferioribus constituendis.

violence>. This is the case of all states which are independent, whether greater or smaller, whatever names and titles they bear, more humble or more ostentatious. By an easy substitution therefor of states for individuals, the natural law with respect to individuals in liberty, makes all that *publick law* of states with respect to each other, which is of necessary obligation. As to voluntary or positive *publick law*, we shall touch at it hereafter.{*}

IV. The several powers requisite for governing a people <or rights of sovereign power> are divided into the *greater* and *lesser*. Of these <289> greater powers some are executed within the bounds of the state <and called internal>, and others respecting other states are to be exerted abroad <and called external>. Of the former class, is that of *making laws* to regulate the behaviour of the subjects [citizens], and maintain their rights, still regarding the law of nature.⁸

2. Another is, that of *exacting all such tributes* or <public> revenues as the <wise> administration of the state requires: this some make a branch of the former. Revenues are sometimes raised from subjects [citizens] <and called *tributa* by the Romans>, sometimes from conquered provinces <and called *vectigalia*>; some destined for support of the families of the supreme governors, and some for the publick uses of the state. As to the former, elective princes are deemed only as life-renters, and hereditary princes have a right like that in fiefs, to be transmitted unburdened to their heirs. As to the other branch, princes can only be deemed administrators or trustees for the whole state.

3. A third branch of power is the *executive*, containing all jurisdiction civil and criminal; and the right of constituting magistrates, and judges to take care of all publick affairs, and decide controversies, as also officers to collect the tributes.

The powers to be exerted abroad are first those of *war*, in enlisting soldiers, and appointing officers, and directing all military operations.

* {Ch. ix. and x. of this book.}

8. Hutcheson's list of powers is in part different from Pufendorf's list (*De officio* 2.15 or *De iure nat.* 7.4.1–8) and Locke's (*Two Treatises* 2.12). See also *System* 3.5.5–7, vol. II, pp. 234–38.

*The Rights of the Supreme Power:
and the Methods of Acquiring it.*

I. The persons vested with the supreme power, have it <and the consequent rights> with that extent which the constitution or fundamental laws <of the people> have given them.¹ The sum of *civil power* in all states is the same; the same quantity of it in every state resides some-where or other, at least with the body of the people. But the powers vested in the king, or in any councils, in one state, may be very different from what is vested in like persons or councils in others. For in some, certain rights of the people are expressly exempted from the power of any prince or political council; but in others, there's no such exemptions [all the rights of the people are trust to their wisdom and fidelity]. But as the end of all civil power is acknowledged by all to be the safety and happiness of the whole body; any power not naturally conducive to this end is unjust; which the people, who rashly granted it under an error, may justly abolish again, when they find it necessary to their safety to do so.² Nor can any thing be conceived more insolent or perfidious, than that persons intrusted with power solely for the good of a people, should strive to retain it by force, for their own grandeur, when it is found destructive to the people.

It were to be wished that in these cases, such powers should be abolished in a peaceable manner, by mutual <303> consent, rather than by force. Nor is it justifiable in a people to have recourse for any lighter causes to violence and civil wars against their rulers, while the publick interests are tolerably secured and consulted. But when it is evident, that the publick liberty and

1. See *System* 3.7.1, vol. II, p. 266. These opening paragraphs are to be contrasted with what Pufendorf says in *De officio* 2.9 on the supremacy, superiority and particular sanctity of the sovereign authority. See also Carmichael, *Notes on Puf.*, pp. 162–65.

2. See *System* 3.7.3, vol. II, p. 271, and vol. 4, p. 276.

tum esse constat, pluraque mala, ex ipsa imperii formâ fore nascitura, eaque diuturniora, quam ex rerum commutatione violenta; tum demum et per extrema omnia {res novare}, imperiique formam modumque immutare licitum erit et honestum.

Quae de proprio rectorum civilium, praecipuè regum, jure divino, et sanctitate quadam <311> inviolabili jactantur, mera sunt adulantium somnia. Divinum est jus omne quod Dei et naturae lege sancitur. Divina sunt populi pariter ac imperantium jura. Immo, quandoquidem haec in illorum tutelam sunt constituta, illa his sunt et graviora et sanctiora. Imperantis quidem jus, singulorum seorsim jure quovis gravius est; universorum verò neutiquam. Plurima civis privatus perferre patique debet iniqua, potius quam contra regem caetera aequum et reipub. utilem, quicquam hostile moliretur; si modo sibi soli periculum immineat. Verum ubi communia omnium jura a rege pessundantur; quaeque uni intentantur, aliis omnibus mox metuenda erunt; tum vero manifesta regis perfidia, omneque imperii jus amissum.

II. Populo jura sua contra rectores quoscunque per vim defendere licet. Si quidem ii quorum imperium est legibus circumscriptum, ea invadant jura, quae populus in imperio deferendo sibi retinuit et reservavit; non dubium est quin populo, [juris sui tuendi causa, ad vim procurrere] [iura sua per vim defendere] liceat. Quin et ad rectores, quorum imperium absolutum est nullisque legibus circumscriptum, coërcendos, vis recte adhibetur; ubi civili animo exuto dominatum occupare conantur, in suam libidinem aut utilitatem, communi <312> spretâ, omnia convertentes; vel ubi animum in cives hostilem produnt; aut ita nequiter rempub. administrant, ut ne vel sanctissima populi jura, quaeque ad vitam tolerabilem sunt necessaria, tuta

safety is not tolerably secured, and that more mischiefs, and these of a more lasting kind, are like to arise from the continuance of any plan of civil power than are to be feared from the violent efforts for an alteration of it, then it becomes lawful, nay honourable, to make such efforts, and change the plan of government.

What is alleged about some peculiarly divine right, and inviolable sanctity of governors, especially monarchs, is a mere dream of court-flatterers. In one sense every right is divine which is constituted by the law of God and nature. The rights of the people are thus divine, as well as those of princes: nay since the later were constituted for the defence and protection of the former; the former should be deemed the more divine and sacred. The rights of the governor, as they are more important than those of any one private man, may be deemed more sacred than his private rights; but can never be deemed more sacred than the rights of the whole body. A good subject [citizen] ought to bear patiently many injuries done only to himself, rather than take arms against a prince in the main good and useful to the state; provided the danger only extends to himself. But when the common rights of the community are trampled upon; and what at first is attempted against one, is to be made a precedent against all the rest, then as the governor is plainly perfidious to his <304> trust, he has forfeited all the power committed to him.³

II. In every sort of government the people has this right of defending themselves <by violence> against the abuse of power. If the prince's power be limited, and yet he breaks over its bounds, invading such rights as the people had reserved in the very constitution of the power; the people's right of resistance is unquestionable. But even in absolute governments they have the same right; if their governor, ceasing to use his power {as if he owned it destined} for the good of the body, should govern the whole state as his own property; and neglecting the common safety of all, turn every thing to the gratification of his own lust or avarice; or if he plainly declares a hatred of his people; or conducts all affairs in such a wretched manner, that not even the most sacred rights of the people, such as are necessary to any

3. See *System* 3.7.2, vol. II, p. 268–70.

maneant. Neque qui hoc populo tribuit, dabit quoque eum regibus esse superiorem: servis enim vel in deterrima conditione degentibus jus est, ut contra dominorum injurias atrociores se per vim defendant.

Si hinc moveatur quaestio, cujus hac in causa sit iudicium, numnam qui summo imperio praesunt <et> rempub. male administrârint, suâque perfidia jus omne amiserint? Si non populi, quod ipsius causa agatur; ob eandem causam, neque imperantis erit iudicium. Ad aequos igitur decurrendum esset arbitros, vel nostrates, vel externos, si res sineret: sin minus, populi certe potius erit iudicium, a quo magistratibus olim mandatum erat imperium, cujusque negotia geruntur, cujus etiam gratiâ potestas omnis fuit constituta. De re fere quavis humanum est errare: neque errorum immunes sunt ipsi rectores}. Saepe de jure publico, saepe de privato sui defendendi jure erratum est; nontamen ideo tollenda sunt haec hominum jura, sive privata sive publica.

His quidem in rebus gravissimis, cuncta cautissimé pensitanda; neque ob leviores <313> imperantium injurias aut errores, quales in homines haud improbos aliquando cadere possunt, in bella civilia, omnium saepe saevissima, cives sunt conjiciendi. Ubi vero alia ratione populus salvus esse nequit; et perfidis dolosisque facinoribus, imperii jus omne amiserunt imperantes; jure per vim regno exui possunt, aliis in eorum locum suffectis, aut nova imperii formâ constitutâ.

Neque motibus civilibus bellisve fovendis apta est haec, de sancto populi jure se contra tyrannos defendendi, doctrina. Immo contrariis feré dog-

tolerable life, remain secure to them.⁴ Nor does this doctrine of resistance give to the people a civil superiority over their governors: for even slaves adjudged to the most miserable subjection {for their crimes}, may have a right to defend themselves <by violence> against certain [the fiercest] injuries their masters may attempt against them.

As to that question, who shall be judge in this disputed point, whether the governors by their perfidy and mal-administration have forfeited their right? If 'tis alleged, the people cannot judge as they are parties: for the same reason the governors cannot judge. The only recourse then should be to impartial arbiters, either within the state, or in some other nation, if this could be safe: but if not; surely the people have a better <305> claim to judge in this point; since *they* at first entrusted their governors with such powers, and the powers were designed for the management of the people's interests, and were constituted for their behoof. 'Tis true there are great dangers of mistakes on this head: but the governors are not exempted from errors more than the people. Men have often erred both about publick rights, and the private ones too of self-defence: but we must not for that reason deny that they have such rights.⁵

In this most important matter, no doubt, persons concerned are bound to use the utmost caution, and weigh all things on both sides. Nor ought we to involve our fellow-citizens in civil-wars, the most miserable [savage] of all wars, for any such lighter injuries, or wrong conduct of our governors, as may be incident sometimes to persons in the main good and of upright intentions. But when there's no other way of preserving a people; and when their governors by their perfidious frauds have plainly forfeited their right; they may justly be divested of their power <by violence>, and others put into their places, or a new plan of power established.

Nor does this doctrine of the right of resistance in defence of the rights of a people, naturally tend to excite seditions and civil wars. Nay they have

4. Hutcheson, as well as Carmichael (*Notes on Puf.*, pp. 169–71), plays down the differences between absolute and limited governments made by Pufendorf in relation to the people's right of resistance.

5. See *System* 3.7.4, vol. II, p. 273–74.

matis haec mala praecipue imputanda. Nimia fere semper fuit populi patientia, et inepta imperantium veneratio; quae tot civitatum monstra, aut potius miseros et abjectos servorum greges, sub dominis saevissimis et nequissimis, jura omnia divina et humana impudenter miscentibus, per terrarum orbem pepererunt.¹

III. Tyranno exturbato, aut rege qui ad munus electus fuit extincto, ubi nihil de successione est praestitutum, aut denique stirpe regia extincta in regnis haereditariis, nascitur *interregnum*. His in casibus, quamvis nihil legibus publicis sit cautum, haud quidem tollitur populi conjunctio civilis: primo enim, quod diximus, pacto obligantur omnes, ut communi consilio communi prospiciant salutem. Existet aliquamdiu democratia <314> quaedam, ubi plurium aut praestantiorum, qui reipub. negotia gerere solebant, suffragiis erit statuendum, qualis in posterum futura sit reipub. forma, quibusque deinceps permittendum imperium. Neque paucioribus, caeteris invitis, civilis vinculi licet esse immunibus; nisi pars major planè iniquas et pestiferas reipub. administrandae rationes ineant.

IV. Principibus quorum probitas fidesque satis est spectata, debetur pietas omnis et observantia; iique cum summo civium periculo, sive contra caecos tumultus, sive aperta bella, sunt defendendi; neque culpis eorum aut vitiis levioribus, qualia aliquando in viros minime malos cadere possunt, cives ab ea obligatione exsolvuntur. Si vero hoc incidat ut devincantur et a dignitate deturbentur, vel ab imperii competitoribus, vel hostibus externis, ita ut

1. In 1742 edn. this paragraph was at the end of art. iv.

6. Cf. *System* 3.7.6, vol. II, pp. 279–80, and Locke, *Two Treatises* 2.18, sections 207–8, and 2.19, sections 223–26.

7. See Pufendorf, *De officio* 2.10.4 and *De Iure nat.* 7.7.7–10.

been more frequently occasioned by the contrary tenets.⁶ In all ages there has been too much patience in the body of the people, and too stupid a veneration for their princes or rulers; which {for each one free kingdom or state} <in the whole world> has produced many monstrous <states or rather> herds of miserable abject slaves or beasts of burden, {rather than civil <306> polities of rational creatures}, under the most inhuman and worthless masters, trampling upon all things human and divine with the utmost effrontery.

III. Upon dethroning a tyrant, or upon the natural extinction of a royal family, or the death of an elective prince<, where there is no rule of succession>, there arises an *interregnum*. In which case, even altho' there be nothing expressly provided in the constitution, yet the political union of the people is not quite dissolved. They all continue bound by that first covenant we mentioned, to consult their common interest by joint counsels.⁷ They seem to be in a sort of {simple} democracy for some time; in which it should be determined by plurality of votes of the whole, or of those at least who used to be concerned in the publick affairs, what shall be their future form of polity and who are to be promoted to the government.⁸ Nor is it just that any smaller part, without consent of the rest, should break off from the political union; unless the majority are setting up some unjust or destructive plan of polity.

IV. To princes, or rulers of any kind, who have evidenced integrity and fidelity in their trust, the highest deference and honour is due {from their subjects}; they should be supported and defended with the lives and fortunes of all, whether against rebels or foreign enemies. Nor are subjects [citizen] freed from this obligation, by any such lighter faults or mistakes of their governors, as may be incident to men in the main upright {and faithful to their trust}. But if {after all the efforts of their subjects,} such princes are conquered and dethroned, either by some competitor or some

8. That "interregna have the character of a temporary democracy" is what Pufendorf says in *De interregnis* (*Dissertationes academicae selectae*, Upsaliae 1677, pp. 261–301), and Carmichael quotes approvingly (*Notes on Puf.*, p. 184).

nulla spes sit reliqua, eos jus suum antiquum recuperare posse; principum est regumve de jure suo ultro cedere: immo id omne pro extincto est habendum; quum omnis inter imperantes et populum obligatio sit mutua, mutuisque officiis conservanda: quae quum ab altera parte praestari nequeunt, nulla alteri sunt praestanda. Omnibus igitur prius tentatis, populus jure se victori submittet, quum suae saluti aliter consulere nequeat. <315> Mirae quidem foret arrogantiae, si quis suae dignitatis aut utilitatis causa, totam civitatem et populum pessundatum velit et laniatum.

V. Quemadmodum naturalis *libertas* est jus pro sua cujusque voluntate agendi, intra legum naturalium limites, (quae nulla foret si nullae essent leges, hanc libertatem caeteraque jura cuique munientes;) sic dicimus populum esse *liberum*, quum non ad alterius praescriptum, sed [suo arbitratu] [ad suum arbitrium] intra legum civilium sines, cuique [manet] [permissa est] agendi facultas. Non igitur leges libertati repugnant, sed acerba aut morosa hominum imperia. Liber Romanis dicebatur populus, ubi concilio populari imperii summa erat permissa, et parendi imperandique vices obtinebantur.

VI. Vix alia ratione quam populi decreto voluntario, potestatem civilem jure constitui posse, satis jam disputatum [dictum]; neque imperatores aliam habere sanctitatem aut majestatem, quam quae hinc oritur, quod hominum multitudo jura, quisque sua, uni homini aut concilio permiserat administranda. Ex quadam libertatis naturalis parte, a singulis ad imperantem translata, aut ex singulorum dominiis eidem aliquatenus subjectis, nascitur legum condendarum potestas. In libertate, quisque vitae necisque jus hactenus <316> in se habebat, ut officia honesta quantocumque cum periculo suscipere liceret; quumque communis hoc postulat utilitas, aliis se dirigen-

foreign <307> power, so that there remain no probable hopes of their recovering their just rights; 'tis their duty in such cases to quit their claim: nay 'tis justly deemed extinct: since all obligations between governors and subjects are mutual, depending upon mutual offices. And when it becomes impossible for one side to perform his part, the other is freed from his obligation. The people therefor, after their utmost efforts for their old rulers have proved unsuccessful, may justly submit to the conqueror, when they cannot otherways consult their own safety. It would indeed be strange arrogance in any prince to expect that a whole people should be bound, by a vain zeal for his dignity and interest, to expose themselves to all the rage and fury of a conqueror{, to no valuable purpose}.⁹

V. As natural liberty is “the right of acting as one inclines within the bounds of the law of nature”; (nor could we hold any such liberty were there no laws to defend it from the force of the stronger:) so we say a people enjoys liberty when “each one is allowed to act as he inclines, within the bounds of civil law, and not subjected to the caprice of any other.” We should never look upon laws as eversive of liberty; but that 'tis sole enemy is the capricious humourous will or command of men in power. The Romans indeed in speaking of a *free people*, generally meant a democratical state; where men had their turns of commanding, as well as of obeying.¹⁰

VI. It was already shewn that civil power can scarce be constituted justly any other way than by the consent of the people; and that rulers have no other <308> sacred rights or majesty, than what may arise from this: that of a large multitude of men, each one for himself subjected part of his rights to the administration of a certain person or council. And thus from a part of our natural liberty transferred to the ruler, and our property in a certain degree subjected to his disposal, arises the legislative power. In natural liberty also each one had a right to expose his life to the greatest dangers, in any honourable services in defence of his family or his neighbours, and when the common interest required it he could commit himself to the di-

9. See *System* 3.7.5, vol. II, pp. 278–79.

10. See *System* 3.7.7, vol. II, p. 281–82.

dum in his officiis obeundis permittere{ unde imperii militaris jus}. In libertate etiam, inter hominum jura erat, ut eum qui ipsis injuriam intenterat aut fecerat, summis coércerent suppliciis; communique innocuorum saluti, si ita facto opus esset, ejusdem caede prospicerent. Hinc oritur jus omne poenas delictis aequas irrogandi, sive jurisdictio quae *criminalis* dicitur. Neque ad potestatem aliquam a Deo proximè derivatam, ad haec aut alia majestatis jura explicanda, decurrendum.

VII. Neque una reipub. forma prae caeteris, alia de causa, divina est habenda, quam quod per eam optimè communi consulatur prosperitati; quod in monarchiis infinitis et haereditariis minime contingit. Quid? quod nulla lege divina, naturali aut positiva, monstratur succedendi, ratio; num scil. satis sit successio quaevis haereditaria, eaque vel agnationis, vel cognationis jure; an contra exigatur *linealis*. De re familiari ad cognatos transmittenda, non leves sunt juris naturalis obscuritates; licet, re generaliter spectata, manifestum sit, bona in familiae aut gentis utilitatem acquisita, sanguinis sequi debere conjunctionem. Quod vero ad imperia attinet, <317> (non in unius familiae dignitatem, sed in populi universi utilitatem destinata,) nulla subest causa, cur in iis deferendis spectetur sanguinis conjunctio; multo minus cur linealis admittatur successio qualiscunque.{*} Ex legibus humanis aut populi scitis, saepe temerariis et incautis, haec omnia nascuntur.

* Vid. Lib. II.viii.4.

II. See *System* 3.8.3, vol. II, pp. 286–89, where Hutcheson refers to Locke, *Two Treatises* I.II. Hutcheson, following Locke's arguments against Robert Filmer, sees a contradiction between the pretended divine institution of hereditary government and the positive character of the laws of succession.

* See Book II. Ch. 8. 4. {The decisions of some questions about the succession in hereditary lineal kingdoms, turn upon very fantastick reasons. Some allege proximity as a natural reason; and yet an elder cousin-germain's grandchild, shall often be preferred

rection of others in such services; and hence the right of military command. <In natural liberty> Men had also this right of repelling injuries, and punishing by violence any one who attempted or executed any injury, and even of putting him to death if this was necessary for the common safety: and hence arises all *criminal jurisdiction*, even to the inflicting of capital punishments [or the right of imposing just punishments on crimes]. Nor need we have recourse to any extraordinary grants or commissions from God to explain any of these rights of civil sovereigns.

VII. Nor can any one form of government be esteemed more divine than others, on any other account than that it is better adapted to promote the prosperity of the community; which can least of all be alleged of absolute hereditary monarchies. Need we suggest here that no divine law natural or positive determines the order of succession to monarchies, whether the *general hereditary*, and that either by males only, or also by females; or the *lineal hereditary*.¹¹ In the succession to private fortunes, tho' this be manifest in general, that the goods plainly acquired for the behoof <309> of a man's family and kinsmen, should descend to his family or kinsmen upon his decease; yet there are not a few difficulties in determining the proportions. But as to civil governments, which, 'tis obvious, were never constituted for the behoof of a family, but for the interest of a whole nation; there seems no natural reasons that the succession to them should depend upon the proximity of blood to the former possessor; and much less that the lineal succession should be regarded.* All such right of succession must arise from human laws, or decrees of a people, and these sometimes very incautious and imprudent.

to a younger cousin-germain. They say too that seniority is a natural reason of preference; and yet the infant-grandchild of a deceased elder-brother takes before a second-brother of mature years. The preeminence of sex too is made a great matter; and yet the infant-grand-daughter by an elder-uncle deceased, shall take before a younger-uncle. In general, these potent causes of preference, proximity, seniority, and the sex, are not regarded as they are found in the competitors themselves; but as they were perhaps in their great-grandfathers or great-grandmothers, deceased an age or two before.} [This added footnote derives from what Hutcheson says in *System* 3.8.3, vol. II, p. 287–88.]

VIII. Illud autem jus, vulgo jactatum, quo in populum devictum imperium civile sibi arrogat victor, non meliore plerumque innititur fundamento, quam quod {sibi} [arrogant latrones ac praedones maritimi] [latronibus ac praedonibus maritimis arrogatur]. Nam primo, qui justam bellandi causam non habuit, nihil quicquam ullo jure capit aut detinet. <(2)> Deinde, fingatur causa vel justissima, certi tamen, ut ante dictum, {*} sunt petendi fines: neque contra hostes quicquam jure aget victor, quod neque ad injuriam avertendam, neque ad damnum reparandum, neque ad injurias in posterum praecavendas, necessarium est aut utile: si quid amplius exegerit, justitiae fines transit. Ad injuriam vero avertendam, aut damnum pensandum, nunquam necessarium est aut utile, ut civitati et populo victo, in provinciam redacto, adimatur libertas publica et majestas. Immo communi plerumque repugnat utilitati, ut civitates opes suas sic augeant, potentiamque adipiscantur vicinis metuendam. Diu <318> plerumque antequam debellatur civitas, victorique subjicitur, depulsa est omnis injuria, damnumque cumulatissime pensatum. Pensationem [pensatur. Compensationem] fere semper sibi prius arripiunt victores, ex rebus hostium mobilibus, quam eorundam penitus devincatur civitas. Hac ratione damnum lubentes praestarent hostes devicti, vel si opus sit, stipendium quotannis penderent (quibus certè omnia damna cumulatissime reparari possunt) potius quam, a missâ patriae civitatis libertate, exteris se subjicerent.

Quod ad cautionem attinet: quibus {rationibus}, ab injuriis a civitate devicta, haud tamen exhausta, in posterum inferendis, satis cautum est, iis multo magis, a civitate {jam} exhausta et tantum non deleta, cautum erit. A civitate autem opibus valente satis cautum est traditis obsidibus, navi-

* Lib. II.xv.5, 8. Lib. III.iii.2.

* {Upon this subject see *Locke on Government*; whose reasonings are well abridged in Mr. *Carmichael's* notes on Puffendorf's smaller book. Book II. ch. x.} [See Locke, *Two Treatises* 2. 16 and Carmichael, *Notes on Puf.*, pp. 175–80.]

VIII. As to that much celebrated *right of conquest*, by which the conqueror claims the civil power to himself {and his heirs} over the conquered people; it has little better foundation generally than the claim of robbers and pirates {upon persons and their goods which <310> have fallen into their hands}.{*} For first, unless the conqueror had a just cause, he acquires <and detains> no right. And then tho' his cause was just [suppose his cause the most just], yet, as we said above,† his claim has certain bounds; nor has he a right to exact more from the vanquished than what is requisite <or useful> to repel the injury attempted, to repair all damages done, or to obtain sufficient security against injuries for the future. If he insists on more, he has no justice on his side in such demands. Now it is never necessary <or advantageous>, either for averting of injuries, or repairing of damages, that the conquered should be deprived of their liberty, or independency, and be reduced into the form of a province to the conqueror. Nay 'tis generally very pernicious to the common interests of mankind, that states should thus enlarge their power, and make it formidable to all around them. All present danger to the victorious is averted, and full reparation of damages generally obtained, long before their enemies are entirely subdued {and over-run by their arms}. The conquerors generally soon take to themselves abundant compensation out of the moveable goods of the conquered: and every state when thoroughly defeated, would always consent to make compensation this way, nay would pay an annual contribution for a certain term, to make up what was wanting; rather than lose their liberty and sovereignty, and be subjected to foreigners. <311> And surely by these ways all damages could be abundantly repaired. {‡}

As to securities against future injuries: surely such securities as are universally allowed to be sufficient against a state yet retaining much of its strength, shall be more than sufficient against one wholly exhausted and almost ruined by war: now {in all treaties,} these are deemed sufficient securities against states yet retaining much of their force, if they deliver hos-

† Book II. ch. xv. 5. 8. and Book III. ch. iii. 2.

‡ {The reasonings in this and the following articles are designed against the pleas of *Grotius* and *Puffendorf* for the rights of conquest, and *patrimonial kingdoms*, or *principalities*, founded on it.}

busve armatis, vel oppidis in confinio munitis; vel victoris praesidiis in urbes munitas acceptis. Immo saepe sufficit quod earum urbium munimenta diruantur. Neque ulla est civitas devicta, quin omnia haec lubens praestaret, potius quam vicinae civitati provincia fieret.

IX. Si quid poenae nomine, ad omnes ab injuriis deterrendos, sit exigendum, id a solis delinquentibus exigi debet. Populi vero devicti pars longe maxima, nullo crimine <319> obligatur, ideo quod a rectoribus suis ciebantur bella {vel} maxime nefaria. A victis igitur hoc solum jure exigere potest victor, ut rectores suos injustos aut dedant aut defendere desinant, ut de illis poenas factis dignasumat. At propter ea quae injustè aut inhumaniter in bello fiunt publico, poenas exigere vetat communis utilitas. In civitate semper spes est, magistratus, viribus suis legumque auctoritate sublevatos, poenas de civibus crimine obstrictis sumere posse: At civitatum bella gerentium vires, per socios et foederatos, ita plerumque sunt aequales, ut anceps sit belli fortuna; quibusque causae sunt justissimae, exitus tamen sit incertus. Ab omni igitur in devictos saevitia abstinendum, ne ad hostes exemplum transferatur, qui causam injustam tuentur, quae {tamen} ipsis justa videatur. Neque ideo quod causam suam justam putant victores, legem saevam, contra se forte aut suos postea valituram, sanciant.

Neque credibile est ullam conventionem tacitam inter civitates dissidentes intercessisse, ut ibi imperium foret unde victoria fuerit. Contraria omnia palam testatur qui bellum movet, nisi ubi disertis verbis istiusmodi pactum fuit initum. Ipso bello, se omni ratione, jura sua defensurum aut persecuturum, significat et denunciat: neque populus, <320> quamvis debellatus, qui novis sociis aut opibus adscitis bellum renovaverit, fidem vio-

tages, give up their fleets, {or a great part of them,} surrender frontier towns with their fortifications, or receive garrisons of their neighbours into them [into their walled cities], or even if they dismantle them{, or demolish all the fortifications}. Nor is there any state that would not rather consent to all these, rather than become a province subjected to another [to a neighbour-state].

IX. If it be alleged that punishments should also be inflicted as a further security by deterring others: yet surely none should be punished but the guilty. Now the far greater part of any conquered people were involved in no guilt by their governors having entered into even the most unjust wars.{*} The conqueror therefor can demand no more of the body of a people than that they either give up their injurious governors, or desist to defend them any further, that the victor may punish them as they deserve. But as to any thing done unjustly or inhumanly in publick wars, the common <312> interest of mankind would dissuade from making it matter of proper punishment. Within the bounds of any regular polity, 'tis generally highly probable or certain that the power of the laws and magistrates will be superiour to that of any criminal citizens; and that therefor they may be brought to justice. But in publick wars, the forces of the parties by their confederates and allies are so generally brought to a parity, that the event is very uncertain: and the just cause is often unsuccessful. This should restrain conquerors even in the justest causes from any severities{, under the notion of punishment}; as they will become precedents to others in very bad causes, which yet they may judge to be just. The victorious therefor should beware of establishing a precedent, which may be followed thereafter against themselves or their friends.

'Tis vain to allege any tacit convention between the parties in war, that that side shall have the civil power over both which happens to be victorious. Taking arms is rather an open declaration of the contrary, that neither side intends to submit its rights of any sort to the other; unless in those cases where there has been such covenants expresly made; nor was it ever, in any other case, deemed perfidious, that the party defeated rallies its forces,

* {See Book III. ch. iii. 2.}

lasse censetur. Quid, quod nemo dixerit, eum cui causa sua videtur justa, tali legi consensisse: atqui sine hujus consensu, alterius partis, {quicquid de ipsius causa senserit,} intervenisse consensum, colligi nequit. Hi denique victorum fautores, solos imperantes consensisse volunt: quo vero jure hi, quorum in tutelam permittitur populus, populi jura omnia, vel absolutè, vel sub conditione, alienare possunt? Finge istud disertis verbis {ab iis} pactum fuisse; ob id ipsum, homines illi perfidi et audaces, omne imperandi jus amiserunt; neque quae ab iis transiguntur civitatem obligare possunt.

X. Quum igitur {illi} scriptores <fere> omnes, qui regna quaedam *patrimonialia* esse contendunt, quae regis arbitrio alienari, aut dividi possunt, ea ex sola ferè victoria profecta statuunt; nullo idcirco jure ea arrogari, satis [docuimus] [ex dictis constat]. Quinetiam, si forte accidat ut populus aliquis, ab saevis hostibus ingruentibus perterritus, populo potentiori se suaque omnia dedat, solum hoc stipulatus, ut contra calamitatem imminentem protegatur; nihilo {tamen} magis ea pactione regnum patrimoniale constituitur.*] Ne quid enim de metus exceptione dicatur; aut quod pactum istud <321> plane onerosum, sit tamen inaequale; ex ipso pacto {reique natura} patet, quod colligi nequeat, tale quicquam fuisse factum. Quippe, qui se civitati excultae, humanae, imperiumque lene exercenti dedunt, minimè censerì poterunt consensisse, ut {istius arbitratu,} quovis modo vexentur aut lacerentur; utque} <et> alteri cuivis vel regi vel populo barbaro subjiciantur; aut saeviore regantur imperio, quam exercebant illi cui se dedi-

* Notatur hic Grot. vid. Lib. I.c.iii.12.

12. For the patrimonial kingdoms, see Pufendorf, *De officio* 2.9.7 and *De iure nat.* 7.6.16; Carmichael says that “patrimonial kingdoms scarcely ever have a just beginning,” that they “are imperfect states,” that their ownership “does not include civil government over the people” (*Notes on Puf.*, pp. 180–82).

{makes new levies,} or gets new allies to continue the war. Can any one pretend, that that side which has a just cause [which judges his cause to be just], {defending or prosecuting its own rights,} makes any such convention? and if one side is known not to do it, we can never presume it on the other side <however it judges its own cause>. The patrons of this right of conquest too, can allege only that the supreme governors <313> consented, and not the body of the people: but with what shadow of right can any governors, whose power was granted to them only in trust for protection of the people, pretend to alienate or transfer the whole people with all their rights to another, either absolutely or upon any contingency? suppose the governors made such an express convention: by this audacious perfidy they plainly forfeit their power; nor is the state bound by such a deed.

X. Since therefor all the authors who plead that certain civil sovereignties are *patrimonial*, so that they may be sold, divided{, or anyway transferred}at the pleasure of the sovereign, suppose also that they are generally founded in conquest; what is said above shews that such power has no just foundation.¹² Nay if it should happen that a state in the greatest consternation, upon an invasion from barbarians [enemies], should by their own deed submit themselves and all their rights to some potent neighbour, demanding nothing from them but protection; yet even such a deed cannot constitute a patrimonial power.* For not to mention the exception of unjust force and terror; or that this covenant being plainly of the onerous kind, yet does not maintain the essential equality: the very nature of the covenant, and the matter of it, shews that no patrimonial power could be intended in it. A state by submitting itself to a humane, civilized neighbour which exercised a gentle rule over its subjects, cannot be deemed to have consented also to any manner of oppression or vexations that thereafter this neighbour may inflict on them; nor that <314> they should be made over to any barbarous prince or people at the pleasure of those entrusted themselves to.

* The reasons here confuted are found in Grotius, L. I. iv. [The corresponding footnote of the *Institutio* refers to *De jure belli* 1.3.12. See also *System* 3.8.7, vol. II, pp. 297–99.]

derunt. Quinetiam si quid istiusmodi moliatur haec civitas dominans, jure sibi jugum excutient qui longè alia lege se isti subjecerunt. Ad arbitros {enim} provocare licet et deditiis, si quid crudelius ipsis sit impositum, ultra {id,} quod salutis et defensionis pretium, jure exigi poterat.

Neque ex populi devicti pacto aut promisso, quod vis minax extorserat, victorius imperii nascitur. Eam enim vim esse injustam satis ostendimus. {*} Sin verò a victore, aequa reipub. forma populo devicto constituatur, quae satis ipsius conservat jura, communemque tuetur prosperitatem; ita ut populus, post periculum factum, ei formae se submittere non recuset; ex hoc consensu imperii jus oriri quodque praecesserat vitium purgari poterit.

XI. Quum insuper nullis causis naturalibus <322> libus {et necessario obligantibus}, sed solo populi decreto, innitatur cujusvis ex regia sobole aut gente jus, ut regi defuncto succedat; decreti hujus verba eodem modo sunt interpretanda, quo {istiusmodi verba} in caeteris legibus de *successionibus haereditariis*: eaque censenda est hac de re fuisse populi voluntas, quae verbis iisdem aliis de rebus declaratur. Ubi igitur, in aliis bonis haereditariis, quisque delicto suo, jus suum, non solum pro se, verum etiam pro liberis et cognatis amittit, idem etiam de imperii jure haereditario est censendum. Immo, rei familiaris dispar [dissimilis] est ratio. Ea familiae alendae et amplificandae gratia acquisita fuit: unde liberi, et saepe cognati, jure postulant ut ex re familiari alantur et amplificentur: durumque est et iniquum, ut unius delictum immerentibus noceat, bonaque, quae naturae lege iis reddiissent, intervertat. De imperii jure omnia alia dicenda; quod neutiquam ob regiam stirpem, aut ob aliquid quod ipsi regi, ejusve soboli debebatur;

* Lib. II.xv.5, 8. Lib. III.iii.2.

Nay if this superior state should attempt any thing very oppressive of this nature, the subject-people may justly shake off the yoke: since it was plainly upon other terms that they subjected themselves. They have a right to demand arbitration, as to the equity of any thing imposed beyond what should be deemed a just compensation for the protection received.

Nor can any right of sovereignty arise from any seeming consent of the conquered, which was only extorted by present force. For we shewed* above that such force is plainly unjust. But if the victor establishes among the vanquished such an equitable plan of civil power, as sufficiently consults their future safety and prosperity, so that upon experience of it they are truly satisfied to submit to it; this subsequent consent becomes a just foundation of his power, and is a sort of civil expiation of the injury done in the conquest.

XI. But further, as the right of any person of the royal-blood to succeed upon the demise of his predecessor, is not founded on any natural causes, but solely upon some {old law or} decree of the state [people]: the words of such laws or deeds are to be understood in the same way as like words about other matters deemed hereditary; and thus we are to collect from them what was the intention of the people in such deeds. When therefor this universally obtained in any country, that when the present possessor of any thing hereditary forfeits it, he forfeits not only for himself but all his kindred; <315> we justly conclude that the peoples intention was that the forfeitures of the hereditary sovereignty should be in the same manner. The plea against extending forfeitures to the whole kindred of the person forfeiting, is very strong and plausible as to private fortunes, which all know were acquired chiefly for the behoof of the proprietor and his family; and this according to a natural obligation: so that children and kinsmen too have a natural claim to be supported and have their condition advanced out of such fortunes: and 'tis unjust that the fault of one of the joint proprietors should prejudice the rest, and prevent their obtaining what they are naturally entitled to. But as to hereditary sovereignties the case is quite different. They were not constituted for the behoof of the royal family, nor

* § 8th of this chap. [The *Institutio* rightly refers to 2.15.5 and 8 and 3.3.2.]

sed ipsius civitatis gratiâ, utque praecaveantur mala ex novorum regum creationibus subinde metuenda, constitutum fuit. Potiore igitur jure in *causam commissi* cadunt regna haereditaria, quam privatorum haereditates.

Ut igitur populus suo jure perfidum regem de solio deturbat; potiore certè jure <323> praecavere potest, ne quis succedat qui reipub. administrandae est ineptus; qui ea fovet dogmata, quae sanctissima populi jura pesundare eum promovebunt, quum primùm potestatem fuerit adeptus; qui insana quadam superstitione percitus, summae potestatis partes haud leves, ad regem quendam exterum, sub falso pontificis nomine, transferet; aut qui se jure divino munitum credit, quo fretus <omnia> civitatis jura audacissime perrumpet, omnesque imperii sibi permissi limites transiliet; seque officio defuturum existimabit, nisi cives summorum cruciatuum metu cogat, ut dogmata absurdissima credant, vel saltem credere simulent; cultumque Deo praestent quem nefarium putant. Qui regni haeres talia profitetur dogmata, {eave palam ejurare rogatus detrectat,} potiore jure excluditur, quam qui plane fatuus est aut insanus: quum istiusmodi dogmata populo libero magis sint pernicioso, quam ulla regis fatuitas aut insania.

XII. Quae de regibus diximus, de cunctis tenent civitatum rectoribus, atque de populi ipsius in provincias aut colonias imperio. Si qui cives, populi aut magistratum permissu, e civitate suis sumptibus migrent, novas sibi sedes quaesituri; illi [civitatem liberam, ditionisque omnis externae immunem] [sociam civitatem] sibi jure constituunt. Qui publicis <324> impensis ea mittuntur lege, ut coloniae modo sub civitatis ditione maneant, ad ejusdem potentiam aut opes augendas; haud aequum est ut eorum quam civium

founded in consequence of any just claim they had for their own behoof; but for the interest of the whole nation, and chiefly to prevent the mischiefs to be apprehended in new elections of sovereigns: and therefore they are much more justly made liable to entire forfeitures from the whole family, than any private fortunes.

As therefor a people may justly dethrone a perfidious prince; they have a better right to exclude from the succession any one who shews himself plainly unfit for the trust: and such are those who hold tenets {about divine rights} which must excite them to trample upon the most sacred rights of the people, as soon as they get into power; or those who possessed with some furious superstition will subject their crown, or alienate no small parts of the supreme power, to some foreign prince, <316> under the shew of a religious character [under the false name of pontifex];¹³ and at the same time think themselves commissioned by God to break through in the most audacious manner the fundamental laws or constitution, and all limits set by it to their power; and to force the subjects by the severest tortures either to believe, or falsely profess to believe, the most monstrous absurdities in religion, and to worship God in a way they judge impious. Any heir apparent who professes such tenets, or refuses upon a just demand to renounce and abjure them in the most solemn manner, may be excluded from succession with much better ground than if he were an idiot or a madman; as the holding of such tenets must make him more dangerous to a free people than any folly or madness.

<XII>: What we have said relates not only to monarchs but all sorts of governours, and to the power of a state itself over its colonies, or provinces. If any citizens, with permission of the <people or> government, leave their country, and at their own expence find new habitations; they may justly constitute themselves into an independent state{, in amity with their mother-country}. If any are sent off at the publick charge as a colony, to make settlements subject to the state, for augmenting its commerce and power; such persons should hold all the rights of the other subjects, and

13. The reference to King James II is as explicit here as in *System* 3.8.II, vol. II, p. 305–6. A more serene condemnation of the king is in Carmichael, *Notes on Puf.*, pp. 185–87.

caeterorum deterior sit conditio. Jura omnia, illis concessa, sunt religiose conservanda. Si quid durius in colonos patria civitas statuerit, ipsique satis per se sibi prospicere possint; aut si tyrannide oppressa sit civitas, ipsiusve forma in deteriora omnia immutata; hoc sibi jure arrogabunt coloni, ut sui sint in posterum juris, sociae civitatis officia praestare parati. Neque pacta, in quibus contrahendis, de iis quae in istiusmodi negotiis praecipuè spectari solent, erratum est, magnum hominum numerum, civitati beatæ constituendæ idoneum, ad ea subeunda adstringunt, quae ipsorum prosperitati et salutis adversantur. Neque quicquam graviora in hominum vitam mala invexit, quam vana et insolens, sive regum sive populorum, cupiditas, imperii sui fines porrigendi, aliosque populos in suam ditionem redigendi, dum neque suae neque eorum foelicitati prudenter consulunt. Hinc ingentia et immania exsurrexerunt imperia, vicinis omnibus gravia et pestifera, et brevi, cum misera hominum strage ruitura. <325>

whatever grants are made to them are to be faithfully observed. If the mother-country attempts any thing oppressive toward a colony, and the colony be able to subsist as a sovereign state by itself; or if the mother-country lose its liberty, or have its plan of polity miserably changed to the worse: <317> the colony is not bound to remain subject any longer: 'tis enough that it remain a friendly state. Nor are we to imagine that any early covenants founded upon errors about the most essential points in view, can still bind large societies of men fit to subsist as happy independent states, to continue in a submission eversive of all prosperity and safety. Nor has any thing occasioned more misery in human life than a vain and insolent ambition, both in princes and popular states of extending their empires, and bringing every neighbouring state under subjection to them; without consulting the real felicity either of their own people or of their new acquisitions. And hence have arose these vast unwieldy empires; the plagues of all around them; which after some time are ruined by their own bulk, with vast destruction of mankind.¹⁴

14. For the same defense of the rights of the American colonies see *System* 3.8.12, vol. II, pp. 306–9.

CAPUT VIII

De Legibus condendis, et de Jurisdictione.

I. Inter imperii jura *immanentia*, est legum jubendarum et administrandarum potestas. Omnis lex aliquam civitatis utilitatem spectare debet, legibusque ea omnia sancienda quae communi inserviunt prosperitati, quantum penes homines est eam procurare aut augere. Si quidem in ipsa imperii constitutione, ea tantummodo potestas rectoribus permissa fuerit, quae in rebus externis tuendis versatur; illi de civium animis virtute colendis, aut de cultu religioso, nihil pro imperio statuere poterunt. Verum ubi eorum arbitratui conceduntur certi redditus, in communem utilitatem impendendi, aut ubi totius [plena] reipublicae administratio ipsis est permissa; quum ex hominum virtute pendeat praecipuè eorum foelicitas, hoc illis qui reipub. praesunt imprimis curae esse debet, ut per disciplinam et institutionem, primis ab annis, imbuantur civium animi iis sententiis et moribus, quibus ad omnia virtutis officia reddantur paratiores.

Cuique tamen conservandum jus illud sanctissimum suo utendi iudicio; cui aperte <326> repugnant leges omnes poenaeque latae de hominum sententiis, sive celatis, sive palam factis, si modo civium moribus non sint pestiferae. Immo, etsi istiusmodi dogmata ab iis divulgentur qui ad ea divulganda religione se putant adstrictos, satius est plerumque, cautione, de non laedendo, officiisque civilibus praestandis, a caeteris exactâ, in ea tantum facinora gravius animadvertere, quae religione malesuadâ perciti admise-