



Bodleian Libraries

UNIVERSITY OF OXFORD

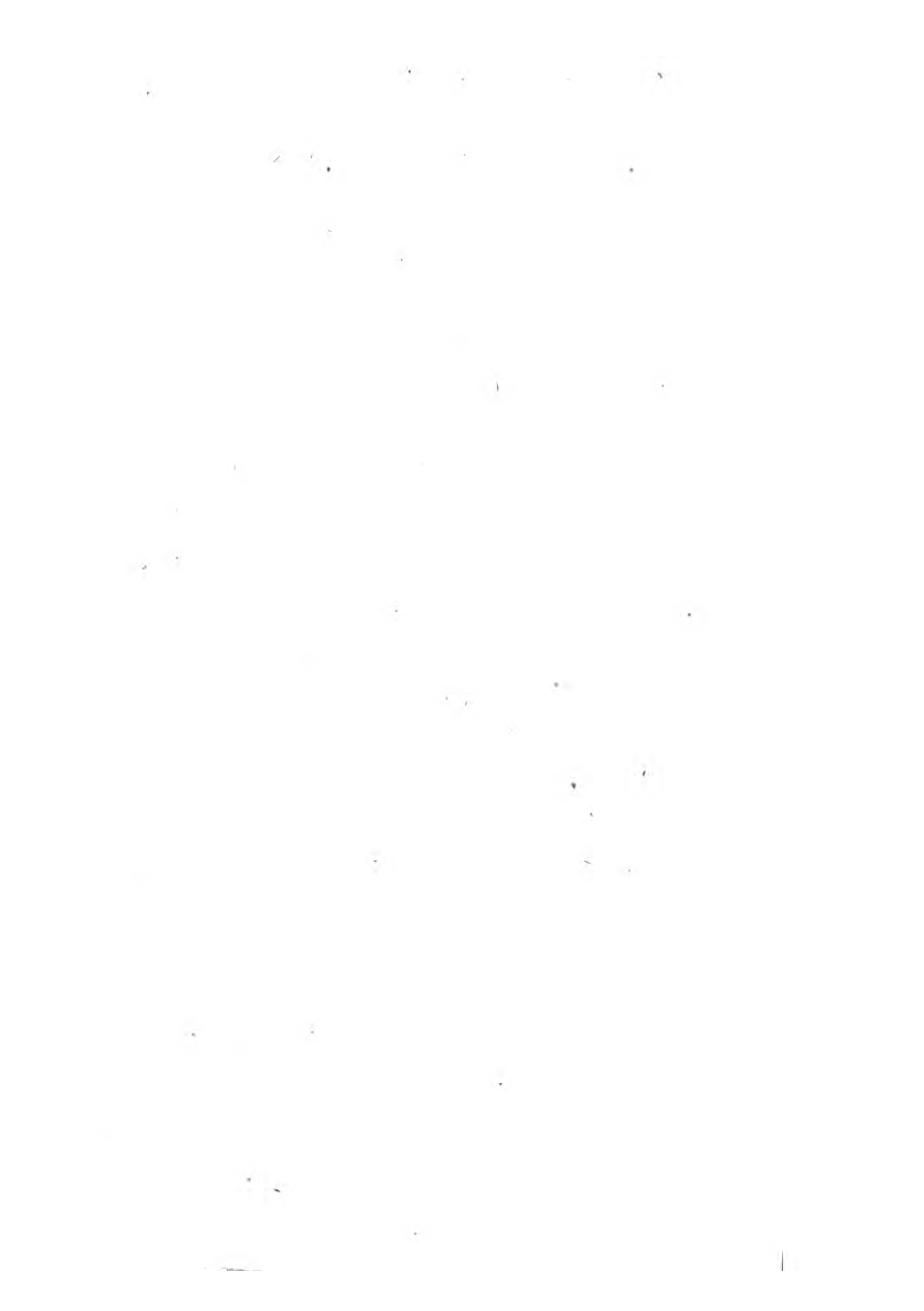
This book is part of the collection held by the Bodleian Libraries
and scanned by Google, Inc. for the Google Books Library Project.

For more information see:

<http://www.bodleian.ox.ac.uk/dbooks>



This work is licensed under a Creative Commons Attribution-NonCommercial-
ShareAlike 2.0 UK: England & Wales (CC BY-NC-SA 2.0) licence.



THE INFLUENCE OF RELIGION
ON HUMAN LAWS.

A
S E R M O N

PREACHED AT
ST. MARY'S IN OXFORD,
AT THE ASSIZES,



BEFORE THE HONOURABLE
SIR SYDNEY STAFFORD SMYTHE, KNT.
ONE OF THE BARONS OF HIS MAJESTY'S COURT OF
EXCHEQUER ;

AND THE HONOURABLE
SIR JOHN EARDLEY WILMOT, KNT.
ONE OF HIS MAJESTY'S JUSTICES OF THE COURT OF
KING'S BENCH ;

AND BEFORE THE UNIVERSITY,
THURSDAY, MARCH 3, 1763.

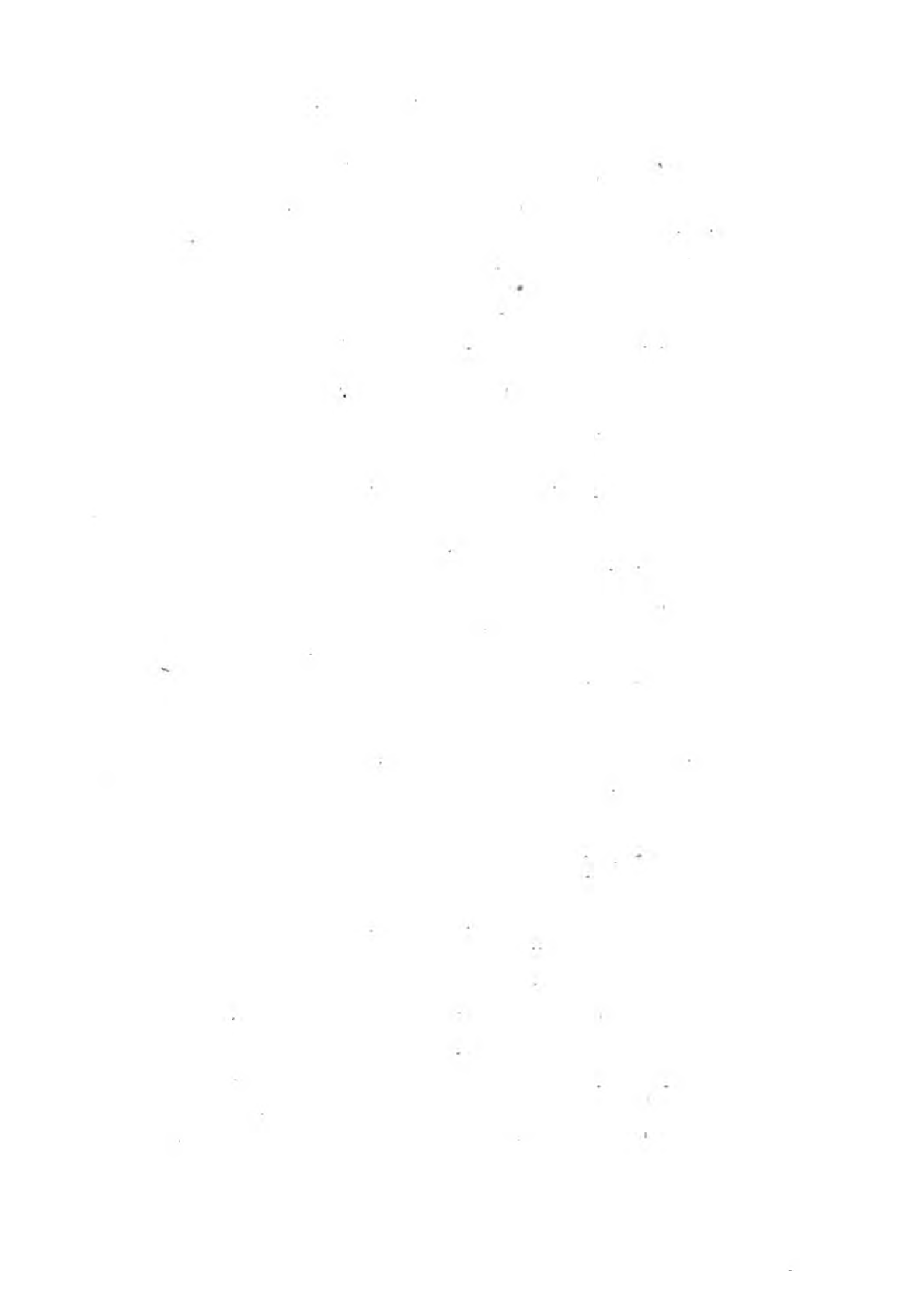
BY JOHN ROTHERAM, M.A.
FELLOW OF UNIVERSITY COLLEGE, AND ONE OF
THE PREACHERS AT HIS MAJESTY'S CHAPEL AT
WHITEHALL.

PUBLISHED AT THE REQUEST OF THE VICE-
CHANCELLOR AND HEADS OF HOUSES.

L O N D O N :

Printed for W. Sandby, at the Ship opposite St. Dunstan's
Church in Fleet-Street ; and sold by Dan. Prince, in
Oxford. 1763. 6s.

(18)



GENESIS ix. 6.

*Whoſo ſheddeth man's blood, by man
ſhall his blood be ſhed.*

THESE words ſeem to admit of two different explanations. They may be taken in a prophetical ſenſe, as foretelling the murderer's doom, that he ſhould fall by violence, and ſhould never eſcape the puniſhment due to his horrid crime even in this life. In this ſenſe they agree well with what goes before. “ And ſurely your blood of your lives will I require : at the hand of every beaſt will I require it, and at the hand of man ; at the hand of every man's brother will I require the life of man.” That is, “ The whole creation ſhall be armed againſt the murderer, he ſhall be cut off from all the rights of humanity, ſhall find no ſhelter in the tendereſt affection, the
B “ neareſt

“ nearest relations shall turn against him,
 “ and even the instinct of the brute shall
 “ drag him to light.” And in giving the
 words this sense, we should be fully justified by the observation of all times, which tells us of many strange discoveries of murder, of many wonderful incidents which have awakened suspicion, and brought the criminal to that vengeance which never ceases to pursue his footsteps.

But the words have likewise the force of a law, authorising man to execute that vengeance upon the murderer which they foretell. And the propriety of the law is manifest. Mankind at this time consisted of one small society, under the conduct of our common parent Noah. This small society was soon to encrease, to branch out into several distinct societies, and by degrees to people the whole earth. But little would have been done towards social happiness by any encrease of the human species, or by any attempts to form their encreasing numbers into societies, unless laws had likewise been provided for the government

ment of those societies, and sanctions for the enforcement of those laws. The security of life is the foundation of all social benefits. The security of life therefore is the first object of all civil institutions. Wisely then, as well as mercifully, did God himself give the fundamental law of all society, to the common parents of our race ; and empower man himself to enforce the observance of it by the highest penalty that human power can inflict. A power to inflict the highest penalty on the greatest crime, naturally included in it a power of inflicting every inferior degree of punishment on every lower crime. And thus was the civil magistrate armed with the authority of heaven.

It is clear then that one law of the utmost consequence to society sprang from an express divine institution. But this being manifestly one of the fundamental laws of society, I shall venture to extend the proposition beyond the particular instance mentioned in the text, and shall endeavour to prove in general,

That all human laws derive their chief force from the divine ; and that without this borrowed celestial power they would be extremely defective, and inadequate to the purposes of society.

Every created being that is capable of surveying his own situation, will find himself surrounded with numberless relations, and subject to various dependencies. He will soon discover however that his primary relation is to his great Creator, and his first and chief dependance upon him. From his Creator he received his being, and all the blessings with which it is enriched ; and on his will depends entirely all that he is or can be ; his happiness, his misery, his existence. To his Creator therefore he is bound by the first and strongest obligations that can be conceived ; to his Creator he owes every possible return, himself and all his faculties.

This is the first law of his existence ; and this law extending its obligation over the whole field of creation, forms one universal kingdom,

kingdom, where the supreme God rules over every being endowed with intelligence.

But if we love God, we must love likewise the various productions of his creating hand. The divine wisdom and goodness stamped upon our fellow-creatures prove them to be of the same heavenly original with ourselves, and must recommend them to our affections. We must love the Creator in them. And thus does the first law of our existence, the love of our Creator, lead directly to a second, that of benevolence, or love to our fellow-creatures. This law likewise must be universal, since the principle from which it springs is so, the equal relation of all intelligent beings to their common Creator. But though in its principle it is universal, binding every rational being to love the whole offspring of the same heavenly parent, yet must the actual exercise of it necessarily be limited by the powers of which every being is possessed. It hath pleased infinite wisdom to form many different ranks of beings with various degrees of perfection. As they are advanced

higher their sphere of action is enlarged, and with it their powers of benevolence. But even they who stand at the summit of created excellence probably have not a power of doing good throughout that whole creation which they admire. To bless at once the whole creation, belongs to the Creator alone. The most excellent of his creatures have their influence limited far within the bounds of the creation. And these limits are still more and more contracted as we descend through every inferior rank of beings. We ourselves possess but a very small part of that immense space which the creation fills. Our knowledge even of our own species, and of our own little world, is very imperfect: and our power bears but a small proportion even to our knowledge. The circle through which our benevolence can act being thus limited, naturally forms the world into various divisions. Could we do nothing for each other's happiness, we should remain single and unconnected. Had we the ability of doing good to all mankind, the whole world would be only one community. We find mankind fixed in a state
between

between these two extremes, and formed into bodies which bear a proportion to that extent through which benevolence can operate. They associate together for each others happiness, and unite their common force for their mutual help and protection. Laws are necessary for the right direction of this common force, and to rule the operations of the public body ; a spacious field is opened for the free exercise of benevolence, which now exerts itself without impediment and with redoubled vigour ; order prevails ; and all social blessings are multiplied.

Thus are several subordinate kingdoms formed in the bosom of that universal kingdom, wherein the Creator immediately presides over his whole intellectual world. In these inferior kingdoms man himself is admitted to some share of power, because beings endowed with freedom like man are ever throwing themselves into new situations which require a suitable change of particular laws. The great lines of duty are clearly marked out by the standing laws

of reason and revelation, and by the dictates of those corresponding social affections, which heaven hath implanted in our breasts. From these man himself is left to deduce such laws, as the particular exigencies of society require.

These subordinate kingdoms then manifestly have their foundations laid in that supreme dominion which comprehendeth all. The universal laws of that kingdom pervade the whole, and give strength and stability to every part. These great laws of love to God and man, prepare us for society, and render us capable of receiving every impression, which the hand of the legislator would give us for the public good. This corresponds to what we see in the material world. The skill of man can give various directions to matter, can mold it into numberless forms, and compound it into various engines of admirable use, and of amazing mechanical power. But this no human skill could effect, without that solidity, that attraction, and those other general properties which matter hath received from the Creator's hand.

Just

Just such power hath he who constructs or guides the political machine over the minds of men. His most consummate skill would be exerted in vain, without that propensity to seek each others good, which the power of heaven hath implanted in us. Benevolence fits us for all the purposes of government; and all the services we render to society, are only benevolence diversified. All human laws then derive their force and efficacy from that general law, the obligation of which upon us is antecedent to all human authority. For that general law of benevolence springs, as we have seen, directly from the Creator's throne.

In how amiable and advantageous a light do these religious considerations place human government! With what new dignity are the legislative and ruling powers invested, when they appear the ministers of heaven, delegated by God to watch over the public good, to cultivate all the better propensities of their fellow-creatures, and to open to them all the sources of social blessings! The subjects on their part will with zeal
and

and alacrity co-operate in all the designs planned by their rulers for the public good; while they consider obedience to them as obedience to heaven, and the laws by which they are governed, as streams flowing from the divine laws. All parties will see the importance of their respective duties increased, when they consider that they are equally subjects of an higher kingdom, accountable to their common Lord, and entrusted by him with parts, different indeed, but of equal necessity to the common good. Every well-regulated government, every little state under a virtuous administration, appears in this light to bear a part in the great and adorable plan of infinite wisdom, and to fill up the harmony of that moral system, over which providence presides.

But if religion in general is of the utmost importance to the public welfare, it must be observed, that the Christian religion is more favourable to society, and leads more surely to all the ends of good government, than any other system of religion can do :
because

because it giveth a clearer view of all relative duties, establissheth more firmly, and enlargeth the principle of benevolence; and revealeth more distinctly, and sets in the strongest light all the great sanctions of religion.

Such is the admirable power of law, where its operation is free, and its order undisturbed; where human laws are supposed to have their source in the divine laws, and to act under the influence of heaven. But deprived of this sacred influence, and supposed to rest only on human authority, it will appear how defective they must be, and how inadequate to the purposes of society.

It is the judgment of Plutarch *, “ that
 “ religion is the cement of all communities,
 “ and the chief basis of all legislative power.
 “ It is much more easy, saith he, to build
 “ a

* Ἄλλα πολὺς ἀν μοι δοκεῖ μάλλον ἔδαφος χωρὶς, ἢ πολιτεία τῆς περὶ θεῶν δόξης ἀναιρεθείσης πανταπασι, συστάσιν λαβεῖν, ἢ λαβύσα τηρεῖσθαι. Τὸ τοῦ μείτοιο συνεκτικὸν ἀπὸ τῆς κοινῆς, ἢ νομοθετικῆς ἐρείσματος, &c. Plut. Adv. Colotem.

“ a city in the air, without any ground to
 “ fix its foundation upon, than to establish
 “ or to maintain a government without re-
 “ ligion.” It will not be difficult to justify
 this opinion. Take away religion, and the
 will of one supreme and universal Lord, and
 we shall cast about in vain for any principle
 to bring mankind under government, or to
 fix them in it. There will remain no other
 imaginable foundation of government, but
 either the common consent and agreement
 of mankind amongst themselves, or absolute
 force. Force can give no right, and a go-
 vernment founded on that, may, on its
 own principles, fairly be resisted and over-
 thrown, either by its own subjects, or by
 any foreign invader. Because it is clear,
 that if force can confer any right, that right
 must always follow the prevailing force.

If we have recourse to mutual consent and
 agreement, this it must be owned is a more
 equitable principle than the other. Much
 indeed hath been said, and much supposed,
 of the social contract, of the power with
 which it invests the governors of society,
 and

and the obligation to obedience which it lays upon the subjects. But unless it is established under the sanction of religion, this foundation too will be found rather specious than solid. For what power is there that can either bring men to enter into this contract, or bind them to the observance of it? What if they should chuse to bring themselves under no engagements to government? You say, the common good requires their assent. But since, before this contract, all men are supposed to be equal, if any one should think otherwise, or should not have affection enough for the common good, to lay himself under the restraint of laws, and to accept of a low and laborious station in society for the sake of it, who shall controul his will? To controul his will indeed would be to abandon the system of the social contract, and to recur to that of force.

But his own interest, you say, will oblige him to come under the protection of the laws. And indeed, religion and all its motives once being laid aside, private interest

terest is the only principle upon which men can act, and the only thing that can give the legislator any power over their minds. Supposing then the interests of all men to be so clearly concerned, as to engage every individual freely to enter into this contract ; still this engagement can only bind him so long and so far as his interest is concerned. The moment that obedience ceases to be his interest, it ceases to be his duty ; and the very same principle which bound him to observe the laws, now releases him from the obligation. The reciprocal engagement in this contract is, on the part of the subject, obedience, on the part of government, the care of the subject's interest. If therefore in any particular instance the laws should not only neglect his interest, but even oppose it, (a case that must frequently happen even in the best constituted governments) he is fairly justified not only in withdrawing his obedience from the laws, but even in opposing them.

Nay there is one grand point suggested by my text, wherein government can receive
no

no support from the social contract, supposing the consent of the subjects to be freely given, and its obligation lasting.

The protection of life is the first end of society; and for the obtaining this end, it becomes necessary that government should have a power over the lives of its subjects; that the heaviest punishment which man can inflict, may fall on the greatest crime which man can commit. But it does not seem that government can obtain this power by any human grant, not even by the free consent of its subjects: 1st. Because government on its part has no advantage of equal value to give for the lives of its subjects: and 2dly, Because the subjects cannot convey a right which they have not themselves. He alone who gave life hath a right to take it away: and He alone could establish that law, which is yet essential to the very existence of society, "whoso sheddeth man's blood, by man shall his blood be shed."

Thus if religion is taken away, human laws have no longer any solid foundation
to

to rest upon. But there would be besides numberless defects in the superstructure itself.

For human laws can never reach the first principles of action, nor inspire habits of virtue. All that they can do is to regulate particular acts, and to guide us in some particular instances of duty. The general principles of benevolence to mankind, and obedience to lawful authority, can never be wrought in us by any human laws. When these are once deeply laid by the superior influence of religion, we shall then be disposed readily to follow the direction of human laws, in those acts of duty which they prescribe, to our fellow-subjects or to our rulers. But the performance of the act must be extremely reluctant and imperfect where it is prompted by no inward principle. Religion alone hath access to the seat of virtue, and can secure the rectitude of our actions, giving them an intrinsic, as well as an apparent worth, by purifying the heart from whence they flow. Whereas human laws, by taking up our actions at a distance
from

from their original source, only attempt to cleanse some few drops of an impure stream.

Human laws then cannot reach the principles of action in any part of our duty : nor can they pretend to reach even the actions themselves in the whole system of social duties. Were it possible for them to specify every act of duty throughout its whole extent, this would render them too voluminous for use or remembrance. Nay, they are obliged wholly to leave untouched some of the most valuable branches of duty. Such are gratitude, hospitality, generosity, and mercy. Here is a new world of social virtues lying entirely beyond all the limits known to human laws. So that it may with great truth be affirmed, that the man who takes human laws for his model, and does no more for society than what is required by the best system of human laws that ever was established, is a very undeserving member of it. For never did human laws give to their country, on great and trying occasions, the patriot, or the hero. Never did human laws, even in common life, inspire the

C

godlike

godlike deeds of humanity and mercy ; never did they wipe the tear from the eye of misery, or “ cause the disconsolate heart to “ sing for joy.”

Add to all this, that, both in their intention and execution, they are ever open to evasion.

Add to all this, that the assistance of religion is no where more necessary than in the peculiar province of human laws, the administration of justice. All their operations here receive their first motion from the secret springs of religion. For from the supposed influence of religious principles evidence borrows all its credibility ; and on the credibility of evidence equity and justice entirely depend. “ Take away religion, says “ the illustrious Roman orator, and faith, “ human society, and justice, that most excellent virtue, are no more *.”

Indeed

* *Pietate sublata, fides etiam, & societas humani generis, & una excellentissima virtus justitia tollitur.*
Cic. de Nat. D. l. 1.

Indeed the necessity of religion to the support of society is a truth so clear that it has been universally assented to, and comes down to us stamped by the authority of all civilized nations, and confirmed by the experience of all ages. For no legislator ever attempted to establish his laws on any other foundation. A few men however, lost in speculation, and strangers to real life, have attempted to turn these high authorities against religion ; to make its utility an argument of its falsehood ; and because it has been of service to the lawgiver, have boldly asserted that it is a mere engine of state, a creature of policy and priestcraft. This charge, though unsupported by any shadow of argument, has been so often repeated, that, merely by the force of hardy assertions, it hath gained an establishment in the world, and hath come to be considered as of some consequence. I must entreat your patience therefore, whilst I endeavour very briefly to shew its weakness and futility.

How would the adversaries of religion
have triumphed, and indeed how justly,
C 2 could

could they have objected to it the contrary of what they now object, and could they have shewn that it is wholly useleſs to ſociety ! But to argue—becauſe it is the prop of the world, that therefore it is falſe—is to ſubvert all principles, and to confound the natures of things moſt oppoſite. As the vices make a vain pretence to the advantages of virtue, falſehood may have its accidental and temporary uſes in the indirecſt ways of fraud ; but all this only under the diſguiſe and outward garb of truth. But, to be the baſis of public utility, to be uniformly and invariably uſeful, is the ſure and genuine character of truth and virtue. For indeed the connection between theſe three, virtue, utility, and truth, is ſo ſtrong, that they have often, by very ingenious men, been miſtaken for each other ; and the whole nature of virtue hath been ſuppoſed at one time to conſiſt in utility, at another in truth.

The very ſuppoſition that religion was choſen by the legiſlator on account of its utility, ſuppoſes its utility to be antecedent to and independent of all human laws. It
hath

hath therefore a foundation in the nature of things, that is, a foundation in truth.

All political laws are by their own nature confined to some political body, that is, to a small number of mankind. But religion is an universal principle, and the common support of all political institutions. To make religion then spring from political laws, is to make them act beyond their proper limits, and to make a partial law give birth to an universal; which is the same kind of solecism, as if it should be asserted, that the laws of a province which must be founded in the laws of a nation, are themselves the foundation of the national laws.

Again. Either religion rests on human authority alone, or it is supported likewise by arguments and proofs. If it is supported by arguments and proofs arising from clear principles of reason, and from the visible works of the creation itself, then must it be allowed to have a foundation in reason, in nature, and in truth, unless these arguments
can

can be refuted : it can never be called the creature of policy and priestcraft, unless it can be shewn that these boasted principles of reason, these visible proofs stamped on the works of the creation, are all an illusion raised by * priests and statesmen, and subsisting only in weak and credulous minds. But if religion is said on the other hand, to rest on human authority alone, unsupported by arguments or proofs, then did the laws create that from which the laws derive their greatest force ; and then is human authority itself the only support of that by which human authority is allowed to be supported.

But this position is not only false in its principles, but likewise contradictory to the clearest and best authenticated facts.

It cannot be pretended that any lawgiver ever gave, or assumed to give, the first impressions, the original ideas of religion. On the

* Priests surely should be acquitted of all share in the invention of religion, since nothing seems clearer, than that religion itself must have been antecedent to the priests of religion.

the contrary it appears, that they applied it only as a persuasion already subsisting, already established on principles very different from that of human authority. This is the language of the ancient Roman law.

“ * Let men approach the Gods with purity, with piety, without ostentation. The transgression of this law, the God himself will avenge.” It is clear that this law supposes the religious principles which it applies already to subsist, and the minds of those to whom it is addressed to be already under the influence of religious fancies.

The most ancient lawgivers are known to have claimed a divine commission for the establishment of their laws. But this claim could never have been set up unless on the antecedent belief of a Deity and a Providence. Vain must have been their attempt to establish their laws under the sanction of some

* Ad Divos adeunto castè: pietatem adhibento: opes amovento. Qui secus faxit, Deus ipse vindex erit.

some heavenly power, had there been no belief of an heavenly power; had the people been originally atheists, and had the laws been obliged first to create the gods, and then to assume their authority.

But, to put the adversaries of religion to silence, the ancient lawgivers themselves clearly refute this calumny. They do not pretend to impose the belief of a Deity on the minds of the vulgar, by any art, or by any authority whatsoever; but appeal to the universal voice of nature for the confirmation of this doctrine. Thus Zaleucus, the celebrated lawgiver of the Locrians, tells his subjects *, “ That they must first of all
“ firmly believe the existence of the gods :
“ but that in order to be convinced of this
“ truth, they need only contemplate the
“ heavens, the world, the wise disposition
“ and order that prevail throughout the
“ whole

* Τὰς κατοικίας τὴν πόλιν καὶ τὴν χώραν, πάντα πρῶτον πεπεισθαι χρὴ καὶ ἰομίζει θεὸς εἶναι, καὶ ἀταβέπεται ἔς ἕνατον, καὶ τὸν κόσμον, καὶ τὴν ἐν αὐτοῖς διακοσμίαν, καὶ τὸ ξιν. ὅ γὰρ τυχῆς, ὅ δ' ἀνθρώπων εἶναι δημιουργήματα αἰ Stobaeus, p. 279.

“ whole system : for these could never be
 “ the effects of chance, or the work of any
 “ human skill.” This proceeding plainly
 cut off all possibility of imposition : since the
 principles of religion were drawn from a
 source that lay open to every ones inspection
 and examination. He that would overthrow
 these principles must refute, not the legisla-
 tor, but the creation.

The result of all is, that laws are
 founded, and can only be founded, on the
 ROCK OF RELIGION.

And if we regard them in this light they
 must demand our highest veneration, as not
 being merely the work of human policy,
 but as the ordinance of God. On this foun-
 dation human institutions rise secure, and
 acquire a stability that nothing else can give
 them ; the laws of men come armed in the
 authority of their divine original ; and as far
 as they are calculated to answer the great
 ends of providence in the appointment of
 government, to protect innocence, to secure
 the just liberties of mankind, and to pro-
 mote

mote the public good, our obedience to them must be considered, as paid ultimately to the will of that great and supreme Law-giver, "whose kingdom ruleth over all."

"Wherefore," to conclude in the words of the excellent Hooker*, "of law there can be no less acknowledged, than that her seat is the bosom of God, her voice the harmony of the world: all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power: both angels, and men, and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy."

* Eccles. Pol. Conclusion of B. 1.

F I N I S.