

CHAP. II.

Of the State of Nature.

Sec. 4. TO understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.

A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection, unless the lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him, by an evident and clear appointment, an undoubted right to dominion and sovereignty.

Sec. 5. This equality of men by nature, the judicious Hooker looks upon as so evident in itself, and beyond all question, that he makes it the foundation of that obligation to mutual love amongst men, on which he builds the duties they owe one another, and from whence he derives the great maxims of justice and charity. His words are,

"The like natural inducement hath brought men to know that it is no less their duty, to love others than themselves; for seeing those things which are equal, must needs all have one measure; if I cannot but wish to receive good, even as much at every man's hands, as any man can wish unto his own soul, how should I look to have any part of my desire herein satisfied, unless myself be careful to satisfy the like desire, which is undoubtedly in other men, being of one and the same nature? To have any thing offered them repugnant to this desire, must needs in all respects grieve them as much as me; so that if I do harm, I must look to suffer, there being no reason that others should shew greater measure of love to me, than they have by me shewed unto them: my desire therefore to be loved of my equals in nature as much as possible may be, imposeth upon me a natural duty of bearing to them-ward fully the like affection; from which relation of equality between ourselves and them that are as ourselves, what several rules and canons natural reason hath drawn, for direction of life, no man is ignorant, Eccl. Pol. Lib. 1."

Sec. 6. But though this be a state of liberty, yet it is not a state of licence: though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us, that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for our's. Every one, as he is bound to preserve himself, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another.

Sec. 7. And that all men may be restrained from invading others rights, and from doing hurt to one another, and the law of nature be observed, which willeth the peace and preservation of all mankind, the execution of the law of nature is, in that state, put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree, as may hinder its violation: for the law of nature would, as all other laws that concern men in this world 'be in vain, if there were no body that in the state of nature had a power to execute that law, and thereby preserve the innocent and restrain offenders. And if any one in the state of nature may punish another for any evil he has done, every one may do so: for in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, every one must needs have a right to do.

Sec. 8. And thus, in the state of nature, one man comes by a power over another; but yet no absolute or arbitrary power, to use a criminal, when he has got him in his hands, according to the passionate heats, or boundless extravagancy of his own will; but only to retribute to him, so far as calm reason and conscience dictate, what is proportionate to his transgression, which is so much as may serve for reparation and restraint: for these two are the only reasons, why one man may lawfully do harm to another, which is that we call punishment. In transgressing the law of nature, the offender declares himself to live by another rule than that of reason and common equity, which is that measure God has set to the actions of men, for their mutual security; and so he becomes dangerous to mankind, the tie, which is to secure them from injury and violence, being slighted and broken by him. Which being a trespass against the whole species, and the peace and safety of it, provided for by the law of nature, every man upon this score, by the right he hath to preserve mankind in general, may restrain, or where it is necessary, destroy things noxious to them, and so may bring such evil on any one, who hath transgressed that law, as may make him repent the doing of it, and thereby deter him, and by his example others, from doing the like mischief. And in the case, and upon this ground, EVERY MAN HATH A RIGHT TO PUNISH THE OFFENDER, AND BE EXECUTIONER OF THE LAW OF NATURE.

Sec. 9. I doubt not but this will seem a very strange doctrine to some men: but before they condemn it, I desire them to resolve me, by what right any prince or state can put to death, or punish an alien, for any crime he commits in their country. It is certain their laws, by virtue of any sanction they receive from the promulgated will of the legislative, reach not a stranger: they speak not to him, nor, if they did, is he bound to hearken to them. The legislative authority, by which they are in force over the subjects of that commonwealth, hath no power over him. Those who have the supreme power of making laws in England, France or Holland, are to an Indian, but like the rest of the world, men without authority: and therefore, if by the law of nature every man hath not a power to punish offences against it, as he soberly judges the case to require, I see not how the magistrates of any community can punish an alien of another country; since, in reference to him, they can have no more power than what every man naturally may have over another.

Sec. 10. Besides the crime which consists in violating the law, and varying from the right rule of reason, whereby a man so far becomes degenerate, and declares himself to quit the principles of human nature, and to be a noxious creature, there is commonly injury done to some person or other, and some other man receives damage by his transgression: in which case he who hath received any damage, has, besides the right of punishment common to him with other men, a particular right to seek reparation from him that has done it: and any other person, who finds it just, may also join with him that is injured, and assist him in recovering from the offender so much as may make satisfaction for the harm he has suffered.

Sec. 11. From these two distinct rights, the one of punishing the crime for restraint, and preventing the like offence, which right of punishing is in every body; the other of taking reparation, which belongs only to the injured party, comes it to pass that the magistrate, who by being magistrate hath the common right of punishing put into his hands, can often, where the public good demands not the execution of the law, remit the punishment of criminal offences by his own authority, but yet cannot remit the satisfaction due to any private man for the damage he has received. That, he who has suffered the damage has a right to demand in his own name, and he alone can remit: the damnified person has this power of appropriating to himself the goods or service of the offender, by right of self-preservation, as every man has a power to punish the crime, to prevent its being committed again, by the right he has of preserving all mankind, and doing all reasonable things he can in order to that end: and thus it is, that every man, in the state of nature, has a power to kill a murderer, both to deter others from doing the like injury, which no reparation can compensate, by the example of the punishment that attends it from every body, and also to secure men from the attempts of a criminal, who having renounced reason, the common rule and measure God hath given to mankind, hath, by the unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed as a lion or a tyger, one of those wild savage beasts, with whom men can have no society nor security: and upon this is grounded that great law of nature, Whoso sheddeth man's blood, by man shall his blood be shed. And Cain was so fully convinced, that every one had a right to destroy such a criminal, that after the murder of his brother, he cries out, Every one that findeth me, shall slay me; so plain was it writ in the hearts of all mankind.

Sec. 12. By the same reason may a man in the state of nature punish the lesser breaches of that law. It will perhaps be demanded, with death? I answer, each transgression may be punished to that degree, and with so much severity, as will suffice to make it an ill bargain to the offender, give him cause to repent, and terrify others from doing the like. Every offence, that can be committed in the state of nature, may in the state of nature be also punished equally, and as far forth as it may, in a commonwealth: for though it would be besides my present purpose, to enter here into the particulars of the law of nature, or its measures of punishment; yet, it is certain there is such a law, and that too, as intelligible and plain to a rational creature, and a studier of that law, as the positive laws of commonwealths; nay, possibly plainer; as much as reason is easier to be understood, than the fancies and intricate contrivances of men, following contrary and hidden interests put into words; for so truly are a great part of the municipal laws of countries, which are only so far right, as they are founded on the law of nature, by which they are to be regulated and interpreted.

Sec. 13. To this strange doctrine, viz. That in the state of nature every one has the executive power of the law of nature, I doubt not but it will be objected, that it is unreasonable for men to be judges in their own cases, that selflove will make men partial to themselves and their friends: and on the other side, that ill nature, passion and revenge will carry them too far in punishing others; and hence nothing but confusion and disorder will follow, and that therefore God hath certainly appointed government to restrain the partiality and violence of men. I easily grant, that civil government is the proper remedy for the inconveniencies of the state of nature, which must certainly be great, where men may be judges in their own case, since it is easy to be imagined, that he who was so unjust as to do his brother an injury, will scarce be so just as to condemn himself for it: but I shall desire those who make this objection, to remember, that absolute monarchs are but men; and if government is to be the remedy of those evils, which necessarily follow from men's being judges in their own cases, and the state of nature is therefore not to be endured, I desire to know what kind of government that is, and how much better it is than the state of nature, where one man, commanding a multitude, has the liberty to be judge in his own case, and may do to all his subjects whatever he pleases, without the least liberty to any one to

question or controul those who execute his pleasure and in whatsoever he doth, whether led by reason, mistake or passion, must be submitted to. Much better it is in the state of nature, wherein men are not bound to submit to the unjust will of another. And if he that judges, judges amiss in his own, or any other case, he is answerable for it to the rest of mankind.

Sec. 14. It is often asked as a mighty objection, where are, or ever were there any men in such a state of nature? To which it may suffice as an answer at present, that since all princes and rulers of independent governments all through the world, are in a state of nature, it is plain the world never was, nor ever will be, without numbers of men in that state. I have named all governors of independent communities, whether they are, or are not, in league with others: for it is not every compact that puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community, and make one body politic; other promises, and compacts, men may make one with another, and yet still be in the state of nature. The promises and bargains for truck, &c. between the two men in the desert island, mentioned by Garcilasso de la Vega, in his history of Peru; or between a Swiss and an Indian, in the woods of America, are binding to them, though they are perfectly in a state of nature, in reference to one another: for truth and keeping of faith belongs to men, as men, and not as members of society.

Sec. 15. To those that say, there were never any men in the state of nature, I will not only oppose the authority of the judicious Hooker, Eccl. Pol. lib. i. sect. 10, where he says, The laws which have been hitherto mentioned, i.e. the laws of nature, do bind men absolutely, even as they are men, although they have never any settled fellowship, never any solemn agreement amongst themselves what to do, or not to do: but forasmuch as we are not by ourselves sufficient to furnish ourselves with competent store of things, needful for such a life as our nature doth desire, a life fit for the dignity of man; therefore to supply those defects and imperfections which are in us, as living single and solely by ourselves, we are naturally induced to seek communion and fellowship with others: this was the cause of men's uniting themselves at first in politic societies. But I moreover affirm, that all men are naturally in that state, and remain so, till by their own consents they make themselves members of some politic society; and I doubt not in the sequel of this discourse, to make it very clear.

CHAP. III.

Of the State of War.

Sec. 16. THE state of war is a state of enmity and destruction: and therefore declaring by word or action, not a passionate and hasty, but a sedate settled design upon another man's life, puts him in a state of war with him against whom he has declared such an intention, and so has exposed his life to the other's power to be taken away by him, or any one that joins with him in his defence, and espouses his quarrel; it being reasonable and just, I should have a right to destroy that which threatens me with destruction: for, by the fundamental law of nature, man being to be preserved as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred: and one may destroy a man who makes war upon him, or has discovered an enmity to his being, for the same reason that he may kill a wolf or a lion; because such men are not under the ties of the commonlaw of reason, have no other rule, but that of force and violence, and so may be treated as beasts of prey, those dangerous and noxious creatures, that will be sure to destroy him whenever he falls into their power.

Sec. 17. And hence it is, that he who attempts to get another man into his absolute power, does thereby put himself into a state of war with him; it being to be understood as a declaration of a

design upon his life: for I have reason to conclude, that he who would get me into his power without my consent, would use me as he pleased when he had got me there, and destroy me too when he had a fancy to it; for no body can desire to have me in his absolute power, unless it be to compel me by force to that which is against the right of my freedom, i.e. make me a slave. To be free from such force is the only security of my preservation; and reason bids me look on him, as an enemy to my preservation, who would take away that freedom which is the fence to it; so that he who makes an attempt to enslave me, thereby puts himself into a state of war with me. He that, in the state of nature, would take away the freedom that belongs to any one in that state, must necessarily be supposed to have a foundation of all the rest; as he that in the state of society, would take away the freedom belonging to those of that society or commonwealth, must be supposed to design to take away from them every thing else, and so be looked on as in a state of war.

Sec. 18. This makes it lawful for a man to kill a thief, who has not in the least hurt him, nor declared any design upon his life, any farther than, by the use of force, so to get him in his power, as to take away his money, or what he pleases, from him; because using force, where he has no right, to get me into his power, let his pretence be what it will, I have no reason to suppose, that he, who would take away my liberty, would not, when he had me in his power, take away every thing else. And therefore it is lawful for me to treat him as one who has put himself into a state of war with me, i.e. kill him if I can; for to that hazard does he justly expose himself, whoever introduces a state of war, and is aggressor in it.

Sec. 19. And here we have the plain difference between the state of nature and the state of war, which however some men have confounded, are as far distant, as a state of peace, good will, mutual assistance and preservation, and a state of enmity, malice, violence and mutual destruction, are one from another. Men living together according to reason, without a common superior on earth, with authority to judge between them, is properly the state of nature. But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war: and it is the want of such an appeal gives a man the right of war even against an aggressor, tho' he be in society and a fellow subject. Thus a thief, whom I cannot harm, but by appeal to the law, for having stolen all that I am worth, I may kill, when he sets on me to rob me but of my horse or coat; because the law, which was made for my preservation, where it cannot interpose to secure my life from present force, which, if lost, is capable of no reparation, permits me my own defence, and the right of war, a liberty to kill the aggressor, because the aggressor allows not time to appeal to our common judge, nor the decision of the law, for remedy in a case where the mischief may be irreparable. Want of a common judge with authority, puts all men in a state of nature: force without right, upon a man's person, makes a state of war, both where there is, and is not, a common judge.

Sec. 20. But when the actual force is over, the state of war ceases between those that are in society, and are equally on both sides subjected to the fair determination of the law; because then there lies open the remedy of appeal for the past injury, and to prevent future harm: but where no such appeal is, as in the state of nature, for want of positive laws, and judges with authority to appeal to, the state of war once begun, continues, with a right to the innocent party to destroy the other whenever he can, until the aggressor offers peace, and desires reconciliation on such terms as may repair any wrongs he has already done, and secure the innocent for the future; nay, where an appeal to the law, and constituted judges, lies open, but the remedy is denied by a manifest perverting of justice, and a barefaced wresting of the laws to protect or indemnify the violence or injuries of some men, or party of men, there it is hard to imagine any thing but a state of war: for wherever violence is used, and injury done, though by hands appointed to administer justice, it is

still violence and injury, however coloured with the name, pretences, or forms of law, the end whereof being to protect and redress the innocent, by an unbiassed application of it, to all who are under it; wherever that is not bona fide done, war is made upon the sufferers, who having no appeal on earth to right them, they are left to the only remedy in such cases, an appeal to heaven.

Sec. 21. To avoid this state of war (wherein there is no appeal but to heaven, and wherein every the least difference is apt to end, where there is no authority to decide between the contenders) is one great reason of men's putting themselves into society, and quitting the state of nature: for where there is an authority, a power on earth, from which relief can be had by appeal, there the continuance of the state of war is excluded, and the controversy is decided by that power. Had there been any such court, any superior jurisdiction on earth, to determine the right between Jephtha and the Ammonites, they had never come to a state of war: but we see he was forced to appeal to heaven. The Lord the Judge (says he) be judge this day between the children of Israel and the children of Ammon, Judg. xi. 27. and then prosecuting, and relying on his appeal, he leads out his army to battle: and therefore in such controversies, where the question is put, who shall be judge? It cannot be meant, who shall decide the controversy; every one knows what Jephtha here tells us, that the Lord the Judge shall judge. Where there is no judge on earth, the appeal lies to God in heaven. That question then cannot mean, who shall judge, whether another hath put himself in a state of war with me, and whether I may, as Jephtha did, appeal to heaven in it? of that I myself can only be judge in my own conscience, as I will answer it, at the great day, to the supreme judge of all men.