

Robert Filmer, *Patriarcha* (1680)



[Introductory note: The *Patriarcha* of Sir Robert Filmer (1588-1653) ranks among the most emphatic theoretical assertions of absolute power of Kings ever to flow from an English pen. From the beginning of his political career, Filmer was an advocate of the Stuart kings against an increasingly self-confident series of parliaments. In the *Patriarcha*, Filmer argues against legal theorists, especially the Dutch jurist Hugo Grotius, who claimed that natural law vested ultimate power to establish government with the people. Filmer's position is a curious mixture of natural and divine law; he tries to refute Grotius on his own ground, but supports his own position primarily with Scriptural interpretation. It is not known for certain when Filmer wrote

the *Patriarcha*, although a date 1628 and 1631 seems likely.¹ Although the text circulated in monarchist circles during the English Civil War, the book was not published until 1680].

I. *The Natural Freedom of Mankind: A New, Plausible and Dangerous Opinion*

WITHIN the last hundred years many of the Schoolmen and other Divines have published and maintained an opinion that "Mankind is naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please, and that the power which anyone man has over others was at the first by human right bestowed according to the discretion of the multitude."

This tenet was first hatched in the Schools for good Divinity, and has been fostered by succeeding Papists. The Divines of the Reformed Churches have entertained it, and the common people everywhere tenderly embrace it as being most plausible to flesh and blood, for that it prodigally distributes a portion of liberty to the meanest of the multitude, who magnify liberty as if the height of human felicity were only to be found in it, never remembering that the desire of liberty was the cause of the fall of Adam.

Although this opinion has lately obtained a great reputation, yet it is not to be found in the ancient fathers and doctors of the primitive Church. It contradicts the doctrine and history of the Holy Scriptures, the constant practice of all ancient monarchies, and the very principles of the law of nature. It is hard to say whether it be more erroneous in Divinity or dangerous in policy.

¹ Richard Tuck, "A New Date for Filmer's *Patriarcha*," *The Historical Journal* 29 (1986): 183-186.

Upon the grounds of this doctrine, both Jesuits and some zealous favorers of the Geneva discipline² have built a perilous conclusion, which is, “that the people or multitude have power to punish or deprive the Prince if he transgress the laws of the kingdom.” Witness [Robert] Parsons and [George] Buchanan. The first, [writing] under the name of Dolman, in the third chapter of his first book, labors to prove that Kings have been lawfully chastised by their commonwealths.³ The latter, in his book *De Jure Regni apud Scotos*, maintained a liberty of the people to depose their Prince.⁴ Cardinal [Robert] Bellarmine and [Jean] Calvin both [hold the same view].

This desperate assertion whereby Kings are made subject to the censures and deprivations of their subjects follows (as the authors of it conceive) as a necessary consequence of that former position of the supposed natural equality and freedom of mankind, and liberty to choose what form of government it please.

And though Sir John Heywood, Adam Blackwood, John Barclay, and some others have learnedly confuted both Buchanan and Parsons, and vindicated the right of Kings in most points, yet all of them, when they come to the argument drawn from the natural liberty and equality of mankind, do with one consent admit it for a unquestionable principle, not so much as once denying or opposing it.⁵ Whereas if they did but confute this first erroneous principle, the main foundation of popular sedition would be taken away.

The rebellious consequence which follows this prime article of the natural freedom of mankind may be my sufficient warrant for a modest examination of the original truth of it; much has been said, and by many, for the affirmative; equity requires that an ear be reserved a little for the negative.

In this discourse I shall give myself these cautions:

² I.e., the adherents of Jean Calvin and Calvinism.

³ Robert Parsons, *A Conference about the next Succession to the Crowne of England* (1594), pp. 37 ff.

⁴ George Buchanan, *De jure regni apud Scotos* (Edinburgh, 1580).

⁵ John Hayward, *An Answer to the First Part of a Certain Conference Concerning Succession* (1603); Adam Blackwood, *Adversus G. Buchanani dialogum 'De Jure Regni'* (Paris, 1588); and William Barclay, *De Regno et Regnali Potestate* (1600).

First, I have nothing to do to meddle with mysteries of the present state. Such *arcana imperii*, or cabinet councils, the vulgar may not pry into. An implicit faith is given to the meanest artificer in his own craft; how much more is it, then, due to a Prince in the profound secrets of government: the causes and ends of the greatest politic actions and motions of state dazzle the eyes and exceed the capacities of all men, save only those that are hourly versed in managing public affairs: yet since the rule for each man to know in what to obey his Prince cannot be learnt without a relative knowledge of those points wherein a sovereign may command, it is necessary when the commands and pleasures of superiors come abroad and call for an obedience that every man inform himself how to regulate his actions or his sufferings, for according to the quality of the thing commanded an active or passive obedience is to be yielded, and this is not to limit the Prince's power, but the extent of the subject's obedience, by giving to Caesar the things that are Caesar's, etc.

Secondly, I am not to question or quarrel at the rights or liberties of this or any other nation; my task is chiefly to inquire from whom these came, not to dispute what or how many they are, but whether they are derived from the laws of natural liberty or from the grace and bounty of Princes. My desire and hope is that the people of England may and do enjoy as ample privileges as any nation under heaven; the greatest liberty in the world (if it be duly considered) is for a people to live under a monarch. It is the Magna Charta of this kingdom; all other shows or pretexts of liberty are but several degrees of slavery, and a liberty only to destroy liberty.

If such as maintain the natural liberty of mankind take offence at the liberty I take to examine it, they must take heed that they do not deny by retail that liberty which they affirm by wholesale; for if their thesis be true, the hypothesis will follow, that all men may examine their own charters, deeds, or evidences by which they claim and hold the inheritance or freehold of their liberties.

Thirdly, I detract not from the worth of all those learned men who are of a contrary opinion in the point of natural liberty. The profoundest scholar that ever was known has not been able to search out every truth that is discoverable; neither Aristotle in natural

philosophy, nor Mr. Hooker in Divinity. They were but men, yet I reverence their judgments in most points, and confess myself beholding even to their errors in this; something that I found amiss in their opinions guided me in the discovery of that truth which (I persuade myself) they missed. A dwarf sometimes may see that which a giant looks over: for whilst one truth is curiously searched after, another must necessarily be neglected. Late writers have taken up too much upon trust from the subtle Schoolmen, who to be sure to thrust down the King below the Pope, thought it the safest course to advance the people above the King; that so the papal power may more easily take place of the royal. Many an ignorant subject has been fooled into this faith, that a man may become a martyr for his country by being a traitor to his Prince; whereas the new coined distinction into Royalists and Patriots is most unnatural, since the relation between King and people is so great that their well-being is reciprocal.

II *The Question Stated out of Bellarmine, and some Contradictions of his Noted*

To make evident the grounds of this question about the natural liberty of mankind, I will lay down some passages of Cardinal Bellarmine, that may best unfold the state of this controversy. ‘Secular or civil power’ (says he) “is instituted by men; it is in the people unless they bestow it on a Prince. This power is immediately in the whole multitude, as in the subject of it; for this power is by the Divine law, but the Divine law has given this power to no particular man. If the positive law be taken away, there is left no reason why amongst a multitude (who are equal) one rather than another should bear rule over the rest. Power is given by the multitude to one man, or to more by the same law of nature; for the commonwealth of itself cannot exercise this power, therefore it is bound to bestow it upon some one man, or some few. It depends upon the consent of the multitude to ordain over themselves a King, or consul, or other magistrate; and if there be a lawful cause, the multitude may change the kingdom into an aristocracy or democracy.” Thus far Bellarmine,

in which passages are comprised the strength of all that I have ever read [about] the natural liberty of the subject.

Before I examine or refute these doctrines, I must make an observation upon his words.

First, he says that by the law of God, power [resides inherently] in the people; hereby he makes God the author of a democratic estate; for a democracy is nothing else but the power of the multitude. If this be true, not only aristocracies but all monarchies are altogether unlawful, as being ordained (as he thinks) by men, when as God himself has chosen a democracy.

Secondly, he holds, that although a democracy be the ordinance of God, yet the people have no power to use the power which God has given them, but only power to make away their power; whereby it follows, that there can be no democratic government, because the people (he says) “must give their power to one man, or to some few”; which makes either a royal or an aristocratic government, which the multitude is tied to do, even by the same law of nature which originally gave them power. Why then does he say that the multitude may change the kingdom into a democracy?

Thirdly, he concludes, that “if there be a lawful cause the multitude may change the kingdom into an aristocracy or democracy”. Here I would [like to] know who shall judge of such a case? If [it is] the multitude (for I see nobody else can) then this is a pestilent and dangerous conclusion.

III *The Argument of Bellarmine Answered out of Bellarmine Himself, and of the Royal Authority of the Patriarchs before the Flood*

I come now to examine the argument that Bellarmine uses, which is the one and only argument I can find produced by any author for the proof of the natural liberty of the people. It is thus framed: It is evident in Scripture that God. has given or ordained power; but God has given it to no particular man, because by nature all men are equal; therefore he has given power to the people or multitude.

To answer this reason, drawn from the equality of mankind by

nature, I will first use the help of Bellarmine himself, whose words are these: “If many men had been created out of the earth, all they ought to have been Princes over their posterity.” In these words we have an evident confession, that creation made man Prince of his posterity. And indeed not only Adam, but the succeeding Patriarchs had, by right of fatherhood, royal authority over their children. Nor dares Bellarmine deny this also. “That the patriarchs” (says he) “were endowed with Kingly power, their deeds do testify.” For as Adam was lord of his children, so his children under him had a command over their own children, but still with subordination to the first parent, who is lord paramount over his children’s children to all generations, as being the grandfather of his people.

I do not see how the children of Adam, or of any other man, can be free from subjection to their parents. And this subordination of children is the fountain of all royal authority, by the ordination of God himself. From whence it follows that civil power, not only in general is by Divine institution, but even the assigning of it specifically to the eldest parent. Which quite takes away that new and common distinction which refers only universal or absolute power to God, but power respective in regard to the special form of government to the choice of the people. Nor does it leave any place for such imaginary pacts between Kings and their people, as many dream of.

This lordship which Adam by creation had over the whole world, and by right descending from him the Patriarchs did enjoy, was as large and ample as the most absolute dominion of any monarch which has been since the creation. For power of life and death we find that Judah, the Father, pronounced sentence of death against Tamar, his daughter-in-law, for playing the harlot, “Bring her forth” (says he) “that she may be burnt.” With respect to war, we see that Abraham commanded an army of 318 soldiers of his own family. And Esau met his brother Jacob with 400 men at arms. With respect to peace, Abraham made a league with Abimelech and ratified the articles with an oath. These acts of judging in capital crimes, of making war, and concluding peace, are the chief works of sovereignty that are found in any monarch. Not only until the Flood,

but after it, this patriarchal power did continue, as the very name of Patriarch proves [...]

VII *Of the Agreement of Paternal and Royal Power*

If we compare the natural duties of a Father with those of a King, we find them to be all one, with no difference at all except in their latitude or extent. As the Father over one family, so the King, as Father over many families, extends his care to preserve, feed, clothe, instruct and defend the whole commonwealth. His wars, his peace, his courts of justice, and all his acts of sovereignty, tend only to preserve and distribute to every subordinate and inferior Father, and to their children, their rights and privileges, so that all the duties of a King are summed up in an universal fatherly care of his people. By conferring these proofs and reasons drawn from the authority of Scripture, it appears little less than a paradox which Bellarmine and others affirm of the freedom of the multitude to choose what rulers they please.

Had the Patriarchs their power given them by their own children? Bellarmine dares not say it, but the contrary. If then fatherhood enjoyed this authority for so many ages by the law of nature, when was it lost? When was it forfeited? And how is it devolved to the liberty of the multitude? [...]

IX. *Dangerous Conclusions of Hugo Grotius against Monarchy*

Many conclusions of Grotius in his book *De Jure Belli et Pacis* are built upon the foundation of these two principles:

1. The first is that the communal use of goods was natural;
2. The second is that the form of property now in use is a human creation.⁶

⁶ *Communis rerum usus naturalis fuit; Dominium quale nunc in usu est, voluntas humana introduxit.*

Upon these two propositions of natural community and voluntary property depend a number of dangerous and seditious conclusions, which are dispersed in several places. In the fourth chapter of the first book, for example, the title of which is of “The War of Subjects against their Superiors,” Grotius handles the question: “Whether the law of not resisting superiors binds us in a most grievous and most certain danger,” and his determination is that “This law of not resisting superiors seems to depend upon the will of those men who at first joined themselves in a civil society, from whom the right of government does come to them that govern. If those had been at first asked if their will were to impose this burden upon all, that they should choose rather to die, than in any case by arms to repel the force of superiors, I know not whether they would answer that it was their will, unless perhaps with this addition: if resistance cannot be made but with great disturbance of the commonwealth, and destruction of many innocents.” Here we have his conclusion, that in great and certain danger, men may resist their rulers, if it be without disturbance of the commonwealth. If you want to know who should be judge of the greatness and certainty of the danger, or how we may know it, Grotius says not one word. So that for nothing appears to the contrary, his mind may be that every private man may be judge of the danger, for other judge he appoints none. It had been a foul fault in so desperate a piece of service as the resisting of superiors, to have concealed the lawful means by which we may judge of the greatness or certainty of public danger, before we lift up our hands against authority, considering how prone most of us are to censure and mistake those things for great and certain dangers which in truth many times are no dangers at all, or at the most very small ones. And to flatter ourselves, that by resisting our superiors we may do our country laudable service, without disturbance of the commonwealth, since the effects of sedition cannot be certainly judged of but by the events only.

Grotius proceeds to answer an objection against this doctrine of resisting superiors. “If” (says he) “any man shall say that this rigid doctrine of dying rather than resisting any injuries of superiors is no human but a Divine law, it is to be noted that men at first, not by any precept of God, but of their own accord, led by, experience of the

infirmities of separated families against violence, met together in civil society, which is how civil power began. This St. Peter calls a human ordinance, although elsewhere it is called a Divine ordinance, because God approves the wholesome institutions of men. God, in approving a human law, is to be thought to approve it as human, and in a human manner.”

And again in another place he goes further, and teaches us that “If the question happens to concern the original will of the people, it will not be amiss for the people that now are, and which are accounted the same with them that were long ago, to express their opinion in this matter which is to be followed, unless it certainly appear that the people long ago willed otherwise.”

For fuller explication of his judgment about resisting superiors, he concludes thus: “The greater the thing is which is to be preserved, the greater is the equity which reaches forth an exception against the words of the law. Yet I dare not” (says Grotius) “without difference condemn either single men or a lesser part of the people, who in the last refuge of necessity, do so use this equity, as in the meantime, they do not forsake the respect of the common good.”

Another doctrine of Grotius is that: “The power which is exercised by Kings does not cease to be the power of the people. That Kings who in a lawful manner succeed those men who were elected, have the supreme power by a usufructuary right only and no property.”

Furthermore, he teaches that: “The people may choose what form of government they please, and their will is the rule of right.”

Also that: “The people choosing a King may reserve some acts to themselves, and may bestow others upon the King, with full authority, if either an express partition be appointed, or if the people being yet free do command their future King, by way of a standing-command, or if anything be added by which it may be understood, that the King may be compelled or else punished.”

In these passages of Grotius which I have cited, we find evidently these doctrines:

1. That civil power depends on the will of the people.

2. That private men or petty multitudes may take up arms against their Princes.
3. That the lawful Kings have no property in their kingdoms, but an usufructuary right only, as if the people were the lords, and the Kings but their tenants.
4. That the law of not resisting superiors is a human law, depending on the will of the people at first.
5. That the will of the first people, if it be not known, may be expounded by the people that now are.

No doubt but Grotius foresaw what uses the people might make of these doctrines by concluding, if the chief power be in the people, that then it is lawful for them to compel and punish Kings as often as they misuse their power. Therefore he tells us he “rejects the opinion of them, who everywhere and without exception will have the chief power to be so the peoples; that it is lawful for them to compel and punish Kings as often as they misuse their power.” And “this opinion,” he confesses, “if it be altogether received, has been and may be the cause of many evils.” This cautious rejection, qualified with these terms of *everywhere*, *without exception* and *altogether*, makes but a mixed negation, partly negative and partly affirmative (which our lawyers call a negative pregnant). Which brings forth this modal proposition, *that in some places with some exception, and in some sort, the people may compel and punish their Kings*. [...]

[In Grotius’ defense] it may be urged that in all presumption the people have given away their whole power to Kings, unless they can prove they have reserved a part. For if they will have any benefit of a reservation or exception, it lies on their part to prove their exception, and not on the Kings’ parts who are in possession.

This answer, though in itself just and good, yet of all men, Grotius may not use it. For he saves the people the labor of proving the original reservation of their forefathers by making the people that now are competent expositors of the meaning of those first ancestors, who may justly be presumed not to have been either so improvident for themselves or so negligent of all, their posterity, when, by the law of nature, they were free and had all things common, at an instant without any condition or limitation, to give away that liberty and

right of community, and to make themselves and their children eternally subject to the will of such governors as might misuse them without control.

On the behalf of the people it may be further answered to Grocius that although our ancestors had made an absolute grant of their liberty, without any condition expressed, yet it must necessarily be implied that it was upon condition to be well governed, and that the non-performance of that implied condition makes the grant void. Or, if we will not allow an implicit condition, then it may be said that the grant in itself was a void grant, for being unreasonable and a violation of the law of Nature, without any valuable consideration. What sound reply Grotius can return to such answers, I cannot conceive, if he keep himself to his first principle of natural community [...]

I have briefly presented here the desperate inconveniences which attend upon the doctrine of the natural freedom and community of all things. These and many more absurdities are easily removed if on the contrary we maintain the natural and private dominion of Adam to be the fountain of all government and property. And if we mark it well, we shall find that Grotius does in part grant as much. The ground why those that now live do obey their governors is the will of their forefathers, who the first ordained Princes, and in obedience to that will the children continue in subjection. This is according to the mind of Grotius, so that the question is not whether Kings have a fatherly power over their subjects, but how Kings first came by it. Grotius will have it that our forefathers, being all free, made an assignment of their power to Kings. The other opinion denies any such general freedom to our forefathers, but derives the power of Kings from the original dominion of Adam [...]

XIII Of Election of Kings by the Major Part of the People, by Proxy, by Silent Acceptation

Let us condescend for a while to the opinions of Bellarmine, Grotius and [...] of all those who place supreme power in the whole people, and ask them if their meaning be that there is but one and the same power in all the people of the world, so that no power can be granted

except all men upon the earth meet and agree to chose a governor? An answer is here given by [Francisco] Suarez, that “It is scarce possible nor yet expedient that all men in the world should be gathered together into one community. It is likelier that either never, or for a very short time, that this power was in this manner in the whole multitude of men collected, but a little after the Creation men began to be divided into several commonwealths, and this distinct power was in each of them.”

This answer of scarce possible nor yet expedient, and it is likelier begets a new doubt how this distinct power comes to each particular community when God gave it to the whole multitude only, and not to any particular assembly of men. Can they show or prove that ever the whole multitude met and divided this power which God gave them in gross, by breaking it into parcels and by apportioning a distinct power to each several commonwealth? Without such a compact, I cannot see, according to their own principles, how there can be any election of a magistrate by any commonwealth, but by a mere usurpation upon the privilege of the whole world. If any man think that particular multitudes, at their own discretion, had power to divide themselves into several commonwealths, those that think so have neither reason nor proof for so thinking, and thereby a gap is opened for every petty factious multitude to raise a new commonwealth, and to make more commonweals than there be families in the world.

But let this also be yielded them, that in each particular commonwealth there is a distinct power in the multitude. Was a general meeting of a whole kingdom ever known for the election of a Prince? Was there any example of it ever found in the world? To conceit such a thing is to imagine little less than an impossibility, and so by consequence no one form of government or King was ever established according to this supposed law of nature.

It may be answered by some that, if either the greatest part of a kingdom, or, if a smaller part only by themselves and all the rest by proxy, or, if the part not concurring in the election do after by tacit assent ratify the act of others, that in all these cases it may be said to be the work of the whole multitude.

1. As to the acts of the major part of a multitude. It is true that under political constitutions, it is often ordained that the voices of the most shall overrule the rest. And such ordinances bind because, where men are assembled by a human power, that power that does assemble them can also limit and direct the manner of the execution of that power. And by such derivative power, made known by law or custom, either the greater part, or two thirds parts, or three parts of five or the like, have power to oversway the liberty of their opposites. But in assemblies that take their authority from the law of nature it cannot be so. For what freedom or liberty is due to any man by the law of nature, no inferior power can alter, limit or diminish. No one man, nor a multitude, can give away the natural right of another. The law of nature is unchangeable, and howsoever one man may hinder another in the use or exercise of his natural right, yet thereby no man loses the right itself. For the right and the use of the right may be distinguished, as right and possession are oft distinct. Therefore, unless it can be proved by some law of nature that the major, or some other part, have power to overrule the rest of the multitude, it must follow that the acts of multitudes not entire are not binding “to all, but only to such as consent unto them.

2. As to the point of proxy. It cannot be showed or proved that all those that have been absent from popular elections did ever give their voices to some of their fellows. I ask but one example out of any history. Let the commonweal be but named wherever the multitude, or so much as the greatest part of it, consented either by voice or by the election of a Prince. The ambition sometimes of one man, sometimes of many, or the faction of a city or citizens, or the mutiny of an army, has set up or pulled down Princes. But they have never tarried for this pretended orderly proceeding of the whole multitude.

3. Lastly, if the silent acceptation of a governor by part of the people be an argument of their concurring in the election of him, by the same reason the tacit assent of the whole commonwealth may be maintained. From whence it follows that every Prince that comes to a crown, either by succession, conquest or usurpation, may be said to be elected by the people. This inference is too ridiculous, for in such

cases the people are so far from the liberty of specification that they want even that of contradiction [...]

XV. *God Governed Always by Monarchy*

Because it is affirmed that the people have power to choose as well what form of government as what governors they please, of which mind is Bellarmine in those places we cited at first, therefore it is necessary to examine the strength of what is said in defense of popular commonwealths against this natural form of kingdoms which I maintain. Here I must first remind you of what Bellarmine affirms in cold blood in other places, where he says: "God, when he made all mankind of one man, did seem openly to signify that He rather approved the government of one man than of many." Again, "God showed His opinion when He endued not only men, but all creatures, with a natural propensity to monarchy. Neither can it be doubted but a natural propensity is to be referred to God, who is author of nature." And again in a third place, "what form of government God confirmed by His authority may be gathered by that commonwealth which He instituted among the Hebrews, which was not aristocratic (as Calvin says) but plainly monarchical. Monarchical."

Now, if God (as Bellarmine says) has taught us by natural instinct, signified to us by the Creation and confirmed by His own example, the excellence of monarchy, why should Bellarmine or we doubt but that it is natural? Do we not find that in every family the government of one alone is most natural? God always governed His own people by monarchy only. The Patriarchs, dukes, judges and Kings were all monarchs. There is not in all the Scripture mention and approbation of any other form of government. At the time when the Scripture says: 'There was no King in Israel, but that every man did that which was right in his own eyes', a even then, the Israelites were under the kingly government of the Fathers of particular families [...]

At that time also, when the people of Israel begged a King of Samuel, they were governed by kingly power. God, out of a special care and love to the house of Israel, did choose to be their King

Himself, and did govern them at that time by His viceroy Samuel and his sons. And therefore God tells Samuel: "They have not rejected thee but Me, that I should not reign over them." It seems they did not like a King by deputation, but desired one by succession like all the nations. All nations belike had Kings then, and those by inheritance, not by election. For We do not find the Israelites prayed that they themselves might choose their own King: they dream of no such liberty, and yet they were the elders of Israel gathered together. If other nations had elected their own Kings, no doubt but they would have been as desirous to have imitated other nations as well in the electing as in the having of a King.

In his *Politics*, when Aristotle compares the several kinds of government, he is very reserved in revealing which form he thinks best. He disputes subtly to and fro of many points, and judiciously confutes many errors, but concludes nothing himself. In all those books I find little in commendation of monarchy. It was his fate to live in those times when the Greeks abounded with several commonwealths, who had learning enough to make them seditious. Yet in his *Ethics* he has so much good manners as to confess in right down words that "monarchy is the best form of government, and a popular estate the worst." And though he is not so outspoken in his *Politics*, yet the necessity of truth has here and there extorted from him that which amounts no less to the dignity of monarchy. He confesses it to be "the first, the natural, and the most divine form of government, and that the gods themselves did live under a monarchy." What more can a heathen say?

Indeed, the world for a long time knew no other sort of government but monarchy. The best order, the greatest strength, the most stability, and the easiest government are to be found in monarchy, and in no other form of government. The new platforms of commonwealths were first hatched in a corner of the world, among a few cities of Greece, which have been imitated by very few other places. Those very cities were first for many years governed by Kings, until wantonness, ambition, or faction made them attempt new kinds of government. All of these mutations proved most bloody and miserable to their authors, happy in nothing except that they continued only a short while [...]

XVII Democracies Were Not Invented to Bridle Tyrants, but Came in by Stealth

The vulgar opinion is that the original reason why democratic government was brought in was to curb the tyranny of monarchs. But the falsehood of this does best appear by the first flourishing popular state of Athens, which was founded not because of the vices of their last King, but because his virtues were such that the people thought no man worthy enough to succeed him: a pretty wanton quarrel to monarchy. For when their King Codrus understood by the oracle that his country could not be saved unless the King were slain in the battle, he in disguise entered his enemy's camp and provoked a common soldier to make him a sacrifice for his own kingdom. And with his death ended the royal government, for after him were never any more Kings of Athens. As Athens thus for the love of their Codrus changed their government, so Rome, on the contrary, out of hatred to their Tarquin, did the same thing. And though these two famous commonwealths abolished monarchy for opposite reasons, they both agreed that neither of them thought it right to change their state into a democracy. The Athenians chose Archons and the Romans Consuls to be their governors, both of whom resembled Kings, and continued in power until the people, by lessening the authority of these their magistrates, brought in popular government by degrees and by stealth. And I truly believe that no democratic state ever showed itself first fairly to the world by any elective entrance, but they all secretly crept in by the back door of sedition and faction [...]

XXII Royal Authority Is Not Subject to Human Laws

Until now I have endeavored to show the natural institution of royal authority, and to free it from subjection to an arbitrary election of the people. It is necessary also to inquire whether human laws have superiority over Princes, because those that maintain the acquisition royal jurisdiction from the people do subject the exercise of it to human positive laws. But in this also they err. For as Kingly power is

by the law of God, so it has no inferior law to limit it. The Father of family governs by no other law than by his own will, not by the law, or wills of his sons or servants. There is no nation that allows children any action or remedy for being unjustly governed. And yet for all this every Father is bound by the law of nature to do his best for the preservation of his family. But much more is a King always tied by the same law of nature to keep this general ground, that the safety of his kingdom be his chief law. He must remember that the profit of every man in particular, and of all together in general, is not always one and the same, that the public is to be preferred before the private and that the force of laws must not be so great as natural equity itself. Which cannot fully be comprised in any laws, but is to be left to the religious arbitration of those who know how to manage the affairs of state, and wisely to balance the particular profit with the counterpoise of the public, according to the infinite variety of times, places, persons.

A proof unanswerable for the superiority of Princes above laws is this, that there were Kings long before there were any laws. For a long time the word of the King was the only law. "And if practice" (as says Sir Walter Raleigh) "declare the greatness of authority, even the best Kings of Judah and Israel were not tied to any law, but they, did whatsoever they pleased in the greatest matters."

XXIV Laws not first found out to Bridle Tyrants but the People.

There are many who believe that the first purpose of laws was to bridle and moderate the over-great power of Kings, but the truth is that the original [purpose] of laws was for keeping the multitude in order. Popular states could not survive at all without laws, whereas kingdoms were governed many ages without them. The people of Athens, as soon as they gave over Kings, were forced to give power first to Draco, and then to Solon, to make laws, not to bridle Kings, but to bridle themselves. And though many of their laws were very severe and bloody, yet for the reverence they bare to their lawmakers they willingly submitted to them. Nor did the people give any limited power to Solon, but an absolute jurisdiction at his pleasure to abrogate and confirm what he thought fit, the people never

challenging any such power to themselves. So the people of Rome gave to the Ten Men, who were to choose and correct their laws for the Twelve Tables, an absolute power without any appeal to the people.

The reason why laws have been also made by Kings was this. When Kings were either busied with wars or distracted with public cares, so that every private man could not have access to their persons to learn their wills and pleasure, then of necessity were laws invented. That so every particular subject might find his Prince's pleasure revealed to him in the tables of his laws, that so there might be no need to resort to the King but either for the interpretation or mitigation of obscure or rigorous laws, or else, in new cases, for a supplement where the law was defective. By this means both King and people were in many things eased.

1. The King, by giving laws, frees himself of great and intolerable troubles, as Moses did himself by choosing elders.

2. The people have the law as a familiar admonisher and interpreter of the King's pleasure, which being published throughout the kingdom represents the presence and majesty of the King.

Also the judges and magistrates (whose help in giving judgment in many causes Kings have need to use) are restrained by the common rules of the law from using their own liberty to the injury of others, since they are to judge according to the King's laws, and not follow their own opinions.

Although it is true that Kings who make the laws are above the laws (as his late Majesty James I teaches us), yet will they rule their subjects by the law. And a King, governing in a settled kingdom, who degenerates into a tyrant ceases to be a King and ceases to rule according to his laws. Yet where he sees the laws rigorous or doubtful he may mitigate and interpret. General laws made by Parliament may, upon known respects to the King, by his authority be mitigated or suspended upon causes only known to him. And although a King frames all his actions to be according to the laws, yet he is not bound by to them, but at his good will and for good example, except in so far as the general law of the safety of the commonwealth naturally binds him. Only in this sense may positive laws be said to bind the King, not by being positive, but because they

are naturally the best or the only means for the preservation of the commonwealth. By this means are all Kings, even tyrants and conquerors, bound to preserve the lands, goods, liberties, and lives of all their subjects, not by any municipal law of the land, but by the natural law of a Father, which binds them to ratify the acts of their forefathers and predecessors in things necessary for the public good of their subjects.

XXV *Of the Oaths of Kings*

Others argue that, although laws of themselves do not bind Kings, yet the oaths of Kings at their coronation tie them to keep all the laws of their kingdoms. To show whether this is true, let us but examine the oath of the Kings of England at their coronation, the words whereof are these: "Art thou pleased to cause to be administered in all thy judgments indifferent and upright justice, and to use discretion with mercy, and verity? Art thou pleased that our upright laws and customs be observed, and dost thou promise that those shall be protected and maintained by thee?" These two are the articles of the King's oath which concern the laity or subjects in general, to which the King answers affirmatively, being first demanded by the Archbishop of Canterbury: 'Does it please you to confirm and observe the laws customs of ancient times, granted from God by just and devout Kings unto the English nation, by oath unto the said people, specially the laws, customs and liberties granted unto the clergy and laity by famous King Edward?'

We may observe in these words of the articles of the oath that the King is required to observe not *all* the laws, but only the *upright laws* and that with discretion and mercy. The word *upright* cannot mean *all* laws, because in the oath of King Richard II I find "evil and unjust laws" mentioned, which the King swears to abolish. And in the old "Abridgement of the Statutes" set out in King Henry VIII's days, the King is to swear wholly to "put out evil laws," which he cannot do if he is bound to keep all laws. Now what laws are upright and what evil, who shall judge but the King, since he swears to administer upright justice with discretion and mercy...So that in effect the King swears to keep no laws but such as in his judgment

are upright, and those not literally always, but according to the equity of his conscience joined with mercy, which is properly the office of a chancellor rather than of a judge. And if a King did strictly swear to observe all the laws, he could not without perjury give his consent to the repealing or abrogating of any statute by Act of Parliament, which would be very damaging to the state.

Let us suppose that Kings did swear to observe all the laws of their kingdoms. No man can think it reasonable that Kings should be *more* bound by their voluntary oaths than common persons are by theirs. If a private person makes a contract, either with oath or without oath, he is no further bound than the equity and justice of the contract ties him. For a man may have relief against an unreasonable and unjust promise if either deceit, or error, or force, or fear, induced him into it... Since the laws in many cases give the King a prerogative above common persons, I see no reason why he should be denied the privilege which the meanest of his subjects does enjoy [...]

XXVI. *Of the King's Prerogative over Laws.*

Many will be ready to say it is a slavish and dangerous condition to be subject to the will of any one man who is not subject to the laws. But such men do not consider the following:

1. That the prerogative of the King is to be above all laws, for the good only of them that are under the laws, and to defend the people's liberties... Although some are frightened by the word 'prerogative,' yet they may assure themselves that the condition of subjects would be desperately miserable without it. The court of Chancery itself is but a branch of the King's prerogative to relieve men against the inexorable rigor of the law, which without it is no better than a tyrant. General pardons at the coronation and at parliaments are but the bounty of the [royal] prerogative.

2. There can be no laws without a supreme power to command or make them. In all aristocracies the nobles are above the laws, and in all democracies the people. For the same reason in a monarchy the King is of necessity above the laws. There can be no sovereign majesty in him that is under them. That which gives the very being to

a king is the power to give laws, and without this power he is but an equivocal King. It matters not which way Kings come by their power, whether by election, donation, succession or by any other means, for it is still the manner of the government by supreme power that makes them properly Kings, and not the means of obtaining their crowns. Neither does the diversity of laws, nor contrary customs, whereby each kingdom differs from another, make the forms of commonweal different, unless the power of making laws be in several subjects.

For confirmation of this point, Aristotle says that "a perfect kingdom is that wherein the King rules all things according to his own will, for he that is called a King according to the law makes no kind of kingdom at all." This, it seems, also the Romans well understood to be most necessary in monarchy. For though they were a people most greedy of liberty, yet the senate did free Augustus from all necessity of laws, that he might be free of his own authority and of absolute power over himself and over the laws to do what he pleased and leave undone what he list. And this decree was made while Augustus was yet absent. Accordingly we find that Ulpian, the great lawyer, delivers it for a rule of the Civil Law: '*Princeps legibus solutus est*: the Prince is not bound by the laws.'

XXVII *The King is Author, Interpreter and Corrector of the Common Law*

If the nature of laws be advisedly weighed, the necessity of the Prince's being above them may the more manifest itself. We all know that a law in general is the command of a superior power. Laws are divided (as Bellarmine divides the word of God) into written and unwritten. "The Common Law unwritten, the statute law written," says Ulpian in *The Civil Law*. The Common Law is called unwritten, not for that it is not written at all, but because it was not written by the first devisers or makers of it. The Common Law... is the common custom of the realm. Now concerning customs, this must be considered, that for every custom there was a time when it was no custom, and the first precedent we now have had no precedent when it began. When every custom began, there was

something else than custom that made it lawful, or else the beginning of all customs were unlawful. Customs at first became lawful only by some superior power which did either command or consent unto their beginning. And the first power which we find (as is confessed by all men) is Kingly power, which was both in his and in all other nations of the world long before any laws or any other kind of government was thought of. From this we must necessarily infer that the Common Law itself, or common customs of this land, were originally the laws and commands of Kings at first unwritten.

Nor must we think that the common customs (which are the principles of the Common Law, and are but few) to be such or so many as are able to give special rules to determine every particular cause. The diversity of cases is infinite and impossible to be regulated by any law. And therefore we find even in the divine laws which were delivered by Moses, there be only certain principal laws which did not determine but only direct the high priest or magistrate, whose judgment in special cases did determine what the general law intended. It is so with the Common Law, for when there is no perfect rule judges do resort to those principle or Common Law axioms whereupon former judgments in cases somewhat like have been delivered by former judges, who all receive authority from the King in his right and name to give sentence according to the rules and precedents of ancient times. And where precedents have failed the judges have resorted to the general law of reason, and accordingly given judgment without any Common Law to direct them. Nay, many times where there have been precedents to direct, they upon better reason only have changed the law both in causes criminal and civil, and have not insisted so much on the examples of former judges as examined and corrected their reasons. Hence it is that some laws are now obsolete and out of use, and the practice now quite different from what it was in former times.

Nor is this spoken to derogate from the Common Law, for the case stands similarly with laws of all nations, although some of them have their laws and principles written and established. For witness in this we have Aristotle his testimony in his *Ethics*, and in several places in his *Politics*. I will cite some of them. "Every law" (says he) "is in the general, but of some things there can be no general law..."

When therefore the law speaks in general, and some things fall out after besides the general rule, then it is fit that what the lawmaker has omitted, or where he has erred by speaking generally, it should be corrected or supplied, as if the lawmaker himself were present to ordain it. The governor, whether it be one man or more, ought to be lord over all those things whereof it was impossible the law should exactly speak, because it is not easy to comprehend all things under general rules. Whatsoever the law cannot determine, it leaves to the governors to give judgment therein, and permit them to rectify whatsoever upon trial they find to be better than the written laws" [...]

Besides, all laws are of themselves silent, and some or others must be trusted with the application of them to particulars, who, by examining all circumstances, are to pronounce when they are broken or by whom. This work of right application of laws is not an easy or obvious thing for ordinary capacities, but requires profound abilities of nature for the beating out of the truth. Witness the diversity and sometimes the contrariety of opinions of the learned judges in some difficult points.

XXIX *Of Parliaments*

Though the name of "Parliament," as Mr. Camden says, "be of no great antiquity," but brought in out of France, yet our ancestors the English Saxons had a meeting which they called "the assembly of the wise," termed in Latin *Conventum Magnatum*, or *praesentia regis*, *procerumque*, *prelaticumque collectorum*, meaning the meeting of the nobility, or the presence of the King, prelates and peers assembled, or in general *Magnum Concilium*, or *Commune Concilium*. And many of our Kings in olden times made use of such great assemblies for to consult of important affairs of state, all which meetings in a general sense may be termed 'Parliaments'.

Great are the advantages which both the King and receive by a well ordered parliament. There is nothing more expresses the majesty and supreme power of a King than such an assembly, wherein all his people acknowledge him for sovereign lord, and make all their addresses to him by humble petition and supplication,

and by their consent and approbation do strengthen all the laws which the King at their request, and by their advice and ministry, shall ordain. Thus they facilitate the government of the King by making the laws unquestionable, either to the subordinate magistrates or refractory multitude. Then the benefit which accrues to the subject by parliaments is, that by their prayers and petitions Kings are drawn many times to redress their just grievances, and are overcome by their importunity to grant many things which otherwise they would not yield unto: for the voice of a multitude is easier heard. Many vexations of the people are without the knowledge of the King, who in parliament sees and hears from his people himself, whereas at other times he commonly uses the eyes and ears of other men [...]

XXXI The King alone Makes Laws in Parliament

A [final] point to be considered is, that in parliament all statutes are made properly by the King alone at the roagation of the people, as his late majesty of happy memory [James I] affirms in his *Law of Free Monarchy*, and as Mr. Hooker teaches us that “Laws do not take their constraining force from the quality of such as devise them, but from the power that does give them the strength of laws.” “*Le roi le veult*: the King will have it so” is the imperative phrase pronounced at the King’s passing of every Act of Parliament. And it was the ancient custom for a long time till the days of King Henry IV that the Kings, when any bill was brought unto them that had passed both houses, to take and pick out as much or as little thereof as they pleased and to leave out what they liked not or to alter it, and so much as they chose or set down was enacted for a law. Which seems to prove that in ancient times the assent of the Commons was not always required, for though their assent may seem to ratify, yet it does not follow that therefore their dissent must nullify an Act of Parliament. Those may have deliberative voices which have not always a negative.