

Discourses concerning Government

Algernon Sidney
1681–1683

Filmer contends that the Scriptures demand obedience to the ruler in all things, but his example proves the opposite. He cannot explain why the laws of God should be set aside in favor of the commands of kings. Whoever commands another to do what is wrong should not be obeyed. The people may meet as they please, and assign political authority to those whom they trust. A king, in calling for a parliament, does only what the people allow him to do on their behalf. The consent of the people, and not conquest, confers a rightful title.

Chapter Three

Section 20

Unjust Commands Are Not to Be Obey'd
and No Man Is Obliged to Suffer
for Not Obeying Such as Are against Law

In the next place our author [Robert Filmer] gravely proposes a question, *Whether it be a sin to disobey the king, if he command anything contrary to law?* and

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as gravely determines, *that not only in human laws, but even in divine, a thing may be commanded contrary to law, and yet obedience to such a command is necessary. The sanctifying of the Sabbath is a divine law, yet if a master command his servant not to go to church upon a Sabbath day, the best divines teach us, the servant must obey, &c.* It is not fit to tie the master to acquaint the servant with his secret counsel.

Tho [Filmer] frequently contradicts in one line what he says in another, this whole clause is uniform and suitable to the main design of his book. He sets up the authority of man in opposition to the command of God, gives it the preference, and says, the best divines instruct us so to do. St. Paul then must have been one of the worst, for he knew that the powers under which he lived, had under the severest penalties forbidden the publication of the Gospel; and yet he says, *Woe to me if I preach it not.* St. Peter was no better than he, for he tells us, *That it is better to obey God than man:* and they could not speak otherwise, unless they had forgotten the words of their master, who told them, *They should not fear them that could only kill the body, but him who could kill and cast into hell.* And if I must not fear him that can only kill the body, not only the reason, but all excuse for obeying him is taken away.

To prove what he says, [Filmer] cites a pertinent example from St. Luke (Chap. 14), and very logically concludes, that because Christ reprov'd the hypocrisy of the Pharisees (who generally adhered to the external and circumstantial part of the law, neglecting

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the essential, and taking upon themselves to be the interpreters of that which they did not understand), the law of God is not to be obeyed: and as strongly proves, that because Christ shewed them that the same law, which by their own confession permitted them to pull an ass out of a pit on the sabbath day, could not but give a liberty of healing the sick, therefore the commands of kings are to be obeyed, tho they should be contrary to human and divine laws.

But if perverseness had not blinded him, he might have seen, that this very text is wholly against his purpose; for the magistratical power was on the side of the Pharisees, otherwise they would not have sought an occasion to ensnare him; and that power having perverted the law of God by false glosses, and a superinduction of human traditions, prohibited the most necessary acts of charity to be done on the sabbath day, which Christ reprov'd, and restored the sick man to his health in their sight.

But I could wish our author had told us the names of those divines, who, he says, are the best, and who pretend to teach us these fine things. I know some who are thought good, that are of a contrary opinion, and say that God having required that day to be set apart for his service and worship, man cannot dispense with the obligation, unless he can abrogate the law of God.

Perhaps, for want of other arguments to prove the contrary, I may be told, that this savours too much of Puritanism and Calvinism. But I shall take the reproach, till some better patrons than Laud and his

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creatures may be found for the other opinion. By the advice and instigation of these men, from about the year 1630, to 1640, sports and revelings, which ended for the most part in drunkenness and lewdness, were not only permitted on that day, but enjoined. And tho this did advance human authority in derogation to the divine, to a degree that may please such as are of our author's mind, yet others resolving rather to obey the laws of God than the commands of men, could not be brought to pass the Lord's day in that manner.

Since that time no man except Filmer and Heylyn has been so wicked to conceive, or so impudent to assert such brutal absurdities. But leaving the farther consideration of the original of this abuse, I desire to know, whether the authority given to masters to command things contrary to the law of God, be peculiar in relation to the Sabbath, or to a few other points, or ought generally to extend to all God's laws; and whether he who may command his servant to act contrary to the law of God, have not a right in himself of doing the same.

If peculiar, some authority or precept must be produced, by which it may appear that God has slighted his ordinance concerning that day, and suffer'd it to be contemned, whilst he exacts obedience to all others. If we have a liberty left to us of slighting others also, more or less in number, we ought to know how many, what they are, and how it comes to pass, that some are of obligation and others not. If the empire of the world is not only divided between God and

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Caesar, but every man also who can give five pounds a year to a servant, has so great a part in it, that in some cases his commands are to be obeyed preferably to those of God, it were fit to know the limits of each kingdom, lest we happen preposterously to obey man when we ought to obey God, or God when we are to follow the commands of men.

If it be general, the law of God is of no effect, and we may safely put an end to all thoughts and discourses of religion: the word of God is nothing to us; we are not to enquire what he has commanded, but what pleases our master, how insolent, foolish, vile or wicked soever he may be. The apostles and prophets, who died for preferring the commands of God before those of men, fell like fools, and perished in their sins. But if every particular man that has a servant, can exempt him from the commands of God, he may also exempt himself, and the laws of God are at once abrogated throughout the world.

'Tis a folly to say there is a passive, as well as an active obedience, and that he who will not do what his master commands ought to suffer the punishment he inflicts: for if the master has a right of commanding, there is a duty incumbent on the servant of obeying. He that suffers for not doing that which he ought to do, draws upon himself both the guilt and the punishment. But no one can be obliged to suffer for that which he ought not to do, because he who pretends to command, has not so far an authority. However, our question is, whether the servant should forbear to do that which God commands, rather than

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whether the master should put away or beat him if he do not: for if the servant ought to obey his master rather than God, as our author says the best divines assert, he sins in disobeying, and that guilt cannot be expiated by his suffering.

If it be thought I carry this point to an undue extremity, the limits ought to be demonstrated, by which it may appear that I exceed them, tho the nature of the case cannot be altered: for if the law of God may not be abrogated by the commands of men, a servant cannot be exempted from keeping the Sabbath according to the ordinance of God, at the will of his master. But if a power be given to man at his pleasure to annul the laws of God, the apostles ought not to have preached, when they were forbidden by the powers to which they were subject: The tortures and deaths they suffer'd for not obeying that command were in their own wrong, and their blood was upon their own heads.

His second instance concerning wars, in which he says the subject is not to examine whether they are just or unjust, but must obey, is weak and frivolous, and very often false; whereas consequences can rightly be drawn from such things only as are certainly and universally true. Tho God may be merciful to a soldier, who by the wickedness of a magistrate whom he honestly trusts, is made a minister of injustice, 'tis nothing to this case. For if our author say true, that the word of a king can justify him in going against the command of God, he must do what is commanded tho he think it evil: The Christian soldiers under the

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pagan emperors were obliged to destroy their brethren, and the best men in the world for being so: Such as now live under the Turk have the same obligation upon them of defending their master, and slaughtering those he reposes his enemies for adhering to Christianity: And the king of France may when he pleases, arm one part of his Protestant subjects to the destruction of the other; which is a godly doctrine, and worthy our author's invention.

But if this be so, I know not how the Israelites can be said to have sinned in following the examples of Jeroboam, Omri, Ahab, or other wicked kings: they could not have sinned in obeying, if it had been a sin to disobey their commands; and God would not have punished them so severely, if they had not sinned. 'Tis impertinent to say they were obliged to serve their kings in unjust wars, but not to serve idols; for tho' God be jealous of his glory, yet he forbids rapine and murder as well as idolatry.

If there be a law that forbids the subject to examine the commands tending to the one, it cannot but enjoin obedience to the other. The same authority which justifies murder, takes away the guilt of idolatry; and the wretches, both judges and witnesses, who put Naboth to death, could as little allege ignorance, as those that worshipped Jeroboam's calves; the same light of nature by which they should have known, that a ridiculous image was not to be adored as God, instructing them also, that an innocent man ought not under pretence of law to be murdered by perjury.

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Section 31

Free Nations Have a Right of Meeting When and Where They Please unless They Deprive Themselves of It

A perverted judgment always leads men into a wrong way, and persuades them to believe that those things favour their cause, that utterly overthrow it. For a proof of this, I desire our author's words may be consider'd. *In the former parliaments, says he, instituted and continued since Henry the first his time, is not to be found the usage of any natural liberty of the people: For all those liberties that are claimed in parliament, are liberties of grace from the king, and not the liberties of nature to the people: For if the liberty were natural, it would give power unto the multitude to assemble themselves, when and where they pleased, to bestow the sovereignty, and by pactions to limit and direct the exercise of it.*

And I say that nations being naturally free may meet, when and where they please; may dispose of the sovereignty, and may direct or limit the exercise of it, unless by their own act they have deprived themselves of that right: and there could never have been a lawful assembly of any people in the world, if they had not had that power in themselves. It was proved in the preceding section, that all our kings having no title, were no more than what the nobility and people made them to be; that they could have no power but what was given to them, and could confer none except what they had received. If they can therefore

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call parliaments, the power of calling them must have been given to them, and could not be given by any who had it not in themselves.

The Israelites met together, and chose Ehud, Gideon, Samson, Jephthah, and others, to be their leaders, whom they judged fit to deliver them from their enemies. By the same right they assembled at Mizpah to make war against the tribe of Benjamin, when justice was denied to be done against those who had villainously abused the Levite's concubine. In the like manner they would have made Gideon king, but he refused. In the same place they met, and chose Saul to be their king. He being dead, the men of Judah assembled themselves, and anointed David: Not long after, all the tribes met at Hebron, made a contract with him, and received him as their king. In the same manner, tho by worse counsel, they made Absalom king.

And the like was attempted in favour of Sheba the son of Bichri, tho they then had a king chosen by themselves. When they found themselves oppressed by the tributes that had been laid upon them by Solomon, they met at Shechem; and being displeased with Rehoboam's answer to their complaints, ten of the tribes made Jeroboam king. Jehu, and all the other kings of Israel, whether good or bad, had no other title than was conferred upon them by the prevailing part of the people; which could not have given them any, unless they had met together; nor meet together without the consent, and against the will of those that reigned, unless the power had been in themselves.

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Where governments are more exactly regulated, the power of judging when 'tis fit to call the senate or people together, is referr'd to one or more magistrates; as in Rome to the consuls or tribunes, in Athens to the archons, and in Thebes to the beotarchs: but none of them could have these powers, unless they had been given by those who advanced them to the magistracies to which they were annexed; nor could they have been so annexed, if those who created them had not had the right in themselves. If these officers neglected their duty of calling such assemblies when the publick affairs required, the people met by their own authority, and punished the person, or abrogated the magistracy, as appears in the case of the decemviri, and many others that might be alleged, if the thing were not so plain as to need no further proof.

The reason of this is, that they who institute a magistracy, best know whether the end of the institution be rightly pursued or not: And all just magistracies being the same in essence, tho differing in form, the same right must perpetually belong to those who put the sovereign power into the hands of one, a few, or many men, which is what our author calls the disposal of the sovereignty.

Thus the Romans did when they created kings, consuls, military tribunes, dictators, or decemviri: and it had been most ridiculous to say, that those officers gave authority to the people to meet and chuse them; for they who are chosen are the creatures of those who chuse, and are nothing more than others till they are chosen.

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The last king of Sweden, Charles Gustavus, told a gentleman who was ambassador there, that the Swedes having made him king, when he was poor and had nothing in the world, he had but one work to do, which was so to reign, that they might never repent the good opinion they had conceived of him. They might therefore meet, and did meet to confer the sovereignty upon him, or he could never have had it: For tho the kingdom be hereditary to males or females, and his mother was sister to the great Gustavus; yet having married a stranger without the consent of the estates, she performed not the condition upon which women are admitted to the succession; and thereby falling from her right, he pretended not to any. The act of his election declares he had none, and gives the crown to him and the heirs of his body, with this farther declaration, that the benefit of his election should no way extend to his brother Prince Adolphus; and 'tis confessed by all the Swedish nation, that if the king now reigning should die without children, the estates would proceed to a new election.

'Tis rightly observ'd by our author, that if the people might meet and give the sovereign power, they might also direct and limit it; for they did meet in this and other countries, they did confer the sovereign power, they did limit and direct the exercise; and the laws of each people shew in what manner and measure it is everywhere done. This is as certain in relation to kings, as any other magistrates.

The commission of the Roman dictators was, to take *care that the commonwealth might receive no det-*

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riment (*Ne quid detrimenti respublica accipiat*. T. Liv.). The same was sometimes given to the consuls: King Offa's confession, that he was made king *to preserve the publick liberty* (*In vestrae libertatis tuitionem*. Mat. Par.), expresses the same thing: And Charles Gustavus, who said he had no other work, than to govern in such a manner, that they who had made him king might not repent, shew'd there was a rule which he stood obliged to follow, and an end which he was to procure, that he might merit and preserve their good opinion.

This power of conferring the sovereignty was exercised in France by those who made Meroveus king, in the prejudice of the two grandchildren of Pharamond sons to Clodion; by those who excluded his race, and gave the crown to Pepin; by those who deposed Lewis le Debonair, and Charles le Gros; by those who brought in five kings, that were either bastards or strangers, between him and Charles le Simple; by those who rejected his race, and advanced Hugh Capet; by those who made Henry the first king, to the prejudice of Robert his elder brother, and continued the crown in the race of Henry for ten generations, whilst the descendants of Robert were only dukes of Burgundy.

The like was done in Castile and Aragon, by frequently preferring the younger before the elder brother; the descendants of females before those of the male-line in the same degree; the more remote in blood before the nearest; and sometimes bastards before the legitimate issue. The same was done in Eng-

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land in relation to every king, since the coming in of the Normans, as I shewed in the last section, and other places of his work.

That they who gave the sovereignty, might also circumscribe and direct it, is manifest by the several ways of providing for the succession instituted by several nations. Some are merely elective, as the empire of Germany and the kingdom of Poland to this day; the kingdom of Denmark till the year 1660; that of Sweden till the time of Gustavus Ericson, who delivered that nation from the oppression of Christian the second the cruel king of the Danes. In others the election was confined to one or more families, as the kingdom of the Goths in Spain to the Balthi and Amalthi. In some, the eldest man of the reigning family was preferr'd before the nearest, as in Scotland before the time of Kenneth. In other places the nearest in blood is preferr'd before the elder if more remote. In some, no regard is had to females, or their descendants, as in France and Turkey. In others, they or their descendants are admitted, either simply as well as males; or under a condition of marrying in the country, or with the consent of the estates, as in Sweden.

And no other reason can be given for this almost infinite variety of constitutions, than that they who made them would have it so; which could not be, if God and nature had appointed one general rule for all nations. For in that case, the kingdom of France must be elective, as well as that of Poland and the Empire; or the empire and Poland hereditary, as that of

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France: Daughters must succeed in France, as well as in England, or be excluded in England as in France; and he that would establish one as the ordinance of God and nature, must necessarily overthrow all the rest.

A farther exercise of the natural liberty of nations is discovered in the several limitations put upon the sovereign power. Some kings, says Grotius, have the *summum imperium summo modo*; others, *modo non summon* (*De jur. bell. et pac.*): and amongst those that are under limitations, the degrees, as to more or less, are almost infinite, as I have proved already by the example of Aragon, ancient Germany, the Saxon kings, the Normans, the kings of Castile, the present empire, with divers others. And I may safely say, that the ancient government of France was much of the same nature to the time of Charles the 7th, and Lewis the 11th; but the work of emancipating themselves, as they call it, begun by them, is now brought to perfection in a boundless elevation of the king's greatness and riches, to the unspeakable misery of the people.

'Twere a folly to think this variety proceeds from the concessions of kings, who naturally delight in power, and hate that which crosses their will. It might with more reason be imagined, that the Roman consuls, who were brought up in liberty, who had contracted a love to their country, and were contented to live upon an equal foot with their fellow citizens, should confine the power of their magistracy to a year; or that the dukes of Venice should be graciously pleased to give power to the Council of Ten to pun-

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ish them capitally if they transgressed the laws, than that kings should put such fetters upon their power, which they so much abhor; or that they would suffer them, if they could be easily broken.

If any one of them should prove so moderate, like Trajan, to command the prefect of the praetorian guard to use the sword for him if he governed well, and against him if he did not, it would soon be rescinded by his successor; the law which has no other strength than the act of one man, may be annulled by another. So that nothing does more certainly prove, that the laws made in several countries to restrain the power of kings, and variously to dispose of the succession, are not from them, than the frequent examples of their fury, who have exposed themselves to the greatest dangers, and brought infinite miseries upon the people, through the desire of breaking them. It must therefore be concluded, that nations have power of meeting together, and of conferring, limiting, and directing the sovereignty; or all must be grounded upon most manifest injustice and usurpation.

No man can have a power over a nation otherwise than *de jure*, or *de facto*. He who pretends to have a power *de jure*, must prove that it is originally inherent in him or his predecessor from whom he inherits; or that it was justly acquired by him. The vanity of any pretence to an original right appears sufficiently, I hope, from the proofs already given, that the first fathers of mankind had it not; or if they had, no man could now inherit the same, there being no man able to make good the genealogy that should give him a

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right to the succession. Besides, the facility we have of proving the beginnings of all the families that reign among us, makes it as absurd for any of them to pretend a perpetual right to dominion, as for any citizen of London, whose parents and birth we know, to say he is the very man Noah who lived in the time of the flood, and is now four or five thousand years old.

If the power were conferred on him or his predecessors, 'tis what we ask; for the collation can be of no value, unless it be made by those who had a right to do it; and the original right by descent failing, no one can have any over a free people but themselves, or those to whom they have given it.

If acquisition be pretended, 'tis the same thing; for there can be no right to that which is acquired, unless the right of invading be proved; and that being done, nothing can be acquired except what belonged to the person that was invaded, and that only by him who had the right of invading. No man ever did or could conquer a nation by his own strength; no man therefore could ever acquire a personal right over any; and if it was conferr'd upon him by those who made the conquest with him, they were the people that did it. He can no more be said to have the right originally in and from himself, than a magistrate of Rome or Athens immediately after his creation; and having no other at the beginning, he can have none to eternity; for the nature of it must refer to the original, and cannot be changed by time.

Whatsoever therefore proceeds not from the consent of the people, must be *de facto* only, that is, void

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of all right; and 'tis impossible there should not be a right of destroying that which is grounded upon none; and by the same rule that one man enjoys what he gained by violence, another may take it from him. Cyrus overthrew the Assyrians and Babylonians, Alexander the Medes and Persians; and if they had no right of making war upon those nations, the nations could not but have a right of recovering all that had been unjustly taken from them, and avenging the evils they had suffered.

If the cause of the war was originally just, and not corrupted by an intemperate use of the victory, the conquer'd people was perhaps obliged to be quiet; but the conquering armies that had conferred upon their generals what they had taken from their enemies, might as justly expect an account of what they had given, and that it should be employ'd according to the intention of the givers, as the people of any city might do from their regularly created magistrates; because it was as impossible for Cyrus, Alexander or Caesar, to gain a power over the armies they led, without their consent, as for Pericles, Valerius, or any other disarmed citizen to gain more power in their respective cities than was voluntarily conferr'd upon them.

And I know no other difference between kingdoms so constituted by conquering armies, and such as are established in the most orderly manner, than that the first usually incline more to war and violence, the latter to justice and peace. But there have not been wanting many of the first sort (especially the nations coming from the north) who were no less

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exact in ordaining that which tended to the preservation of liberty, nor less severe in seeing it punctually performed, than the most regular commonwealths that ever were in the world.

And it can with no more reason be pretended, that the Goths received their privileges from Alan or Theodoric, the Franks from Pharamond or Meroveus, and the English from Ine or Ethelred, than that the liberty of Athens was the gift of Themistocles or Pericles, that the empire of Rome proceeded from the liberality of Brutus or Valerius, and that the commonwealth of Venice at this day subsists by the favour of the Contarini or Moresini: which must reduce us to matter of right, since that of fact void of right can signify nothing.