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14



THE  
NATURE AND EXTENT  
OF  
CIVIL AND RELIGIOUS LIBERTY.

A  
S E R M O N

PREACHED BEFORE THE  
UNIVERSITY OF CAMBRIDGE,

NOVEMBER the 5th. 1783.

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By PETER PECKARD, A.M.  
MASTER OF MAGDALEN COLLEGE.

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C A M B R I D G E,

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M.DCC.LXXXIII.



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I. P E T E R II. 16.

AS FREE AND NOT USING YOUR LIBERTY FOR A CLOKE OF  
MALICIOUSNESS, BUT AS THE SERVANTS OF GOD.

**I**T is appointed by Legal Authority that this day shall be annually set apart for the Commemoration of two very important events, which are immediately connected with the great interests of man in civilized society.

The former of these displayed the overruling hand of Providence in defeating a horrid attempt to introduce a system of Ecclesiastical Tyranny: the latter shewed with equal evidence the same providential care to establish in this country the supreme earthly blessings of Civil and Religious Liberty.

Blessings! which, by their sacred influence, and as it were by some divine enchantment, convert the barren rock, or inhospitable desert into scenes of permanent delight; blessings! in the absence of which nature smiles in vain, and every kind gift of the great God of nature perishes unenjoyed; blessings! without which our very existence is turned into a curse; becomes a gloomy state in which every endearment of Life is but a fresh summons for horror and dismay; a state to which Hope never comes but for an end of torture by the end of Existence!

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Such



Such is the comfortless condition of those whom despotic oppression hath deprived of Civil and Religious Liberty. \*

Oh! thankless men, to set at nought, as some of us do, and deride as of no value these inestimable treasures! which the appointment of God, which the voice of nature, which even the laws of our Country proclaim, and have confirmed to us as an indelible right, an indefeasible possession. Never may it perish in our hands! may we ever with decent fortitude assert our natural, our legal claim, as Free, indeed, yet not using this our Liberty for a cloke of maliciousness, but as the Servants of God.

In times not long past, but let us hope never more to return, men of abilities were found who by a vile Idolatry prostituted their talents to the iniquitous purposes of princes aiming at absolute dominion. The pulpits every where re-founded with the Divine and Irresistible Power of Kings, and Despotism was preparing his heaviest chains. Voluminous treatises were published, as every one knows, to prove that man hath not any natural right to Liberty, and that all Government is absolute.

It seems to be little better than an insult to the common understanding of man, to enter into a regular proof that he hath such Right, and consequently that the Forms of Human Government consistently with Justice cannot be absolute; for it is to be considered as a self-evident proposition to every one  
who

\* See Dr. Burnet's Travels into Switzerland and Italy: from which it appears that Switzerland is better peopled than France or Italy, though countries incomparably more rich and better situated. That this proceeds from the gentleness of Government in the first, and the oppressive severity of it in the two last. That particularly in Codelago, and Lugane, and other small provinces belonging to the Switzers, where the people enjoy their Liberty, the Country, though extremely barren, is abundantly peopled; and that great desolation appears in all the Pope's territories, through the Rigour of Government.

who will exercise his faculties, and he who will not, does not deserve to be satisfied.

Nevertheless these absurd as well as false positions asserting the natural slavery of man; and the despotic power of princes, near a century since, when they were seriously insisted on as maxims of truth, and warrantable principles of reasoning, were solidly confuted, and completely answered by one \* whose name will be a perpetual honour to this nation; whose abilities would be the glory of every country, and every age; whose virtues will for ever remain the brightest ornament, and the highest dignity of Human Nature.

Yet have we seen in this our day the Principles of Liberty Civil and Religious treated as a subject of derision: we have seen the System of that Great, and truly Venerable man declared to be pernicious to Society, and destructive of the Interest of his Country; we have seen Arbitrary † Power openly, and

\* Mr. Locke.

† Some of these advocates for Absolute Dominion and the natural Slavery of man, endeavour to maintain their favourite Doctrine by arguments deduced from the confinement in his mother's womb, and his being bound in swaddling clothes in his Infancy.

Others inform us, That Civil Liberty is nothing Positive. It is an Absence. The Absence of Coercion. Not from Civil Governors: they are Omnipotent, and there is no Liberty against them. The purport of this latter part is very clear and intelligible, and does more in a single sentence than Filmer could in a whole volume. But the Doctrine about Absences and Positives is not so easy to be comprehended. It seems to me to introduce a confusion of ideas that will be no great help to the acquisition of knowledge in any branch of Philosophy. Many very agreeable absences might be named that would appear, except to a true Stoic, preferable to their opposites, whether we please to call them Positives, or distinguish them by any other appellation. It is delivered as a maxim that Liberty is nothing Positive, it is only the Absence of Coercion. So we might say that Light is the Absence of Darkness, Harmony the Absence of Discord, Health, Riches and Strength, the Absence respectively of Sickness, Poverty, and Weakness; and to conclude, that Good Sense is the Absence of Nonsense: an Absence, on the presence of which it would be a pleasure to congratulate the author.

But to have done with all that may have the slightest appearance of Levity,

and avowedly maintained and sometimes pressed upon the public in a manner too trifling to deserve the notice of a serious confutation.

With respect to those arguments that have been deduced from Scripture, and particularly from the 13th ch. of the Ep. to the Romans, I must take the Liberty to say that they are not entitled to a lighter censure. For as that much tortured passage has been frequently explained with perfect candour and good sense, and hath been proved incontrovertibly to give no support to these slavish opinions, I am afraid we cannot attribute to meer ignorance, the attempt to force it into so detestable a service.

The scriptures, though in their general tenor, as well as many particular passages, they teach proper submission to Governors, and a due obedience to all those superiors which the subor-

it must affect every true friend to our Establishment with the deepest concern to find the Press continually pouring forth publications defending the Divine and Indefeasible Right to Dominion, and in consequence asserting the Absolute Slavery of mankind. This hath produced from a very judicious and respectable Critic, the following remark on a work of this pernicious tendency.

“Ye advocates for Liberty! ye friends of mankind! bring forth your most potent charms! for behold the Ghost of Sir R. F. is risen from the dead, again to maintain the jus divinum of Kings.’ ‘When Adam sinned, Slavery took place of perfect freedom, and became the inevitable portion of his posterity.’ ‘The descendants of Ham were by the judicial appointment of God sentenced to servitude; and this sentence has been fulfilling 4000 years. But the descendants of Ham were a third part of mankind; therefore a third part of mankind have been born in a state of Absolute Slavery, in which they still remain.’ — Thus *All* mankind inherit Slavery from Adam, and one third of mankind inherit this birthright both from Adam, and from Ham; that is, *All* mankind are by nature Slaves, and one third of mankind are doubly Slaves.”

To establish this doctrine are calculated all the pretended Refutations of Mr. Locke, who, I trust, will nevertheless still maintain his credit with all who wish well to the happiness of Mankind. Concerning the merit of these productions, either as literary or political performances, I choose to be silent; and far, very far be it from me to judge of the heart of man, or uncharitably to attribute to dishonourable Motives, what may proceed from nothing more than an Infatuation of Judgement.



subordinations of Society require, yet they do not in the least degree give countenance to the frenzy of despotism, or enjoin in any state an unconditional and slavish subjection of the Subject. And in that very passage on which the greatest stress is laid, though we read indeed, "Let every soul be subject to the higher powers," yet this implies no more than the common duty of every Subject in every civilized State; "for the powers that be, are ordained of God." No Society whatsoever can subsist without a due subordination of its members, and subordination implies a supreme Authority; which in one country exists in one form, in another country in another. And all these different forms of Human Government, "all these powers that be, are ordained, that is, permitted of God;" and the duty of Subjects is obedience to that form of Government, which the generality of any state have chosen and established, whether it be monarchical, aristocratic, or republican. Whosoever resists this just establishment, is an enemy to good order, and the welfare of his country, and as such is guilty of an heinous crime. But this doctrine of Submission to legitimate Government cannot consistently with common sense be extended to all the abuses of which Government is capable; or, in other words to the infamous doctrine of Non-resistance to the lawless despotism of the magistrate. For this is not only the destruction of every Good, but the certain introduction of the worst Evils that can be conceived. It is therefore contradictory to St. Paul's idea of a magistrate, who calls him the "Minister of God for Good;" but if he thus becomes the (19) Minister of Evil, he is no longer the Minister of God, and may with safe conscience be resisted to the utmost. If Submission to all abuses may be defended from the doctrine of Submission to Government, we may by parity  
of

of reason defend even the Pagan Idolatry, because the Scriptures enjoin Religious Worship as a duty.

But as attempts of this sort are a species of Treason against our Establishment both in Church and State, a direct insult upon our Laws that are actually founded in, and maintain the Principles of Civil and Religious Liberty,\* and if not a formal, at least a virtual denial of those Rights which we claim as Men, which we demand as Members of our happy Constitution, it may not be improper so far to notice the falshood of these bold positions, as to assert, in contradiction, this plain fact, (3) That the Inhabitants of this Land have always considered themselves, even when bound in the severest slavery, as having nevertheless a Right to Liberty; that this hath been all along the great object in view; and that all the permanent alterations that have been made from time to time in our Constitution have been so formed as to support and extend it.

For proof of this I must refer to the Original Institution of Juries; an institution intentionally calculated for the Security of the common Rights, and Privileges of Man; an Institution now of nine hundred years antiquity; an Institution which from that day to this hath ever been considered, and indeed is generally described by the Characteristic Appellation of the "Bulwark of Liberty." †

I next appeal to our antient writers in subsequent ages of the first authority, as Glanville, Bracton the Author of Fleta, Fortescue, and Smith; which brings us to the time of the first James, whose despotic views had no small share in bringing

\* The Laws of England in all cases favour Liberty, which is counted very precious, not only in respect of the profit which every one obtains by his Liberty, but also in respect of the public. 2. Lill. abr. 169. as quoted by Jacob in his Law Dictionary.

† (v. no. 1. 2.)

ing on that actual contest for Liberty, which ended in the tragical death of his Son.

Lastly, I appeal to many well known authors deservedly of the highest esteem in the last and present century. Lawyers, and Divines, and Non-professional Laymen; from whose authority, both separate and combined, full confirmation may be found of what is here asserted; \* namely, That the People of this Land are free: That they have at all times a strict and proper Right to assert their Liberty Civil and Religious, provided it be done without maliciousness, and as the Servants of God.

My intention then in this discourse is not to enter into the Proof that Men are Free, and that Tyranny justifies Resistance, (for this is taken for a granted Truth) but to state the Nature and the Extent of Civil and Religious Liberty; and farther to shew that our Ancestors, though frequently deprived of this blessing, yet never lost sight of it; but always as circumstances permitted, asserted their Rights, and controuled the Madness and Absurdity of Despotism.

But of late the terms Liberty and Licentiousness have by some persons been industriously confounded, as if they were in fact the same thing, differing only in degree. Who laying it down as an incontrovertible maxim, first, that Licentiousness is destructive to civil Subordination (which will be universally allowed) then boldly asserting that Liberty is the same as Licentiousness, they prove their point at once, That Civil Liberty is not to be permitted where you would preserve the order of Civil Society. The same mode of arguing some persons seem not unwilling to apply also to Religious Liberty.

But the proper ideas of Licentiousness, and of Liberty, are really distinct and unconnected; for true Liberty is as different

\* (v. no. 3. 4. 5.) see also no. 6. 7.

cent from, and as abhorrent of Licentiousness, as it is of Despotism.

And, as in a State outwardly professing Liberty, and pretending the principles even of a Republican System, there may nevertheless be found something that looks like Tyranny, so even in a despotic State there may be an appearance of Liberty: the slaves by the gracious good-humour of the Tyrant, may be presented with a temporary and precarious freedom; yet men in either of these situations are not Free. That is not Liberty which hath any relation to, or any dependance upon Tyranny of any complexion. Men are then only properly speaking Free, when they enjoy their Liberty, not from the variable and fluctuating Will of Governors, but from the Stability of Civil Institution.

There are three different States in which men may be placed, a State of Licentiousness, a State of Liberty, and a State of Tyranny. In those of Licentiousness and Tyranny there is no Law, no rule of Conduct, no Protection, no Security. In perfect Licentiousness all is the Wildness of Anarchy, and Confusion unrestrained. In perfect Tyranny all is Horror, and Misery, and Desolation. These are the two extremes which know no bounds.

The state of Liberty is that alone which hath its proper limits. It is circumscribed on all sides, and supported by Laws calculated to prevent men from making, and secure them from suffering encroachments. In this state men have a right to do whatsoever the Laws permit: but no more: for if a citizen could do what they forbid, he would no longer be possesser of Liberty, because all his fellow citizens would have the same power.\* And if all should do the same thing, all would be in a state of Licentiousness. Liberty then has its limits,

\* Montesquieu. Book II. c. 3.



limits, and those limits are the Laws, which protect it equally from its two deadly Foes, Licentiousness, and Tyranny.

In that middle region then, which in Morals is the place of Virtue, which in the natural world is the climate of Happiness; in that middle region in Civil Polity, between Anarchy and Despotism, is erected the Throne of Liberty. There this amiable Empress of Human Hearts, this Universal Object of rational Desire holdeth her Dominion, founded in Eternal Truth, and supported by Reason, by Philosophy, and by Law, as much as by the instinctive appetites of Man.

In this state of Law, and of Liberty, All Men are equal, all being subject to the Authority, and all enjoying the Protection of Law. The child of the Prince hath not any natural preeminence, with respect to Dominion, over the child of the beggar. They both certainly begin, and they as certainly end in equal Infirmity. And though from the necessary constitutions in Civil Society, as they grow up to maturity, and as they decline in age, they must share very unequally the honours of this Life, they must at last partake equally of the dishonours of the Grave, and be covered without distinction by the dust of Death. The preeminence of the one, and humiliation of the other, during their intermediate state of inequality, arises originally from Consent, from formal, or virtual Compact, from Institution; and thus the Superiority of Princes springs not from any divine character in themselves, but is a human claim, founded in the appointment of Law. For even during this period of artificial Inequality, there is an inherent independance belonging to every man, which sets him free from every other; which neither superiority of Wisdom or Strength, Riches or Power, can either give or take away: which arises from the Rights of Nature confirmed by the Civil Institutions of Society. And as these only confirm,

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but



but do not give the Right to Liberty, so, although for the great purposes of Society they may to a proper degree restrain or abridge, they cannot destroy or annihilate it: nor can Man himself do this even for himself, much less for others, any otherwise than he can commit Theft, Adultery, or Murther. He cannot make himself a proper \* Slave, any more than he can perpetrate these forbidden crimes without contradicting the will of his Creator. For Liberty and Life are equally the gift of God; who gave him Life, that he should live, and the Right to Liberty, that he should be Free. (43. 44.) — A Gift not absolute, but conditional. — A Property of that sort, that is strictly in the nature of a Trust, and, like his Life, to be conscientiously applied to the purposes for which it was given; which therefore he can neither destroy, nor wantonly sacrifice without the guilt of criminal conduct.

How deep then in the sight of God must be the complexion of our Guilt, who blush not professedly to make the Natural Liberty of Man an article of public Commerce! who daily by fraud or by violence, deprive many thousands of innocent persons of this most precious gift of God. Who with conscious deliberation, force them into such a situation, and such circumstances of Servitude, that, at the recital, the blood of every man, not absolutely hardened in Cruelty, would freeze with horror. Whether we consider this crime with respect to the Individuals immediately concerned in this most cruel traffick, or whether we consider it as patronised, and encouraged by the Laws of the Land, it presents to our view an equal degree of Enormity. A crime founded on a dreadful preeminence in wickedness. A crime compared with which, even murder assumes

\* Because he who consents to be a proper Slave, consents to give up all Power of Moral Agency, and is engaged to commit any crime at the command of his Master; and this is a situation into which no man can put himself, without acting contrary to the Will of God.

assumes the appearance of Virtue. A crime which being both of Individuals, and of the Nation, must sometime draw down upon us the heaviest judgment of Almighty God; who made of One Blood all the Sons of Men, and gave to All equally a natural Right to Liberty; and who, ruling all the Kingdoms of the earth with equal Providential Justice, cannot suffer such deliberate, such monstrous iniquity to pass long unpunished.

As human laws then are sometimes the very Essence of Injustice, and are so constituted as to be destructive of that Liberty which they ought to protect: under this circumstance what becomes of this natural claim, this great privilege of Man? Even in this case no alteration is made in his Original Rights. To suppose that the Right to Liberty may be precarious because human Laws may be tyrannical and unjust, is a great deception. For Law itself hath its proper foundation, its just boundaries, and precise extent, in the Institution of Providence. No human Power whatsoever, whether in a single person, or any combination of men, hath any just authority to make a Law that shall without very sufficient reason deprive any one of those Rights, and Privileges which God hath bestowed upon him (13). And if such a Law should any where be established, either by Violence, by Artifice, or by Corruption, it hath in reality no justifiable, though in meer form it may have a legal claim to obedience. Every one hath a Right to oppose it: the voice of Nature cries out against it, and this voice is supported by the Institutions of God.

This is to be understood as applicable to those decrees of a corrupt or tyrannical Legislature which are real, and manifest oppressions, and are not reconcileable with the Laws of

God, or the Rights of Man: but is not meant as a justification of those tumultuary combinations of a seduced and infatuated multitude, who under pretence of grievances oppose salutary Laws, and from motives of discontent and faction are the disturbance and disgrace of civilized Society. This is indeed Licentiousness, not Liberty. Legitimate Government and the Spirit of true Liberty, like sincere friends, go hand in hand together, each cordially supporting, and giving all assistance to the other.

Man from the instinct and propensities of Nature, is, as many other of his fellow creatures seem to be, a social animal, and by the kindness of Providence being also a rational agent, and qualified to form a judgment of what is Fit, and Convenient, when once either from the propensities of Nature, or the circumstances of his Situation, he is become a member of Society, he soon sees both the necessity, and the utility of Government; which cannot subsist without Laws that bind all the members of the Society. Yet in the rudest form, and most imperfect state of Law, there is an Original Rule, and superior obligation, that of not violating, so far as they are known, the Laws of God, and the common Rights of Man, in conformity to which all Human Institutions must be framed, otherwise they are void of Authority.

But Law, in the proper sense of the word, is entitled to absolute obedience: it is the support of Liberty Civil and Religious, but cannot take away either; and Legislators who through servility, corruption, or tyranny, who through ignorance, superstition, or prejudice, have ordained institutions to this purpose, may be said to have issued Edicts, and these they may have enforced by penal sanctions: but they have not, properly speaking, established Laws: for it is essentially necessary

ecessary that the Object, and the matter of Law be fundamentally holy, and just, and good; or in other words, consistent with the ordinations (35) of God, and the Rights of Man.

Then is Law properly supreme; nor is there any other power existing that can supersede, or dispense with its Authority. The Constitution of this Country, for example, is a limited Monarchy, consisting of three component Powers; and the Authority of Law, in its true sense, is the united force of these three powers combined: which must therefore be the highest Authority: for to assert that any one of these powers is singly superior to the joint power of the three united, appears no better sense than to assert, that a Part is greater than the whole, of which it is but a Part.

When Law, under the restriction just mentioned, is established, and obeyed, then, and then only, is a people, properly speaking, Free: but Liberty is gone whensoever any power, but that which made, shall presume to controul, supersede, or dispense with Law. (39)

In those great and important exigencies indeed, in which the safety, and well-being of the Community immediately demands as it were a transgression of the established Law, as in cases of Invasion, dangerous Conspiracies, and the like, it is highly meritorious to make the transgression, and abide the determination of a judicial Enquiry. But this is very different from those unjustifiable attempts of arbitrary princes who for the purposes of ambition, either break through Law, or exert, as far as they are able, a dispensing power. In these instances there is indeed an agreement in one point, that each is a Transgression of Law: but still the Principle, the Motive, the Action, is in nature opposite, that on one side being directed to the Security, that on the other to the Destruction of the Common Welfare.

But



But it may be here observed, that the despotism of a King is not the only species of Tyranny that is destructive of a legal and free Constitution, or indeed that which is with greatest reason to be dreaded in this Country. There is a Tyranny of the Nobles, a Tyranny of Ecclesiastics, a Tyranny of the Multitude: each of these is the Bane of true Constitutional Liberty; and the Free People of this land, having at different times severely felt the scourge of each, it is now their duty, if they regard their own, or the welfare of those who are to come after them, to be cautious of, and to guard against them all.

Ineffectual efforts to this purpose have frequently been made, but it was a long time indeed before Law, so far as it respects Civil and Religious Liberty, was in its true sense established in this nation: the glorious event which we commemorate this day, may be considered as its precise æra; nor need we go farther back to look for the proper establishment of our invaluable constitution.

There had been for ages a miserable contest between the Abettors of civil despotism, and licentious faction, of fanatic infatuation, and spiritual tyranny, till Heaven at length smiled upon the noble endeavours of the conscientious friends to true Liberty. Then were those sacred privileges in solemn form confirmed, which always had been claimed by our ancestors: to which claim direct reference is made in that declaration of Rights, which at this æra abjured the dispensing power of Kings; when it was become necessary to remove an inhuman and insupportable tyrant, and place the Protector of Law, and the Defender of Civil and Religious Liberty, upon the Throne. In which transaction is contained a plain recognition of that important Truth, which is in the strongest manner enforced by Writers of the first eminence in their profession,



profession, particularly by Glanville, Bracton, and Fortescue, in several parts of their very valuable works; namely, That between King and Subject there is a bond of reciprocal obligation, and that the one is no longer entitled to Obedience, than the other receives Protection.

But this is not to be so understood as if every unimportant transgression beyond the bounds of Legal Prerogative would justify an actual resistance. The peace of Society is of so great worth, that Obedience is due till Tyranny begins to trample upon the dearest Rights of man, and overturn the Fundamentals of a happy Constitution: till scenes shall be exhibited similar in tendency to those which gave birth to the present solemnity. For the Actions of Kings ought not to be judged by a severer tribunal than that which judges the actions of their Subject. Men of all denominations seem to be desirous to extend their power beyond its proper bounds. This is not a fault peculiar to Kings; it is an imbecillity of human nature. Where shall we meet with instances of Ambition and Tyranny so insufferable as amongst those men whose profession, whose peculiar character, should have taught them Benevolence, and Moderation? who nevertheless have sacrificed every Virtue for the acquisition of Power, and stopped at no iniquity to encrease it. But these and all other similar abuses made not any alteration in the Original Rights of men, who always had an inherent title to Liberty, and in this Country, as they were able, always asserted it.

Yet notwithstanding all that could be said or done in defence of their Rights and Privileges, Oppression, and Tyranny, at different times in various forms prevailed. Then partial Laws were instituted, as occasion called, to redress partial grievances, lessening sometimes the burthen of Civil, sometimes that of Religious Oppression. But Civil and Religious

ligious Liberty was never made the grand systematical object of Constitutional Law before the æra of the Revolution. This great event was founded on the Principles of Eternal Truth; on the Principles of that venerable, and most worthy man, whose character we have lived to see publicly insulted, and basely defamed.

We must indeed allow to the patrons of lawless power, that the people of this nation have in fact at different times suffered a dreadful slavery to Kings, to temporal Nobles, to spiritual Tyrants. But it is also true, that as opportunity would permit, they endeavoured to throw off the galling yoke, and gain their Liberty. Sometimes this effort went no farther than to encrease the power of one Tyrant, in order to diminish that of another, which was found no longer tolerable. As if it was something like relief, something like an advance towards Liberty, to change the mode of Tyranny, and Torment. But it seems a strange employment at this time of day, to go about to prove, that because men were once unjustly bound in slavery, they therefore have not any right to Liberty. For oppression cannot from prescription give a title to enslave; nor does an enforced and unnatural sufferance of Slavery, defeat the inherent Right to Liberty. It were an attempt not more base and unworthy the spirit of a man to maintain, that because we were once in a state of barbarism and ignorance, we never should have pretended to civilized cultivation, either of mind or manners, or to have broken those bands that held us in a condition inferior to that of the beasts that perish.

This reformation was a necessary and a glorious work, but it was effected by degrees, arising from incomplete rudiments to Institutions of a more, and still more perfect nature. Yet those that were formed in times of Ignorance and Superstition, though

though very imperfect, in an absolute consideration, were not without their relative merit. Let us therefore not deceive ourselves by looking upon them with a comparative contempt, but learn to set a due value upon our own. They were the *Foundation of Liberty*. There might be a greater propriety in them, arising from the circumstances of the times, than we at this distance may be able to perceive; and if we neglect or abuse our present blessings, we may relapse again into a worse state than that from which we have emerged. For no human institutions are necessarily perpetual; and nothing but virtue can give permanent stability to them. We were once under the dominion of an Evil Demon: our house hath been swept and garnished; let us not call in other bad spirits, and make our last state worse than the first.

The barbarous nations who by predatory incursions settled themselves in this country, formed, we deny not, a sort of Constitution which held the people in Slavery, to a number of small, but cruel tyrants. A people uncivilized as they were, had not any proper notions of subordination: their turn of mind was warlike, and their sentiments ferocious: their Liberty might border too nearly upon Licentiousness, and one species of violence might call for another to restrain it. But as Science, and the Arts gained ground, as Commerce opened a communication with civilized nations, and softened their manners, they became sensible of the Rights of human nature, claiming gradually, and at length asserting effectually, their Liberty. \*

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\* Proofs of this happy disposition appear as far back in history as the days of Vassalage and Military Service. "As the times grew more peaceable, and the new conquerors were more safe in their conquests, more peaceable manners prevailed, which made the minds of men to be shocked with the bondage of their fellow creatures; † Villains were enfranchised; the slavish tenure of Villenage was

† Littleton. sect. 204. et seq. as referred to by Dalrymple.

In process of time the same happy æra which secured our Civil Rights, established also to a certain degree our Religious Liberty. For we had formerly been in this respect also, in a state of dreadful servitude to that peculiar species of Despotism, which must for ever be the astonishment of all sober minded Christians. But the great Reformers of Papal Encroachments first gave men a full view of their Religious Rights, and ascertained to them an unquestionable claim to Liberty of Conscience.

Now Liberty of Conscience in matters of Religion, though often denied, is yet a clear and certain Right belonging to every man upon the face of the earth: for, strictly speaking, Conscience is nothing more than the sober judgment of a man's own mind, either previously upon something intended, or by reflection upon something already past. And as it is impossible for any human power to restrain the operations of the mind of man, in judging on any subject that falls under his contemplation; his private judgment therefore on religious subjects must be free, except in this respect he enters into voluntary slavery; which indeed is the case under the Papal System: otherwise it is as absurd, as it is unjust, to endeavour to chain down his Opinion. The open declaration of Opinion indeed Penal Laws may restrain; but these can never reach the heart, and private judgment of the mind. That every man therefore should be master of his own judgment and determinations in religious concerns, is a part of Natural Liberty, allowed and approved by our Saviour, who frequently appeals to the private judgment, or conscience of his hearers. Under the Papal Institutions indeed men were in effect compelled to resign, this their Natural Liberty, to the pre-

was deemed to be too severe, and by degrees was converted into a tenure better accommodated to the more civilized dispositions of Mankind. See Dalrymple's *Hist. of Tenures*.



pretended Infallibility of the Church. But that important change in Ecclesiastical Polity, the Reformation, restored to them the exercise of this Natural Right, which also was farther in Legal form allowed, and established in this country at the Revolution. From that day to the present, according to the influence of Education, Prejudice, Passion, or Interest, and the different capacities of men, this concession is seen in very different views, and some condemn as too great an indulgence, what others consider as an unjustifiable restraint. — I would therefore say a few words upon the real state of Religious Liberty, as it is now settled in this country, it being a main part of my Subject, but fear that this is too slippery ground for me to venture upon without danger of falling. Yet as it essentially belongs to the Solemnity of this day, it seems to be my duty not to pass it over entirely unnoticed. And as I intend not to offend any man, or any collective body of men, a plain historical fact may surely be referred to without offence, and I may suppose myself permitted to observe, that some portion of that ill-judging, that intemperate zeal, which at the Restoration pressed the Act of Uniformity with relentless rigour, descended down and influenced too much the spirit of some men at the Revolution. Protestant Dissenters indeed gained some little relief, but still were subjected to severities absolutely unjustifiable. The Sword was still kept hanging over their heads, suspended by a single thread. The truly christian endeavours for a comprehension by a liberal toleration, found great opposition, I am sorry to say, for this shameful reason, That it was bad policy to put an end to dissensions, or suffer so great a body as the Protestant Dissenters to be made easy and inclineable to unite with the Church. These proceedings were a great bar to



Religious Liberty. But its greatest check, and the heaviest burthen upon the conscience of worthy men, is the particular Form and Circumstances of Subscription, then reestablished, and continued to the present day; which is an impediment only to those who are honest, which constantly defeats its own pretended purpose, and probably will sometime end in the destruction of that System which it was intended to support. With respect to this Subscription, Bp. Burnet tells us that he fell under great censure for moving that instead of *Assent*, and *Consent*, it should only be to submit, with a promise of Conformity. A motion, which how far so ever it may have been blamed in some particular considerations, nevertheless proved him to be, what he had always with great constancy shewn himself, a friend to Religious Liberty. As on the other hand, the enmity it provoked, was a plain evidence that his opponents either did not understand, or refused to support that Liberty wherewith Christ hath made us free.

Yet surely had this proposal been complied with, or the phrase *Assent*, and *Consent*, been explained to signify only *so far as each Individual thought it agreeable to the word of God*, things would have been in a better state than they now are: the requisition would then have been more consistent with the fundamental principle of the Protestant persuasion, and more agreeable to that Liberty of Conscience, which we derive both from nature, and from the great Author of our Religion. Then would the Son have made us Free, and so should we have been Free indeed. But this must be in God's appointed time, who knoweth the fittest seasons for all things. As matters are at present, our enemies reproach us, and our friends desert our Communion. Yet let us not despair. Our duty indeed is Obedience, as far as conscience will permit us

to go; but still we have a right to apply with decency, though with little hope for a redress of those grievances which ought to be reformed.

The foregoing remarks respect principally the Externals of Establishment: the Internal part suggests a more important cause of consideration: but with this I meddle not. The Institution of Christianity, whether we regard its Origin, its Doctrines, or its Sanctions, is in every view complete; it is noble, it is perfect, it is divine. Remove from it human corruptions, it is easy to be comprehended, not difficult to be practised, and in the observation of its precepts, certainly productive both of present and future happiness.

How far the Established Doctrines of any Human System, with which we are acquainted, truly correspond with this general idea, I leave to others to enquire, and to determine. But of this I am very confident, that the Infidelity of which we justly complain, the consequences of which we have the greatest reason to dread, is, in great measure, owing to the false representations of Christianity in the established Doctrines of Human Systems. I do not mean particularly our own: but as heavy complaints have even here been made, as objections of consequence have been seriously and candidly propounded, and as we cannot pretend a total exemption from human Error, the time seems now to be arrived, that reminds us of our Religious Liberty, that calls aloud for a free, and dispassionate revival. Not one like that in the cause of the Arminians, founded in Faction, and carried on by Persecution and Tyranny, where the Decision was made before the Cause was heard; but a serious, a free, an unprejudiced Examination, conducted in the genuine spirit of Christianity, the liberal spirit of mutual Toleration, with respect to every disagreement in Opinion, or opposition of Sentiment; a spirit of  
Mildness

Mildness and Moderation, regarding matters to be proposed; a spirit of Indifference, as to things confessedly indifferent; a spirit, not only of general Justice and Equity, but of Universal and Disinterested Charity, and Benevolence. And I will take upon me to say, that there are at this day, and in this country, men sufficiently qualified in every respect, in theological knowledge, in sincerity of heart, in candour of judgment, in a proper sense of what is expedient, as well as a firm conviction of what is right, and in short, in every human requisite for so glorious an undertaking.

All human institutions begin in imperfection: in proportion to the wisdom and virtue of the community, they will regularly move in a progressional course towards perfection, yet even in their best estate will fall short of it. During this progress, there is an agreement and natural connexion between Civil, Moral, and Religious Improvements, and Liberty, Civil and Religious, hath on this ground its most durable establishment: and when it is thus established, then is produced the most excellent form of human Government. But by Vice, and Folly, attendants too common on a state of prosperity, the best may be corrupted and become worst. Then will Liberty be lost, and such a sort of Dominion formed, as is fit for a degenerate and corrupted state. But to waive the supposition of a degeneracy so fatal, the meer course of time, and the change of manners, and opinions, in the variation and uncertainty of human affairs, will produce some degree of Instability in the best contrived institutions, whether Civil or Ecclesiastical: requiring constantly the Attention of wise and good men, to prevent their decline, to remove what may be amiss, to reform what requires reformation, and promote their general improvement. Who therefore should not obstinately adhere to a precise observation of things once established,

established, merely and solely on that ground; for it is at least a great impropriety to persevere in any practice, either in Civil or Ecclesiastical Institutions, when all proper reason for it is entirely removed and gone.

A perfect agreement with the Principles of Natural Justice and Equity, with a proper accommodation to the particular circumstances of the People, gives, it is acknowledged, the finished excellence (45) of human (47) Laws. And this their excellent formation, arising principally from two considerations not always perfectly consistent, That namely which is Right, and that which is Expedient, the wisdom of Legislators, as well as the difficulty of their office, will be seen in giving to each its due, if the claims of both cannot be entirely reconciled or satisfied.

But as these circumstances, and consequently the manners of every people, are perpetually varying, the Legal Institutions must therefore in due degree be varied also, if we would preserve consistency between those Institutions, and the conduct of those who are to be governed by them. And hence arises not only the Propriety, but indeed the necessity of timely and repeated Reformation, if we would give to any state or society of men, permanent vigour and prosperity. \*

A skilful Physician will sedulously watch the variation of circumstances in every disorder; and if from careful observation he finds the remedies, which hitherto may have been of service, prove no longer effectual, he will apply others that may better promote his intended purpose: he will not indeed give up the use of Medicines, essentially necessary, or any capital intention of cure, merely to gratify the petulant humour

\* Cum decursu temporis fieri solet ut non solum a Legibus paulatim defectant Mores sed et ipsa etiam tandem vitientur Remedia; non minoris consilii atque industriæ res est *Legum Vitia* sanare quam hominum.

Præf. ad Cor. Stat. Univ. Oxon.



mour of every froward Invalid; nor is it hereby meant, that salutary Institutions are to be perpetually changed in subserviency to the wayward fashions, and fluctuating modes of prevailing manners; but they may be conveniently altered, or even new-modelled, without proceeding so far.

Fundamental and Essential Principles must always be retained; which are easily known, and should frequently be considered and applied to, by those Governors of a State who are anxious for its welfare. But if these Principles should be obscured by adventitious impurities, it is the duty of good men to endeavour to remove every superinduced corruption; which at all times might be effected without any prejudice to the Principles themselves.

Nothing can evince this important truth more decidedly, than a careful attention to the alterations that have been made in the Legal Institutions of this Country, till they arrived at that happy period, which is the subject of the present Solemnity. (v. 48, 49, &c. &c.)

Yet many respectable men, whether from timidity of disposition, from indolence, from the influence of early prejudice, and a contracted mode of Education, which sometimes occasions an illiberal turn of Sentiment, or whether from any other latent cause, look however upon every attempt to correct abuses, and remove what is amiss, with no small degree of horror; insomuch that the very word *Reformation*, carries with it a sound of terror and confusion.

Some fear that Reformation, if begun, would have no end: but from removing the Evil, would proceed to destroy the Good. And to this instance they have shewn a readiness to apply the Parable, of the Tares being permitted to grow with the Wheat till the time of the Harvest, lest by gathering the Tares, the Wheat should be rooted up with them. But this is both a  
misap-



misapprehension of the Spirit, and misapplication of the Letter of the Parable. For, as to the Letter, our Saviour says expressly, That the Field in which the good Seed was sown, and the bad intermixed with it by an Enemy, is the World at large; not any particular Society of the Christian Church. That the Harvest is the End of the World, when the general Separation will be made of the Righteous from the Wicked. The Parable therefore refers to the general Dispensations of Providence, in the mixture of Good and Bad Men, in this our scene of Probation, and to the final judgment of all mankind at the great day of Retribution. And as to its spirit and real intent, it seems to me only to teach the general Doctrine of Moderation, and Universal Benevolence, with a prohibition of every sort, and every degree of Persecution: but it does not appear to be, with truth and candour, applicable to the care and attention of good Shepherds to preserve their particular flocks from any disorder that chance, or neglect, or the malice of an enemy may bring upon them.

Others think that the *Present Time* is not a fit opportunity. Now if the *Present Time* as such, is not fit, all Times must of necessity be *unfit*, because every portion of Time must, in its turn, be the Present, and no portion of Time can possibly arise, in which some persons might not pretend some circumstances of unfitness for Reformation.

But all these objections, all this pretended fear, to say the best, is a meer imaginary Evil. And if the arguments raised on this ground were of real force, we must at this very moment have been slaves to civil and religious Despotism; nor could either the Reformation have taken place, or even Christianity itself been introduced into the world. But we are afraid where no cause of fear is: we have a precise and determinate Standard of Civil and Religious Truth, by which

we can measure, and know with certainty, the rectitude or obliquity of our Civil and Religious Opinions. To that Standard we ought always to refer, and by it decide all our doubts, and difficulties. This ought to be our last resort, and we should not acknowledge any other decisive authority. It is scarce necessary to add, that in matters of Religion, I mean The sole Authority of the holy Scriptures; and in civil concerns Those Laws, which, as on this day, established our invaluable Constitution.

The blessings we enjoy from it are manifold, and of the utmost importance. And if there be some tincture of human Imperfection in it, it is no more than must be expected in all human appointments. Upon the whole, our situation is in many great advantages superior to that of any people upon the face of the earth. A celebrated author of a neighbouring kingdom has declared (which was true when he wrote) that we are the only nation in the world where the direct object of the Constitution is Liberty.

May we therefore never be deluded by the sophistry of unprincipled men, who would persuade us that we are slaves; who would erect amongst us a Power superior to Law; who for reasons best known to themselves would lead us back into the gall of bitterness, and the bonds of iniquity. May we always shew a due obedience to every just ordinance of man for the Lord's sake: to the King, as Supreme, and to all inferior Governors, as being appointed, not only for the punishment of evil doers, but for the praise of them that do well; for ever holding in equal abhorrence, both Licentiousness and Despotism. May we with conscientious firmness always conduct ourselves as Free, yet never use our Liberty for a cloke of Maliciousness, but as the servants of God.

## NOTES referred to in the foregoing Sermon.

Note (1) p. 6. When Alfred, a prince truly great and good, by his wisdom and military prowess had made himself superior to his enemies, his next care was to turn the power he had gained, to the good of his subjects. He formed a collection of the best Laws he could devise or find, and adapted them to the circumstances of his people. In these Laws appears an ardent zeal for Justice, and a sincere desire of rooting out oppression, and violence. They were calculated to save the Poor and Low from being oppressed by the Rich and Great. But as he was sensible that the Spirit of Oppression grew upon men in authority, he studied to prevent that inconvenience. To this end he instituted *Juries*; a mode of administering Justice, which has rightly been denominated the *Bulwark of Liberty*. On which the Historian (Rapin) observes, Happy is the People who enjoy so glorious a Privilege! Alfred died in the year 900.

(2) p. 6. At this early æra, from which we may deduce the Origin of our present Constitution, we cannot see any countenance given to the base and preposterous doctrines of Despotism, and Slavery: but on the contrary, a due regard to the Rights of Mankind, and the Civil Liberty of the Subject.

(3) p. 7. A few centuries afterwards, in the time of Hen. II. flourished Glanville. In whose works are many strong and express passages declaring and defending the Civil Liberty of the Subject. Particularly he says, that between King and Subject there is Duplex et reciprocum ligamen quia sicut subditus regi tenetur ad obedientiam, ita Rex subdito tenetur ad protectionem. On which a very sensible and ingenious author makes this observation; "Notwithstanding therefore the power usurped by the Norman princes, the great authority of the Nobles, and the low estate of the People, there is little reason to think, that non-resistance, and a quiet submission to arbitrary power, was ever considered as a duty in this kingdom." King's Essay on the English Constitution.

(4) p. 7. After Glanville, in the 13th Century lived Bracton. His celebrated work treats De Consuetudinibus Ang. in Lib. 5. In many places of this book passages of importance in favour of Liberty seem to be transcribed from Glanville.

(5) p. 7. Next, and not long after him, as we may fairly conjecture from Mr. Selden, is to be considered the Work entitled *Fleta*, in which is to be found a similar defence of Civil Liberty.

(6) p. 7. In the time of Hen. VI. sir John Fortescue was Ld. Chief Justice, and Ld. Chancellor of England. He wrote many valuable works, amongst which is a treatise entitled, *De laudibus Legum Angliæ*, in which he proves that our Laws are not alterable at the sole will of our Monarchs, whose power is not *Absolute* and *Royal*, but *Legal* and *Political*; and that Statutes enacted by the advice of our Senators, are not alterable but by the same authority that gives them their being. He was also the author of a treatise, *De Politica Administratione, sive de Domino Regali, et Domino Regali-politico*. The difference between which he describes to this effect, That the former is

a Dominion Absolute, the other a Dominion under established Laws, and that the Dominion of England is of the latter sort.

(7) p. 7. Sir Thomas Smith flourished in the reign of Elizabeth and James. He wrote a treatise, *De Republica Anglicana*. In his 2d. Book, Ch. 23, *De Plebeis*, he says, *Eum ego Plebeium voco, quem Leges nostræ Hominem Legalem appellant, voce in formulis et inquisitionibus tritissimâ, qui statim ut natus est, ingenuus est.*

(8) This chain of authorities, through so many ages, from men deservedly of the first character, both for Abilities, and Integrity, all agreeing in the defence of Civil Liberty, should teach the modern patronizers of despotic principles, that there is more to be produced in favour of the Common Rights of mankind, than they seem either to be aware of, or willing to allow. I shall now in proof of this point give a few extracts from each of these authors, according to the order of time in which they respectively wrote.

(9) Glanville de *Legibus et Consuetud. Ang.* describing the Nature and Spirit of the Laws of England, says, *Pauperem non opprimit Adversarii potentia, nec a limitibus Judiciorum propellit quemquam amicorum favor aut gratia.* And although he does afterwards introduce that maxim of the Civil Law, *Quod principi placet Legis habet vigorem*, yet he explains and qualifies it in such a manner, as to shew clearly, that it is not the Absolute will of the King that has the force of Law, but only his Fiat given to the voice and determination of the other branches of the Legislature. *Leges Anglicanas licet non scriptas Leges appellari non videtur absurdum, (cum hoc ipsum Lex sit Quod principi placet Legis habet vigorem), eas scilicet quas super dubiis in Consilio definiendis, procerum quidem consilio ex principis antecedente autoritate constat esse promulgatas.* Glanv. Prol. ad Tract. de Leg. et Conf. Ang.

(10) *Mutua debet esse Domini et Homagii Fidelitatis connexio, ita quod quantum homo debet domino ex homagio tantum illi debet Dominus ex Dominio.* Glanv. B. 9. C. 4. And again, as quoted by Mr. King, *Ess. on Eng. Constit.* between the Sovereign and Subject there is, *Duplex et reciprocum ligamen, quia sicut Subditus Regi tenetur ad obedientiam, ita Rex Subdito tenetur ad protectionem.* Thus Glanville.

(11) In Bracton we read as follows. *Legis vigorem habet quicquid de consilio et de consensu magnatum, et reipublicæ communi sponfione, autoritate regis præcedente, juste fuerit definitum et approbatum.* Brac. Lib. 1. c. 1. § 2.

(12) *Quæ quidem (Leges sci. Anglic.) mutari non poterunt nec destrui sine communi consensu et consilio eorum omnium quorum consilio et consensu fuerint promulgatæ.* Id. Lib. 1. C. 2. § 7.

(13) p. 11. *Lex, specialiter significat Sanctionem Justam, jubentem Honeſta, prohibentem contraria.* Id. Lib. 1. C. 3. § 1.

(14) — *omnis quidem sub eo (sci. rege) et ipse sub nullo (i. e. no person) nisi tantum sub Deo. Ipse rex non debet esse sub homine, sed sub Deo, et Sub Lege, quia Lex facit Regem.* Attribuat igitur Rex Legi, quod Lex attribuit ei, videlicet dominationem, et potestatem, non est enim Rex ubi dominatur voluntas et non Lex. Lib. 1. C. 8. § 5.

(15) In Dominico Di. *Regis plura sunt genera hominum: sunt enim ibi servi, sive Nativi ante conquestum, in conquestu, et post, et tenent villenagia, et per*



per villana servitia, et *incerta*, qui usque in hodiernum diem villanas faciunt consuetudines, et *incertas*, et quicquid eis præceptum fuerit, *dum tamen licitum et honestum*. Fuerunt etiam in conquestu *Liberi homines* qui *libere* tenuerunt tenementa sua per *libera* servitia, vel per *liberas* consuetudines; et cum per potentiores ejecti essent, post modum reversi, receperunt eadem tenementa sua in villenagio, faciendo opera servilia, *sed certa et nominata*, qui quidem dicuntur *Glebæ Ascriptitii* et nihilominus *Liberi*; quia licet faciant opera servilia, non faciunt ea ratione *Personarum*, sed ratione *Tenementorum* — et ideo dicuntur *Glebæ ascriptitii*, quia tali gaudent privilegio, quod a *Glebæ amoveri non poterunt* quamdiu solvere possunt debitas pensiones, &c. &c. Brac. Lib. 1. C. 11.

(16) This author in his Chapter of the different sorts of Property, after specifying several, says, Item sunt res *Naturâ* nullius, ubi *Natura* non patitur quod possent esse alicujus, sicut sunt *Liberi homines*, liberi enim homines exempti sunt a Dominio.

(17) Rex habet superiorem Deum; item Legem per quam factus est Rex. Item Curiam suam, videlicet Comites, Barones, quia Comites dicuntur quasi Socii Regis, et qui habet Socium habet Magistrum, et ideo *Si Rex fuerit sine fræno, i. e. sine Lege, debent ei frænum ponere*. L. 2. C. 19. § 3.

(18) Libertas est naturalis facultas ejus quod cuique facere libet, quod voluerit, nisi quod de Jure vel Vi prohibetur. L. 2. C. 16. § 4.

(19) p. 5. Debet Rex in coronatione sua, in nomine J. Christi præstito sacramento, hæc tria promittere populo sibi subdito. In primis se esse præcepturum, et pro viribus opem impensurum, ut Ecclesiæ Dei, et omni populo Christiano vera pax omni suo tempore observetur. Secundo, ut rapacitates et omnes iniquitates omnibus gradibus interdicit. Tertio, ut in omnibus judiciis æquitatem præcipiat et misericordiam, ut per Justitiam suam firma gaudeant pace universi. Ad hoc autem *creatus est et electus* ut justitiam faciat Universis. — Separare autem debet rex jus ab injuria, æquum ab iniquo, ut omnes sibi subiecti honeste vivant, et quod nullus alium lædat, et quod unicuique quod suum fuerit reddatur. Licet omnes potentia præcellat, tamen ne sit effrænata, frænum apponat temperantiæ, et lora moderantiæ, ne cum effrænata sit, trahatur ad injuriam. Nihil enim aliud potest Rex in terris, nisi id solum quod jure potest; nec obstat quod dicitur, Quod Principi placet Legis habet vigorem, quia sequitur in fine Legis cum lege regia quæ de imperio ejus lata est, non quicquid de voluntate regis temere præsumptum est, sed animo condendi jura, sed quod consilio magistratuum suorum, rege authoritatem præstante, et habita super hoc deliberatione et tractatu recte fuerit definitum. Potestas itaque sua Juris est, et non Injuriam: exercere igitur debet rex potestatem juris, sicut Dei vicarius et minister in terra, quia illa potestas solius Dei est; potestas autem injuriam Diaboli et non Dei. Igitur dum facit justitiam, vicarius est regis æterni, minister autem Diaboli dum declinet ad injuriam. Dicitur enim Rex a bene regendo, et non a regnando, quia Rex est dum bene regit, Tyrannus dum populum sibi creditum violenta opprimit dominatione. Temperet igitur potentiam suam per Legem quæ frænum est potentiæ quod secundum leges vivat, quod hoc sanxit lex humana quod leges suum ligent latorem. Item nihil tam proprium est imperii quam legibus vivere, et majus imperio est legibus submittere imperium.

imperium, et merito debet retribuere legi quia lex tribuit ei; facit enim Lex quod ipse fit Rex. L. 3. 9.

(20) Est genus Villenagii quod tenetur de Do. Rege a conquestu Angliæ, quod dicitur Socagium Villanum, et quod est Villenagium, sed tamen privilegiatum. Habent itaque tenentes de dominicis Di Regis tale privilegium quod a Glebâ amoveri non debent, quamdiu velint et possint facere debitum servitium, et hujusmodi Villani Socmanni propriè dicuntur Glebæ Ascriptitii. Villana autem faciunt servitia, sed certa et determinata. Nec compelli poterunt contra voluntatem suam ad tenenda hujusmodi tenementa, et ideo dicuntur *Liberi*. Braët. Lib. 4. De Assisa novæ Dissesynæ. C. 28. § 5. Thus far Braëtton.

(21) The beginning of the Fletæ autoris præmium, and of the Prologus to Glanville's tractatus de Consuetudinibus are for many sentences together word for word the same. The same agreement is observable in many other parts. Between Braëtton too and the author of Fleta, there is in many parts the same coincidence both of sentiment and expression; but particularly their definition of Liberty is literally the same, as also of the Socmanni. Socmanni dicuntur Glebæ Ascriptitii, eo quod a Glebis amoveri non debent quamdiu solverint debitas pensiones; nec compelli poterunt ad hujusmodi tenementa tenenda contra suas voluntates, eo quod corpora sua sunt libera. Flet. L. 1. C. 8.

(22) Mr. Selden also in his Dissertatio ad Fletam, as will presently be more particularly shewn, informs us of the same sort of agreement between the work of Gilbertus de Thornton and those of the Lawyers above mentioned. "Opus quod diximus Thorntonii esse Henrici de Braëtton summam abbreviatam palam est. Verba tituli integra damus.

(23) Incipit summa de Legibus et Consuetudinibus Angliæ a Magistro Henrico de Bryctona composita tempore Henrici filii Regis Johannis, quam quidem summam Di. Gilbertus de Thornton tunc Capitalis Justitiarius Di. Regis in Anglia secundum statuta et leges tunc usitatas, ad utilitatem posterorum diligenti studio postmodum abbreviavit sub compendio anno regni regis Edwardi filii Regis Henrici vicesimo. Incipit non aliter atque Braëttonius ipse, nec aliis in præmio verbis quam ille in editis utitur. Postrema item ejusdem verba, et caput partis octavæ postremum integrum eadem fermè sunt ipsissima quibus finitur Braëttonius.

(24) This very close agreement between these ancient Lawyers, each in his day, of the most distinguished reputation and abilities, an agreement so close that the succeeding author seems to have borrowed the very words of his Predecessor, gives the fairest presumption that there was as perfect an agreement in their sentiments, with respect to the fundamental principles of the English Law, as it regards the Liberty, the Rights, and Privileges of the Subject. And as that one peculiar circumstance of the Tenant being *Glebæ Ascriptitius*, has sometimes been considered as a proof of the *Slavery* of our Ancestors, as if indeed they were no better than cattle, and conveyed with the Land, or disposed of at the absolute pleasure of the Lord, it must be no small satisfaction to the true friends of Liberty, to see that this argument is founded on a misapprehension of the meaning of this Expression, which the Authors abovementioned always use as a proof of Liberty. For the being *Glebæ Ascriptitius* did not signify that the Tenant was transferable or not, with the Land, at the will of the

the Lord, but that the Tenant under that description, had a Liberty of Possession, of which his Lord could not deprive him: that he could retain his tenement, or quit it *at his own pleasure*, provided he paid his stipulated rent, notwithstanding the will of the Lord to the contrary. And all the great Authors abovementioned, produce this known fact as a proof, not of the *Slavery*, but of the *Liberty* of the People of England.

(25) Quemadmodum autem Fletæ auctor in non paucis tam sententiis ac periodis integris quam rebus ipsi sequax est et Bractonii et Thorntonii, ita Thorntonius ipse Bractonii ut scilicet ejusdem epitomator; de quo utpote adeo Fletæ congener, atque scriptore quasi incognito, etiam ferme inaudito pauca liceat adjicere. Gilbertus ille de Thornton sub Edwardo rege primo cum potestate summa, seu quæ Capitalis Justitiarum vocatur, judiciis præfuit; quod nec ignorat quisquam siye Archivis nostris siye Juris annalibus non alienus. Anno autem ejusdem regis vigesimo Bractonium in Compendium redegit, unde etiam de singulari Bractonii qui Fleta paulo vetustior est, in Jure, sub Edwardo illo (cujus etiam Annales juridici in foro hætenus obtinere, atque in rebus gravissimis etiamnum obtinent) discutiendo, autoritate est dijudicandum. Selden. Differ. ad Fletam. C. 2. § 1.

(26) Neque Epitomator (Bractoni) solum sed etiam subinde et interpret egregius Thorntonius et Expositor. Id. C. 2. ad finem.

(27) As it must follow from what has been already cited that the People of England, notwithstanding the oppression which in many instances and at different times they suffered from the hand of violence, had nevertheless an undoubted right to Liberty; it may not be improper now to see what was in former times the Legal idea of the Power of the King.

(28) It appears by Mr. Selden's Dissertation upon the Fleta, that the celebrated maxim in the Imperial Law, *Quod Principi placet Legis habet vigorem* was generally construed both by the Greek and Latin Expositors, as giving the Prince an absolute and unqualified dominion, nothing being permitted on the part of the Subject but slavish and unconditional Submission. And this sort of unlimited power hath not only in past times been frequently contended for in England, but even in the present day hath been defended as Justifiable Prerogative. But when either they who are entrusted with Government, or they who publish their Sentiments on Political Subjects, begin to rave in this distracted manner, it is high time they should be put under *Legal* confinement. And it is worth notice, that Mr. Selden mentions it as a remarkable thing that our great Lawyers, as Glanville, Bracton, Thornton, and the Author of Fleta, (to which I may add Fortescue) consider this maxim in a way very different from the ancient Civilians, and explain it in a restrained and qualified sense, as implying no more than the *Soit comme il est desire*, and *Le Roy le veut*, of the present day; that is to say, the Royal and Formal confirmation of the Opinion and Desire of the other branches of the Legislature.

(29) But though the arbitrary and unconfined acceptation abovementioned was general amongst the ancient Civilians, it was not universal; for Mr. Selden, in the same Dissertation, says, (Diss. ad Flet.) — Theophilus quartum juris condendi autorem post tres illos Populum, Plebem, Senatium, facit Principem Romanum; καὶ τὴν, inquit, ἐστὶν βασιλεύς; ἐστὶν ἡ κρατὸς τῆ ἀρχῆν. παρὰ τῶν

τυ δημο λαβω. Et quid est Princeps? Princeps est qui potestatem imperandi a populo accepit. Ita Legem Regiam, ut Ulpianus, intellexit. Et Scholiastes ibi, βασιλευς νομικος, Princeps Legitimus, cui scilicet potestas sic concessa. Unde in Leonis et Constantini epitome vocatur Imperator εννομος επιτασια, legitima Præfectura.

(30) Specimen præ reliquis, Juris Cæsarei ab Juris consultis nostratibus tunc adhibiti peregrinorum est illud quod de potestate Principis seu Regia e Pandectis, sed non expressim memoratis Bractonius exhibet. — Then follows a Quotation from Bracton already cited. — Tantundem et totidem ferè syllabis Fleta, Thorntonius item, parili adjuncta ratione.

(31) A little further on Mr. Selden informs us of the propriety, or rather the necessity, which even the Civil Lawyers of that day were under to explain this maxim of the Imperial Law, admitted in their codes, in this restrained and qualified sense — ex eo quod Professores ac studiosi eo in ævo juris hujus quod ita paulo ante occidentalibus instauratum est, cautiùs timerent, ne si Principibus ex eo potestatem tantam quanta in priore sententia habetur, tribuerunt, *Populis, civibusque per Europam passim Libertate, moribusque avitis, potestati ejusmodi haud parum dissonis, gaudentibus, nimium displicerent*, nec recens enascenti Professioni suæ satis prudenter consulere. Seld. Diff. ad Fletam. C. 3. § 3. Surely no one can desire a fairer proof of the general and prevailing Spirit of Liberty in those days, and the legal limitation of Royal Authority.

(32) It seems also to follow, from what Mr. Selden says a little farther on, that the Imperial Law, so favourable to the ambitious views of Princes, was not in form introduced into England, till a foreign Tyrant had subdued the people of this Land, deprived them of their ancient Liberties, and established an arbitrary dominion. Gulielmus primus dicitur Londinum anno suo quarto convocasse omnes, e provinciis suis universis, Anglos nobiles, sapientes et Lege sua eruditos, ut eorum et Jura et Consuetudines ab ipsis audiret. Atque ut ante ita post usque in tempora quibus ita in studia ac forum, qualitercunque receptum est heic Jus Cæsareum, Jurisperiti ac Causidici nostrates nullo alio jure omnino præter patrium (nisi forsan Pontificii aliquot capita quæ in usu quotidiano excipias) ex instituto imbuti sunt. At vero usus ejusdem juris, qualiscunque is olim fuerit tum in Tribunalibus cæteris regiiis, tum in Jurisperitorum nostratium studiis, scriptisque, qua talium, postmodum evanuit, circa initia, ni fallor nimium, Edwardi tertii plane neglectus rejectusque.

(33) Quod autem ad usus ejusmodi effectum attinet, quicquid sane vellent, cuperentve Juris consultorum nostratium illi quibus ita utcunque adhibitum est jus illud, id certum est in Regimine publico quod Civile vocitamus nihil omnino inde consecutum esse mutationis, neque usûs ejusmodi effectum revera fuisse alium quam ut ii qui sic uterentur, ejusdem aut peritos aut sciolos aut amantiore se inde exhiberent, aut, ut illud simul cum Anglicano in praxi forensi, accedente autoritate publicâ, admitteretur, cupientiores, non omnino ut in Regiminis Civilis partes, velut vim obtinens, revera reciperetur. Et Gens ipsa tunc Anglicana, ac qui in Judiciis in ea præerant Tribunalium (in quibus etiam ipse Bractonius, et Thorntonius, et fortè etiam Fletæ autor) morum patriorum; id est, Juris communis Angliæ semper, etiam per intervallum



vallum illud, scilicet a tempore Stephani regis, per Henrici secundi, Richardi primi, et Johannis regum tempora, tenacissimi fuere; adeoque ut neque aut locutionis, scriptionis, aut agendi formulam aliquam in publicas tabulas ex Cæsareo, quantum observaverim, desumi, admittive vellent. In publicis insuper tabulis legitur quod regnum Angliæ ab omni subjectione Imperiali sit liberrimum, et que le royaume d'Angleterre ne estoit devant ces heures, ne a l'entent du roy nostre dit seignior, et seigniors du parlement unques ne serra rule ne governe par le ley Civil.

(34) Quod ad singularem per intervallum illud Juris Anglicani seu Patrii quod Commune vocamus, æstimationem, inque illo adhætionem spectat, cernitur quidem illa satis tum in ipsis articulis Coronæ et Placitis, tum ex juramento ipso solenni quo obstringi etiam tunc soliti illi qui Judiciis præficiantur. In formula juramenti expressim continebatur Se judicatuos secundum Legem et Consuetudinem Regni. Inde etiam inolevit locutionis formula illa Lex Terræ, quâ, uti etiam Legis et Consuetudinis Regni nomine, disertius designaretur Lex juxta quam vivendum judicandumque, sic ab Lege Cæsarea, Civili vulgo nobis, et tunc simpliciter dicta, omnino distinctam determinatamque. Verba etiam tantundem significantia in juramentis a regibus nostris illius intervalli (uti et temporis insequentis) in eorum coronatione præstitis legibusque ab eis latis expressim occurrunt, unde negata est Cæsareo heic juri in regimine publico, utcunque subinde adhibito, tunc vis omnimoda. Seld. Diss. ad Fletam, C. 8, et 9. — Thus far the Fleta, and Mr. Selden's Dissertation on that well known work.

(35) p. 13. In Fortescue de Laudibus Legum Angliæ we read, Lex est sanctio sancta jubens honesta, prohibens contraria. C. 3.

(36) Non potest Rex Angliæ ad libitum suum leges mutare regni sui. Principatu namque nedum Regali, sed et Politico ipse suo populo dominatur. Si Regali tantum ipse præesset eis, leges regni sui mutare ille posset; Tallagia quoque et cætera onera eis imponere, ipsis inconsultis, quale dominium denotant leges civiles cum dicant, Quod principi placuit legis habet vigorem. Sed longe aliter potest Rex, politice imperans Genti suæ, quia nec leges ipse sine subditorum assensu mutare poterit, nec subiectum populum retinentem onerare impositionibus peregrinis; quare populus ejus libere fruatur bonis suis; legibus quas cupit regulatus, nec per Regem suum, aut quemvis alium depilatur. Fort. C. 9.

(37) Ut non potest caput corporis physici nervos suos commutare, neque membris suis proprias vires, et propria sanguinis alimenta denegare, nec rex qui caput corporis politici est, mutare potest leges corporis illius, nec ejusdem populi proprias substantias subtrahere, reclamantibus eis aut invitis. C. 13.

(38) Clarissime jam conspicio quod non alio pacto gens aliqua, proprio arbitrio unquam se in regnum incorporavit, nisi ut per hoc, se et sua quorum dispendia formidabant tutius quam antea possiderent, quasi proposito gens hujusmodi fraudaretur, si exinde facultates eorum eripere posset rex suus, quod antea facere ulli hominum non licebat. Et maxime si legibus minoraretur eorum substantia, pro cujus vitanda jactura, ut pro suorum tutela corporum, ipsi se regis imperio, arbitrio proprio submiserunt, non potuit revera potestas

hujusmodi ab ipsis erupisse, et tamen si non ab ipsis Rex hujusmodi super illos nullam obtineret potestatem. C. 14.

(39) p. 13. Angliæ statuta non principis voluntate sed et totius regni assensu conduntur. Et si Statuta hæc tanta solemnitate et prudentia edita, efficaciam tantam quam conditorum cupiebat intentio, non esse contingant, concito reformari ipsa possunt, at non sine Communitatis et Procerum regni illius assensu. C. 18.

(40) Per leges Angliæ, Veritas (sc. exitus Placiti) non nisi 12 hominum de Vicineto ubi factum supponitur sacramento Judici constare poterit. C. 20.

(41) Inter Leges Civiles præcipua sententia est, Quod principi placuit Legis habet vigorem, qualiter non fanciunt Leges Angliæ; dum nedum Regaliter, sed et Politicè rex ejusdem dominatur in populum suum quo ipse in coronatione sua ad legis suæ observantiam astringitur sacramento: quod reges quidem Angliæ ægre ferentes, putantes proinde se non libere dominare in subditos, ut faciunt reges regaliter tantum principantes, qui lege civili regulant plebem suam, quo ipsi ad libitum jura mutant, nova condunt, pœnas infligunt, et onera imponunt subditis suis, propriis quoque arbitriis contentendentium cum velint dirimunt lites. Quare moliti sunt ipsi progenitores tui hoc jugum politicum abjicere, ut consimiliter et ipsi in subiectum populum Regaliter tantum dominari, sed potius debacchari queant. C. 34.

(42) Sanctus Thomas in libro quem Regi Cypri de regimine principis scripsit, dicit, Quod Rex datur propter regnum, et non regnum propter regem, quo omnis potestas regia deferri debet ad bonum regni. Quare rex qui hoc peragere nequit impotens est necessario judicandus. Sed si ipse passionibus propriis, aut penuria, ita oppressus est, quod manus suas cohibere nequit a depilatione subditorum suorum, quo ipsemet eos depauperat, nec vivere finit et sustentari propriis substantiis suis, quanto tunc impotentior ille judicandus est, quam si eos defendere ipse non sufficeret erga aliorum injurias? Revera rex talis nedum impotens, sed et ipsa impotentia dicendus est. Quare, Princeps, constat, progenitores tuos, qui sic politicum regimen abjicere satagerunt, non solum in hoc non potuisse nancisci potentiam quam optabant, viz. ampliorem, sed et sui bonum, similiter et bonum regni sui per hoc ipsi discrimini exposuissent, et periculo grandiori. Unde Sanctus Thomas supradictus optare censetur ut omnia mundi regna Politicè regerentur. C. 37.

(43) p. 10. Crudelis necessario judicabitur Lex quæ Servitutum augmentat, et minuit Libertatem. Nam pro ea natura semper implorat humana. Quia ab homine et pro vitio introducta est Servitus. Sed Libertas a Deo hominis est indita naturæ. Quare ipsa ab homine sublata semper redire gliscit, ut facit omne quod Libertate naturali privatur. Quo ipse et crudelis judicandus est qui Libertati non favet. Hæc considerantia Angliæ jura, in omni casu Libertati dant favorem. C. 42.

(44) p. 10. Humana natura in Libertatis causa favorem semper magis quam in causis aliis deprecatur. C. 47. — Thus Fortescue.

(45] Little follows in point of Honour or Excellency, *specially* to be attributed to the Laws of a Nation by an argument drawn from Antiquity; neither are Laws to be thus compared. Those which best fit the State wherein they

they are, clearly deserve the name of the best Laws. — Selden's notes upon Fortescue.

(46) There are no Slaves in England. One may be a Villain, but not a Slave. (Salkeld.) But now there are not, properly speaking, any Villains; for the Title and Tenure of Villenage are abolished by the Stat. of Ch. II.

(47) The excellence of any particular form of Government is founded in the fitness of its mode and complexion to the manners, disposition, abilities, and general state of the people over whom it prevails; and, of course, in order to have it constantly a good one, and well adapted at different periods of time, it must have varied as those circumstances have changed.

(48) p. 24. Alfred compiled a body of Laws, and established Trials by Juries. He himself possessed a great degree of power, which was diminished under his Successors, till the time of the Confessor. Their Power over the Lords was but small: at length one of that body, Earl Godwin, became greater than his Sovereign.

(49) p. 24. At the conquest an alteration was made in the Constitution by Williams introducing a more perfect system of the feudal Law, and the holding Lands by Knights Fees, which gave rise to the terms *Vetus Feoffamentum et Novum Feoffamentum* in the old records: but the original principles were still retained, as appears plainly by the continuation of Trials by Juries, County Courts, and other material parts of the Saxon Government, unaltered even to this day.

(50) The Commonalty, however, still continued in a state of great dependance on their Lords, only the power of the Nobles began to be restrained by the encrease of the Royal Power from various causes. But notwithstanding the power usurped by the Norman Princes, there is little reason to think that non-resistance to arbitrary power was ever considered as a duty in this kingdom.

(51) In these times the Manners were very licentious, and the Arts, with their attendant improvements, were little known. In this state of things, the Barons, being very numerous, became very powerful. Yet in time such a disproportion was introduced in the degree of their power, and the value of their estates, especially by the liberty (see Hurd's Dialogues) that had been given them in the time of Hen. II. of alienating their possessions, that they could not any longer be upon an equal footing.

(52) Hence arose the distinction of the Greater and Lesser Barons; and the latter being very numerous, it was found convenient for them to appear in the great Assemblies in the time of Hen. III. only by representatives, while the other appeared in person. And this brought on another great alteration in the Constitution.

(53) But the Kings abusing their power, and the Barons being jealous of their ancient privileges, they restrained their Sovereign, by demanding, in arms, a solemn acknowledgment of their rights, adding new Laws in favour of Liberty. For Hen. II. had established a second time, in imitation of Alfred, a regular kind of Civil Government, having appointed Assizes, and itinerant Judges, for the better administration of Justice; and Ed. I. afterwards, by confirming Magna Charta, and regulating the Courts of Judicature, gave an

additional legal establishment to the Rights and Privileges of the people, and the just claims of public Liberty. Commerce also, and civil intercourse with other nations, was now much encouraged by some excellent Laws passed in his reign, particularly the Statute *Quia Emptores*, which made even Feudal Land the subject of Commerce.

(54) The common people now being, strictly speaking, possessed of Property, began to feel their own consequence. Borough Towns were formed; men in trade became rich, and able to contribute to the exigencies of the State: and as it is unreasonable that any man's Property should be diminished without his own consent, they now were permitted to send their Representatives to Parliament. Here again the foundation on which our Constitution is built was enlarged, and a fresh security given to the claims of public Liberty, and the Rights and Privileges of the People.

(55) Such a spirit of Liberty had by these means been gradually introduced as created an abhorrence of Despotic Power, and Vassalage became (as it always ought to be) intolerable. The people in the time of Rich. II. joined in an insurrection, demanding the abolition of Slavery; and fixed Rents, instead of service by Villenage.

(56) In the time of Ed. IV. printing was introduced into England; when Wickliffe had already prepared the minds of men for an important Revolution, by teaching them to think, and to reason for themselves. I need not stay to observe how powerful a support this event gave to all the claims of Civil and Religious Liberty.

(57) Not long after this the exorbitant Power of the Barons was eventually reduced by the Law passed under Hen. VII. which made Lands under *Entails* to be alienable, and become the Subject of Commerce. This soon made a more equal division, and more general possession of Property; by which *Civil Liberty* received an additional Support. Now also real learning being diffeminated, in consequence of the art of Printing, and the Doctrines of the Reformation taking place, men found and felt that the Slavery of the mind was more intolerable than Personal Servitude. This prepared them for a great change under Hen. VIII. who, by the most unjustifiable acts of Tyranny and rapacious Despotism, broke that peculiar and enormous power of the Ecclesiastics, which only was more insufferable than his own. And thus the most ferocious Tyrant that ever lived became, in the hand of Providence, a great contributor to the Establishment of *Religious Liberty*.

(58) But Power and Privilege not being well settled, and the true Boundaries of Prerogative and Liberty not precisely ascertained, (which from the varying circumstances of human affairs is, perhaps, a political impossibility) many struggles were maintained, and many fatal contests in the times succeeding, on one hand for the Extent of Power, and on the other for the Support of Liberty; till at the last this important affair was legally settled, as far as the imperfection of human counsels would admit, at the Revolution.

(59) The point at which I am aiming by these observations is to shew, that notwithstanding the Institution of Feudal Tenures, and the unjustifiable Tyranny at different times of Kings, of Nobles, of Ecclesiastics, yet the  
 People



People of this Land always considered themselves as having an inherent right to Liberty; and as they had opportunity exerted themselves in defence of their Natural, and undoubted Rights and Privileges.

(60) The preceding historical note is in part taken from an Essay on the English Constitution, by E. King, Esq;

A candid view of the foregoing Extracts and Observations may be sufficient to convince any one of a fair and ingenuous mind, that the People of England have at all times had *a strict and proper right* to Liberty; and that the lately revived Doctrines of Non-resistance, Unconditional Submission, and a Power in Governors, superior to law, are totally false and groundless. But farther, when we consider the malignancy, the gross and wilful misrepresentation, the scandalous calumny and defamation with which they have been propagated, we must be not only much grieved, but indeed much surpris'd to find, in so enlightened an age, such a dreadful darkness and perversion of the human heart.

In Mr. Locke's works we have a full and fair discussion of this most important subject, where the Right to Civil and Religious Liberty is demonstrated to the entire Satisfaction of every reasonable man, in his Treatises on Civil Government, and Religious Toleration. But I have purposely avoided making any reference to his Authority, because, it seems, that he is now found out to be a Party Writer. He is so indeed; and of a Party that has not many advocates. He is of the Party of Truth, of Reason, and of sound Philosophy; of rational zeal for the Glory of God, and the real Happiness of Man; of universal, and disinterested Benevolence; of unshaken Veneration for the Rights of Human Nature, and of unalterable good-will and friendship to the Glorious Cause of Civil and Religious Liberty.



## A D V E R T I S E M E N T.

AFTER I had determined to send the foregoing Discourse to the Press, I was informed by a friend that I formerly had published a Sermon upon the same subject, and very same text of Scripture. This, like those unnatural parents, who produce, and then desert their offspring, I had indeed entirely forgotten. I have not seen it, I dare say, for five and twenty years or more; I have not any copy of it by me, nor do I recollect a single sentence or sentiment in it. If any copy of that should remain, and a comparison be made with the present, I think it is probable, that there will not be found a contrariety of Principles: because I know that I never wrote either with a view to Interest, or from attachment to Party, but always from a clear and conscientious conviction of mind. My humble station, and more humble circumstances, never gave me an opportunity to be of real service to the glorious cause of Civil and Religious Liberty, which, nevertheless, I always have according to my power defended, and will to the last continue to defend. I have now only to add my sincere and grateful acknowledgments to my most respectable audience, for that very favourable attention with which they honoured me; assuring them, that I never will again by a similar and unreasonable trespass upon their time, abuse their future indulgence.