

from violence and wrong; That the liberal Education of Children be encouraged; That those who deserve well be Rewarded, and Wickedness be punished: When by such Laws as these, they do as far as can be provide for a People's Felicity, they are very Good.

AS to the Question, *Whether Civil Rulers have Power to make Laws about the Religious Worship of God, and Heretical Doctrines?* I shall only Answer, Whatsoever may truly serve to the Peace and Tranquillity of the People comes within their reach, agreeable to the Rule of Reason, and the Word of God. Now, no People can do well without Religion, nor can they do well without the True Religion. Civil Judgments are often bro't for Irreligion, and false Worship, when tolerated; and who should restrain it but such as have the Civil Sword put into their hands by God: Those therefore were the Leaders in the Reformation, recorded in Scripture, and punished Offenders in this kind. Civil Rulers do receive their Authority from God, and are to use it for Him; which how shall they do, if they suffer His Attributes to be Blasphemed, His Name to be taken in vain, His Worship to be defiled, His Sabbaths to be profaned, His Truths to be perverted. Tho' therefore they have no Warrant from God, to Coin any New Articles in the Religion which He Himself hath revealed; nor to appoint any New Institutions in His Worship, which alone belongs to the Kingly Office of Christ; (and if they should do so, His holy Jealousy would be incensed against them,) yet their Power is *Circa Sacra*; and they ought to provide that the House of God be built His Worship upheld; the Ministers of His Sanctuary be supported; all Affronts against His Sacred Majesty be duly born witness against; and all Heretical Doctrines which are at any time broached, be suppressed. And how can this be done, unless there be Laws adapted to these Ends? Without this, they cannot provide that their Subjects may lead quiet and peaceable Lives, in all Godliness; but there must be endless Schisms and Divisions in the Church of God.

USE. WHAT need have we then, to *Pray to God for our Rulers, in this Regard*; That He will put His Spirit upon them; and afford them the direction of His holy Spirit; That they may have a right discerning of these Things, and an Heart strenuously engaged, thus to promote the true Wellfare of the People under their Charge.

[NOVEMBER 16. 1703.]

SERMON CLXXXVII.

(II.) THEY ought to take care for the Execution of Good Laws, according to Equity. This also is incumbent on the Civil Magistracy, although the Duty doth

notly alike in all respects on all in Authority, but on every one in the Station which he bears in the Civil Government. We before observed, that for the maintenance of good Order in the Body Politick, there is a Legislative, and an Executive Power belonging to the Magistracy, both whereof are necessary, nor can they be well separated without unavoidable mischief. To Govern without Laws, brings an Arbitrary Government, which is unreasonable; and opens the way to Tyranny, by exposing the Estate, Liberty and Life of the Subject, to the Will of the Rulers, who are sinful Men, and liable to Prejudices; and no Man is safe, or knows when or how to keep himself clear from Civil Censures: And the end of Laws which is to maintain Equity and Justice, cannot possibly be advanced except due Care be taken that such Good Laws be duly put into Execution. Laws that are made or used, only as Scarecrows, will soon be despised; and the Law-makers themselves be quickly contemned, and their Authority disregarded. A Law is properly an Instrument of Government, and all the Good it doth is by being applied to the End of it, which is to encourage Virtue and suppress Vice; which is attained by letting Men know, that it is made in earnest; else the Sword is born wholly in vain. It is therefore to be observed, that as there are Persons to whom it belongs to make Laws, so there are such as are entrusted with the dispensation of them, who are in Scripture-Language called *Judges*: And tho' the same Persons may be employed in both, (the Prudence whereof will admit of a dispute,) yet they do it not under the same consideration. There is a Power of appointing Judges or Justices; and there is a Power vested in the Persons so appointed, who are nextly to Execute the Laws, by virtue of the Authority thus conveyed to them; and there is something incumbent upon each of these, to render the Government just and equal: And these may be considered severally.

[1.] IT belongs as a Duty on *Lawgivers*, to take utmost Care, that *just Laws may have a due Execution*. We formerly observed, that it is incumbent on them to see that their Laws be *Righteous and Good*; else if the Law be Unjust and Oppressive, they will be guilty of all the Injury that is done by the Execution of it, because they Command it; but they have an Inspection over the Application also. And here are principally these Duties,

(1.) TO appoint Persons fully qualified for this Post. All Men are not capable of sustaining such a Charge, nor will Birth or Wealth nextly furnish them; but there are peculiar Gifts & Vertues necessary to be found in such as have so great a Trust put upon them. *Feibro's* Advice which he gave to *Moses* is very comprehensive of this Duty, *Exod. 18. 21. Thou shalt provide out of all the people, able men, such as fear God, men of truth, hating covetousness.* The wisest of Men may be deceived in the Character of others; however such are to be sought

fought for; they must be *able men*, Heb. *Men of might*, which is not always applied to bodily Strength, which is no necessary Qualification of a Judge; but often to Strength of Mind, and comprehends under it both Resolution and Courage, and Ability to search into a Cause, and Skill in the Laws; that so they may put a difference between Right and Wrong. They must be such as *Fear God*, which will influence them to Righteousness, as knowing they must give an Account to God; and having a Principle in them, which will not suffer them to do any Injustice, but make them impartial. They must be Men of *Truth*, i. e. of *Fidelity*, for so the Word is frequently used; which will make them search out matters to the bottom, and Judge according as the Cause is, laying aside respect of Persons. And they must *hate Covetousness*, which will make them scorn to take Bribes, to blind their Judgments.

(2.) TO *hear a due Testimony against such as carry themselves unworthily in their Trust*. This also belongs to the Superiour Power in a Government: Men may upon Trial be found to be insufficient to bear their Place, and manage themselves very unworthily in it; they may oppress the Innocent, and let Criminals escape, and not hear the Pleas of the Widows and Fatherless; certainly such, upon due Information, ought at least to be discountenanced, and not be suffered to have any more advantage to do, but be wholly disabled. We find what David resolved to do in his Kingdom, *Psal. 101. 2. 3c. and 75. 10.* These ought to let all such know, that if they Transgress their Charge, they shall find no Protection from them.

[2.] THE Duties of *Judges* themselves, which they are to follow in all their Administrations, are *diverse*; the chief whereof are such as these;

1. THEY ought in general, to have a *due regard to Justice and Equity*. The Law is, or ought to be a Rule of Righteousness; this therefore 'tis his Duty to lay in the Foundation of all his Administrations, and firmly resolve to take all his measures according to it; and that he will take heed, that he do no unjust thing; so did he, *Psal. 75. 2.* When I shall receive the congregation, I will judge uprightly. The distinction indeed between Justice and Equity is very nice, tho' I know *Lawyers* make a very great one; and for that reason are Courts of *Equity* erected, to abate the Rigour of *Law Justice*, in Cases wherein Persons else would suffer wrong. But in a Moral sense, all Laws are to be calculated by the Rules of right Reason; and if so, they are both *Just* and *Equal*: And tho' Men through the misapprehension of the reason of things, may be in an Error in the application; yet Judges ought to interpret them in every thing that is dubious, by this general Rule; for they are to do Justice and Judgment.

AS to that Question, *Whether a Judge is bound to Execute a Law, which he is convinced to be in it self Unrighteous?* It would take up too much time to discuss it distinctly; all that I say is, They are to Judge for God primarily;

and He loves Righteousness, and hates Iniquity; and we are told concerning such, *Prov. 17. 15. He that justifieth the wicked, and he that condemneth the just, even they both are abomination to the Lord.* And they that think such a Man hath two Consciences, a Publick and a Private, will find it a grand Cheat one Day, when they shall stand before the great Tribunal. But there is great Prudence necessary to be used in such a Case.

2. THEY ought to have a *peculiar regard to the Laws of the Government, to which they serve*. Tho' the Law of God is the Rule of his Conscience, which he ought by no means to transgress; and that Law extends, and sets bounds to all his Actions, in every Relation he bears among Men; yet the Law of the Government is that to which he is to refer all his Juridical Actions, and they are to be bounded by it, and that on a double Account. He is to execute all the wholesome Laws of it, according as there is occasion for it offered to him; and this he is to do because the Oath of God is upon him, which is a Solemn tie lying upon his Conscience, that which there can be no stronger Obligation among Men; as also, because he is a Minister of God, as well as of Men, appointed for this very end, *Rom. 13. 4.* God therefore and Men expect it of him; and the Civil Tranquillity hath no little dependance upon it. He is also to be limited by the Law in all the Executions of his Office. Consider him as a Judge, and he hath no Authority to make Laws for his Direction, for they are already made to his hand, and he is bound to them. It is an unexceptionable Rule, that where there is no Law, there is no Transgression, and consequently no Punishment due: And tho' if a Man transgress the Law of God, a Judge may and ought as a Christian to rebuke him for it; yet if there be no Law of Man, he cannot inflict any Civil Punishment upon him; nor will it be his default, but the blame of Law-makers, if he go unpunished, in case the Transgressions be such, as requires that it be born witness against by the Civil Powers; which, when it is so, was formerly taken notice of.

3. TO *search to the bottom of the Cause that comes under his Cognizance*. He ought to avoid all rash Judgment, and not to determine a Case before he hath heard it: We are therefore advised, *Prov. 18. 13. He that answereth a matter before he heareth it, it is folly and shame unto him.* And *25. 2. It is the glory of God to conceal a thing: but the honour of kings is to search out a matter.* There are many Causes, that come before Civil Judges, which are intricate and perplexed; and the matters themselves lye much out of sight, and the right determination of them is a matter of great weight, wherein Men's Estates, or Reputation, or Lives are concerned; such things as these are not to be slightly passed over, but canvassed thoroughly. This therefore was one thing wherein *Job* vindicated his Integrity in this regard, *Job. 29. 16.* There are a great many Tricks, and Covers, and fair Pleas that Men will make in their own Cause, to blind the Cause, and put a false Face upon it; and

and it requires great Skill, and a diligent Application of it, to set it in its true light, to prevent and detect all Fraud & wrong Judgment; and if he is not critically Cautious in this he may easily pass an Unrighteous Sentence, which he will have cause to repent of, when it may be too late to remedy, and bring upon himself a Guilt which is not easily wiped off.

4. HE ought to have a special regard to right the Poor and Helpless, against their Rich and Potent Oppressors. The Mean and Despised, who have none else to stand up for them, and right them, are exposed to wrongs and injuries, and every one will be ready to crush and tread them under the foot of Insolence: These therefore have no other, under God, to make their Case known to, but such as have the Authority of righting them, put into their hands. God hath therefore in his Word, given special Charge to such, to take Care of these; hence that in, Psal. 82, 3, 4. *Defend the poor and fatherless: do justice to the afflicted and needy. Deliver the poor and needy: rid them out of the hand of the wicked.* Hence that Warning given to such, Prov. 24, 11, 12. *If thou forbear to deliver them that are drawn unto death, and those that are ready to be slain: If thou sayest, Behold, we knew it not: doth not he that pondereth the heart consider it? and he that keepeth thy soul, doth not he know it? and shall not he render to every man according to his works?* And this is the commendation given of Solomon's Reign, who was therein a Type of Christ, Psal. 72, 12, 13, 14. *For he shall deliver the needy when he crieth: the poor also, and him that hath no helper. He shall spare the poor and needy, and shall save the souls of the needy. He shall redeem their soul from deceit and violence: and precious shall their blood be in his sight.*

5. HE is to allow a fair Hearing to all Parties, whose Cause comes before him. There are Two sorts of Causes which belong to the Cognizance and Determination of Civil Judicature, viz. Matters Criminal or Capital; and Matters of Controversy between Man & Man: In either of these it is his Duty to suffer the Party accused to Plead for himself, and bring whatsoever he can in his own Defence, and have an Ear open to him, as well as the Accuser or Plaintiff; and not to Judge before he hath heard what both sides have to alledge for themselves. (Acts 25, 16.) He ought therefore to shew no manner of Partiality during the Trial, much less to become an Attorney for the one against the other. *Audi alteram partem*, was a saying frequently in the Mouth of a Pagan Judge. And another could say, *I have Two Ears, when I sit to hear any Cause.* In matters between the Prince and the Subject, he ought to let the Subject have as full a Hearing and with as much Candour as him who pleads on the Princes behalf; and in Matters between Man & Man he is to give the Poor as free Audience as the Rich, the Mean as the Noble Man. Nor ought the Plaintiffs fair and plausible colouring of the matter, Preoccupy or Prejudice his Judgment, much less Determine it; but he must maintain as free and open a

Spirit to receive what the other hath to bring in his own Vindication. It is a Vulgar speech and True, *One Man's Cause is Good, till another be heard.* And it agrees with that of the Wise Man, Prov. 18, 17. *He that is first in his own cause, seemeth just; but his neighbour cometh and searcheth him.* He ought not therefore to be frightened with hard Words and Menacing, but entertained with greatest Candour: Thus did Joshua accost Achan, when he sat in Judgment upon him; as, Josh. 7, 19.

6. HE ought to proceed in judgment, secundum Allegata & Probata, i. e. according to the Nature of the Things alledged, and the Evidence which is produced, for the making of it a Legal Truth. And there are two things which do belong to this Head.

(1.) THE matter of Fact must be legally proved. It is not enough that the Person be accused, and Matters never so unjust alledged against him; but there must be Evidence brought in against him, which shall according to Righteousness make it to appear that it is, *ad Hominem*, a plain and undeniable Truth. If it were eno^d to Accuse, who should be Innocent? But in due Proof, it stands a Truth in Law, nor will the denial of the other Person invalidate it; for if it be enough to Deny, who should be Guilty? Now the ordinary way to Evidence things of Fact in Civil Courts, is, by Humane Testimony; tho' Artificial Arguments are of use; and here God hath required, that in one Case, there must be at least Two Witnesses, for the Conviction of a Person, or making a Thing legally True.

AS to that Case, *Whether One Witness will not suffice in some Cases?* I Answer in a word, That all Cases are alike as to Evidence, and God hath wisely provided, that because One Man's Credit is, of it self, as good as another's in this point, there should be Two Witnesses, and therefore that Law was Moral which required this; i. e. When there is nothing else to prove the matter, & this must be to an Individual Fact.

AS to the Case, *How far the Man's own Confession will Convict him?* It may be replied, That the Word of God allows it in some Cases; but then the Person must be clear, full and free in it; not evidently under the power of Melancholly: And the Civil Law also well provides both that no Confessions shall be extorted, and that the Matter of Fact Confessed shall be Notorious. Hence it is wholly unlawful to put any to the Rack, to draw out a Confession from them; because it is a fearful Punishment, and an horrible Injury to an Innocent Person; and such is the Person in the Question, till legally Convicted, in the account of the Law.

(2.) THE Relation which the matter of Fact bears to the Law, must be duly stated. And here also, no small Caution is requisite: A matter of Fact may be proved, the Man may be legally convinced that the thing is so; but then it is another Question, What reference it hath to the Law; whether he hath Transgressed, and so made himself liable to the Sanction; whether he hath Injured his Neighbour, and so ought to make him a Reparation? It was proved

proved against *Abimelech*, that he had succoured *David*, when he fled from *Saul*, but not that he had therein transgressed any Law, inasmuch as *Saul* had never declared *David* to be an Enemy, and a Rebel against the Government.

7. HE is to disallow all unnecessary delays of Judgment. It is true, over precipitancy is on the other hand to be avoided; suitable Time is to be allowed for Men to provide for the Justifying of their Cause; but still it is a great Duty, that matters be not needlessly deferred, and this both in matters Criminal, and in Suits at Law: There may be matters of Suspicion and Presumption alledged against an Innocent Person, which may unavoidably bring him into Trouble; tho' Care is to be used as far as may be to prevent it: However to suffer Imprisonment, or be under Security, is a suffering, and therefore it ought not to be any longer than need requires; but the matter as soon as can be, brought to an issue, that if he be Innocent, he may be restored to his Liberty and good Name; if Guilty, he may suffer according to his demerit. And in matters of Suit, it is the Duty of Judges to bring matters to as Expedite an Issue as can be, and not to consent to every trifling pretence of Non Suits, &c. and so to keep things in suspense, till the righteous Person suffer more loss and expence than his gained Cause will repair, and it stands him in more to recover his just due, than the thing it self is worth. It was Exemplary in that Roman Judge, Acts 25. 17. *Therefore when they were come hither, without any delay on the morrow I sat on the judgment seat, and I commanded the man to be brought forth.*

8. HE ought to pronounce the Sentence impartially, without respect of Persons. It was a Moral Precept given to Judges, in Lev. 19. 15. *Thou shalt do no unrighteousness in judgment; thou shalt not respect the person of the poor, nor honour the person of the mighty: but in righteousness shalt thou judge thy neighbour.* And Deut. 1. 16, 17. *Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him. Thou shalt not respect persons in judgment, but thou shalt hear the small as well as the great, thou shalt not be afraid of the face of man, for the judgment is God's.* Acceptation of Persons is then sinful, when Men are to be tried in Law, and the Judge instead of keeping exactly to the true meaning of the Law, is byassed by the consideration of something in the Person himself, so as to neglect or pervert the Law for the sake of that Consideration; and here it is universally forbidden: It is neither to be regarded for the Poor or for the Rich. Sometimes a Man may be tempted to Succour an unrighteous Cause, either from Consanguinity, or Friendship, or Fear of the Person, lest he should do him some injury in Revenge, or because of some Gift, or Bribe offered in secret; and sometimes, tho' this is more rare, to favour a Poor Man in Pity and Compassion to

him, supposing him like to be ruined, in case the Law be prosecuted upon him; both of these are contrary to the Justice required of such. There is indeed no unlawful Acceptation of Persons, in things meetly Gratuitous; a Man may bestow his Favour at his discretion; but in matters of Justice, it is a thing abhorred of God, and of all good Men.

9. HE is to provide that the Sentence may be duly Executed. The End of the Law will not otherwise be obtained, but indeed excluded. There are indeed subordinate Officers employed for this; but it is incumbent on the Judge to take an effectual course that it be done, or such as are trusted with it, be duly born witness against, on their neglect thereof, Prov. 28. 17.

BUT here it may be enquired, *Whether Civil Authority may not grant a Pardon to an Offender, if they see meet to extend such a Favour to him?*

TO this I reply, That no Judge as such, is impowred to give a Pardon to a Criminal, his Province being to administer Justice, according to Law; and there is no dispensatory Power belonging to him in that Post. It is also a great Truth, that there are some Crimes which God hath definitely required of Men, that they shall not show the least Pity to the Person convicted of them, as in the case of Murder, fore-mentioned, Gen. 6. 9. And it is farther to be observed, that the end of Laws is to put away Guilt from a People, whereby else God would be provoked to bring his Judgments upon them; and to be a Terror to others, that by the Execution of them, they may learn to fear and avoid such things; both of which will be in a great measure lost, by the easy forgiving of such Persons.

NEVERTHELESS, There are some Cases so circumstanced, that extream Right would be extream Wrong, and the Severity of the Civil Law would appear to be Cruelty: And when it is so, it's doubtless, that God hath lodged in the supream Power of a People, a Prerogative, either to mitigate the Severity of the Sentence, or to take it off by a free Pardon: And this more especially, when the Law it self which is transgressed, is such as nothing else makes it a Crime, but only the Civil Authority and Sanction; and the thing it self would else have been Lawful; though where this Power is lodged, is according to the Constitution of the Government.

USE. THIS also gives us reason to Bless God, when He bestows such Judges upon us. And calls upon us to Pray to God, That He would inspire, or assist all such, that they may acquit themselves so, that Justice and Judgment may go down our streets as a stream: and then will God, even our own God bless us.

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