

BOOK VIII. To this they often^r apply that strict^a and severe charge¹ which God so often gave concerning his own law, "Whatsoever I command you, take heed ye^a do it; thou shalt put nothing thereunto, thou shalt take nothing from it;" nothing, whether it be great or small. Yet sometime be- thinking themselves better, they speak as acknowledging that it doth suffice to have received in such sort the principal things from God, and that for other matters the Church hath^b sufficient authority to make laws. Whereupon they now have made it a question, what persons they are whose right it is to take order for the Church's affairs, when the institution of any new thing therein is requisite.

Laws^o may be requisite to be made either concerning things that are only to be known and believed in, or else touching that which is to be done by the Church of God. The law of nature and the law of God are sufficient² for declaration in both what belongeth unto each man separately, as his soul is the spouse of Christ, yea so sufficient, that they plainly and fully shew whatsoever God doth require by way of necessary introduction unto the state of everlasting bliss. But as a man liveth joined with others in common society, and belongeth unto the outward politic body of the Church, albeit the same^d law of nature and scripture^e have in this respect also made manifest the things that are of greatest necessity; nevertheless, by reason of new occasions still arising which the Church having care of souls must take^f order for as need requireth, hereby it cometh to pass, that there is and ever will be^g great use even of human laws and ordinances, deducted by way of discourse as conclusions^h from the former divine and natural, serving forⁱ principles thereunto.

No man doubteth, but that for matters of action and practice in the affairs of God, for the manner of^k divine

^r also E.Q.C.L. Cl. Trab. ^a strait E. ^s to Cl. Trab. you D. ^b had E. law E. ^d said Cl. Trab. D. ^e of scripture D. ^f must needs take D. ^g so great E.Q.C.L. Cl. Trab. ^h as a conclusion E. ⁱ as E.Q.C. ^k for manner in E.C.L. Cl. Trab. for manner of Q.

¹ Deut. iv. 2; xii. 32; [quoted in Admonit. p. 1. ed. 1617;] ² Thom. ii.* [2 Sum. pars i.] Jos. quæst. 108. art. 2. [p. 709. Venet. 1596.]

* 1. 2. D.

service, for order in ecclesiastical proceedings about the regiment of the Church, there may be oftentimes cause very urgent to have laws made: but the reason is not so plain wherefore human laws should appoint men what to believe. Wherefore in this we must note two things: First, That in matter of opinion, the law doth not make that to be truth which before was not, as in matter of action it causeth that to be duty¹ which was not before, but it^m manifesteth only and giveth men notice of that to be truth, the contrary whereunto they ought not before to have believed. Secondly, That asⁿ opinions do cleave to the understanding, and are in heart assented unto, it is not in the power of any human law to command them, because to prescribe what men shall think belongeth only unto God. "Corde creditur, ore fit confessio," saith the Apostle¹. As opinions are either fit or inconvenient to be professed, so man's law hath^o to determine of them. It may for public unity's sake require men's professed assent, or prohibit contradiction^p to special articles, wherein, as there haply hath been controversy what is true, so the same were like to continue still, not without grievous detriment to a number of souls, except law to remedy that evil should set down a certainty which no man is^q to gainsay. Wherefore as in regard of divine laws, which the Church receiveth from God, we may unto every man apply those words of Wisdom^r in Solomon², *Conserva, fili mi, præcepta patris tui*^s: "My son, keep thou thy father's precepts;" even so concerning the statutes and ordinances which the Church itself maketh^t, we may add thereunto the words that follow, *Et ne dimittas legem matris tuæ*, "And forsake not thou^u thy mother's law²."

[6.] It is undoubtedly^x a thing even natural, that all free and independent societies should themselves make their own laws, and that this power should belong to the whole, not to any certain part of a politic body, though haply some one part may have greater sway in that action than the rest: which thing being generally fit and expedient in the making

¹ a duty E. ^m it om. E.C.L. ⁿ as om. E. ^o man's laws have E. ^p their contradiction E.Q.C.L. Cl. Trab. ^q man afterwards is E.C.L. Cl. Trab. ^r man of wisdom apply those words of D. ^s *The English first* E.Q. ^t makes E.Q.C.L. ^u thou not E.Q.C.L. ^x a thing even undoubtedly E.C.L.

¹ [Rom. x. 10.]

² Prov. vi. 20.

of all laws, we see no cause why to think otherwise in laws concerning the service of God; which in all well-ordered^v states and commonwealths is the first thing that law hath care to provide for¹. When we speak of the right which naturally belongeth to a commonwealth, we speak of that which needs must² belong to the Church of God. For if the commonwealth be Christian, if the people which are of it do publicly embrace the true religion, this very thing doth make it the Church, as hath been shewed. So that unless the verity and purity of religion do take from them which embrace it, that power wherewith otherwise they are possessed; look, what authority, as touching laws for religion, a commonwealth hath simply^a, it must of necessity being Christian, have the same as touching laws for Christian religion^b.

[7.] It will be therefore perhaps alleged, that a part of the verity of Christian religion is to hold the power of making ecclesiastical laws a thing appropriated unto the clergy in their synods; and that^c whatsoever is by their only voices agreed upon, it needeth no further approbation to give unto it the strength of a law: as may plainly appear by the canons of that first most venerable assembly², where those things which^d the Apostles and James had concluded, were afterward^e published and imposed upon the churches of the Gentiles abroad as laws, the records thereof remaining still in the book of God for a testimony, that the power of making ecclesiastical laws belongeth to the successors of the Apostles³, the bishops and prelates^f of the Church of God.

^v ordained D. ² must needs E.Q.C.L. ^a Here the fragment in Cl. Trab. breaks off. ^b it must of necessity retain the same, being of the Christian religion E. of necessity being [of 1676] Christian Religion, Gauden, 1662. ^c that om. E.C.Q. inserted L.D. ^d which om. E. ^e afterwards E.Q.C.L. ^f belongeth to the prelates E. The MSS. all give it as above: except that the before bishops is omitted in D.

¹ Δεῖ τὸν νόμον τὰ περὶ Θεοῦ καὶ δαίμονας καὶ γονέας, καὶ ὅλων τὰ καλὰ καὶ τίμια, πρῶτα [πρῶτα] τίθεσθαι δεύτερον δὲ τὰ συμφέροντα τὰ γὰρ μήνα τοῖς μείζουσιν ἀκολουθεῖν καθήκει. [ποθάκει*.] Archyt. de Leg. et Justit. That is, "It behoveth the law first to establish or settle those things which belong to the gods, and divine powers, and to our

"parents, and universally those things which be virtuous and honourable; in the second place, those things that be convenient and profitable: for it is fit that matters of the less weight should come after the greater†." [Ap. Stob. Floril. II. 169. ed. Gaisford.]

² Act. xv. 7. 13-23. ³ [See App. No. iv.]

* This word is erased D.

† Translation om. D.

To this we answer, that the council of Jerusalem is no argument for the power of the clergy alone^g to make laws. For first, there hath^h not been sithence¹ any council of like authority to that in Jerusalem: secondly, the cause why that was of such authority came by a special accident: thirdly, the reason why other councils being not like unto that in nature, the clergy in them should have no power to make laws by themselves alone, is in truth so forcible, that except some commandment of God to the contrary can be shewed, it ought notwithstanding the foresaid example to prevail.

The decrees of the council of Jerusalem were not as the canons of other ecclesiastical assemblies, human, but very divine ordinances: for which cause the churches were far and wide commanded¹ every where to see them kept, no otherwise than if Christ himself had personally on earth been the author of them.

The cause why that council was of so great authority and credit above all others which have been sithence^k, is expressed in those words of principal observation², "Unto the Holy Ghost and to us it hath seemed good:" which form of speech, though other councils have likewise used, yet neither could they themselves mean, nor may we so understand them, as if both were in equal sort assisted with the power of the Holy Ghost; but the later had the favour of that general assistance and presence which Christ doth promise³ unto all his, according to the quality of their several estates and callings; the former, that¹ grace of special, miraculous, rare, and extraordinary illumination, in relation whereunto the Apostle, comparing the Old Testament and the New together, termeth⁴ the one a Testament of the letter, for that God delivered it written in stone, the other a Testament of the Spirit, because God imprinted it in the hearts and declared it by the tongues of his chosen Apostles through the power of the Holy Ghost, framing both their conceits and speeches in most^m divine and incomprehensible manner. Wherefore inasmuch as the council

^g alone om. E. ^h has E.C.L. hath Gauden. ¹ since D. ^k since D. ^m more D.

¹ Acts xvi. 4.
² Acts xv. 28.

³ Matt. xxviii. 20.
⁴ 2 Cor. iii. 3, 6.

of Jerusalem did chance to consist of men so enlightened, it had authority greater than were meet for any other council besides to challenge, wherein no^a such kind of persons are.

[8.] As now^o the state of the Church doth stand, kings being not then that which now they are, and the clergy not now that which then they were: till it be proved that some special law of Christ hath for ever annexed unto the clergy alone the power to make ecclesiastical laws, we are to hold it a thing most consonant with equity and reason, that no ecclesiastical law^p be made in a Christian commonwealth, without consent as well of the laity as of the clergy, but least of all without consent of the highest power.

For of this thing no man doubteth, namely, that in all societies, companies, and corporations, what severally each shall be bound unto, it must be with all their assents¹ ratified. Against all equity it were that a man should suffer detriment at the hands of men, for not observing that which he never did either by himself or by others, mediately or immediately, agree unto; much more that a king should constrain all others unto the strict observation of any such human ordinance as passeth without his own approbation. In this case therefore especially that vulgar axiom is of force², "Quod omnes tangit ab omnibus tractari et approbari debet." Whereupon Pope Nicholas, although otherwise not admitting lay-persons, no not emperors themselves to be present at synods, doth notwithstanding seem to allow of their presence when matters of faith are determined, whereunto all men must

^a no om. E.^o are, as now E.C.L.^p laws E.Q.C.L.

¹ Cap. *Dilecta*, de Excess. Prælator. [Decretal. Greg. v. 31, 14. c. 1642. Lugd. 1572. This is an inhibition of Pope Honorius III. to the clergy of Jouars, in the diocese of Meaux, forbidding them to make or use a common seal without the consent of the abess of Jouars, who was "ipsorum caput et patrona." L. *Per fundum* [Tit. de servitutib.] rusticor. Præd. [Digest. lib. viii. tit. iii. l. 11. "Per fundum, qui plurium est, jus mihi esse eundi, agendi, potest separatim cedi: ergo sub

"till ratione non aliter meum fiet jus, quam si omnes cedant: et novissima demum cessione superiores omnes confirmabuntur." et § *Religiosum*. De rerum divis. [Inst. II. 1. § 9. "Religiosum locum unusquisque sua voluntate facit. In communem autem locum purum invito socio inferre non licet." ² Gloss. [in verb. *Pertinet*.] Dist. 96. c. *Ubinam**. [fol. xcix. Lugd. 1509. Bonifac. viii. De Regulis Juris, ad calc. lib. 6¹ Decretal. Lugd. 1572. Reg xxix. col. 742.]

* This note from D.

stand bound¹: "Ubinam legistis imperatores, antecessores vestros, synodalibus conventibus interfuisse; nisi forsitan in quibus de fide tractatum est, quæ universalis est, quæ omnibus communis est^a, quæ non solum ad clericos, verum etiam ad laicos et omnes pertinet Christianos?" A law, be it civil or ecclesiastical, is as^r a public obligation, wherein seeing that the whole standeth charged, no reason it should pass without his privity and will, whom principally the whole doth depend upon. "Sicut laici jurisdictionem clericorum perturbare, ita clerici jurisdictionem laicorum non debent imminuere^s;" saith Innocent², "As the laity should not hinder the clergy's jurisdiction, so neither is it reason that the laity's right should be abridged by the clergy^t." But were it so that the clergy alone might give laws unto all the rest, forasmuch as every estate doth desire to enlarge the bounds of their own liberties, is it not easy to see how injurious this might prove unto men of other condition^u? Peace and justice are maintained by preserving unto every order their rights^x, and by keeping all estates as it were in an even balance. Which thing is no way better done, than if the king, their common parent, whose care is presumed to extend most indifferently over all, do bear the chiefest sway in the making of laws^y which all must be ordered by.

^a quæ univ. . . communis est om. E. ^r as om. E.Q.C.L. ^s minuere E.C.L. ^t saith Pope Innocent E.Q.C.L. ^u conditions E.L. ^x right E.C. ^y in making laws E.Q.C.L.

¹ [Decr. Gratian. pars i. d. 96. col. 468, from a letter of Nicholas I. to the Greek emperor Michael III, reproving him for having been a party to the proceedings of the provincial synod which deposed Ignatius patriarch of Constantinople without any charge of heresy, and substituted Photius in his place. A.D. 865. Concil. Hard. v. 158 C.] ² Extrav. de Judic. C. *Novit*. (*Extra de judiciis novit*, Gauden in text.) [This passage does not appear in the Extravagantes, Tit. De Judiciis, ad calc. vi. Decretal. ed. 1573. The forty-second canon of the fourth Lateran council, which was drawn up by Innocent III, A.D. 1215, runs thus: "Sicut volumus ut jura clericorum non usurpent laici, ita velle debemus, ne clerici jura sibi

"vindicent laicorum. Quo circa universis clericis interdicimus, ne quis prætextu ecclesiasticæ libertatis suam de cætero jurisdictionem extendat in præjudicium jurisdictionis sæcularis." Conc. Hard. vii. 49. In the title *De Judiciis*, Decretal. Greg. ix. lib. ii. tit. i. cap. 13, (which begins, *Novit ille qui nihil ignorat*) the following passage is given of the letter from Innocent to the bishops of France; by which he interfered between king John and Philip Augustus, A.D. 1204; "Non putet aliquis quod jurisdictionem illustris regis Francorum perturbare aut minuere intendamus, cum ipse jurisdictionem nostram nec velit nec debeat impedire." col. 489. Lugd. 1572.]

[9.] Wherefore, of them which in this point attribute most to the clergy, I would demand what evidence there is, which way^z it may clearly be shewed, that, in ancient kingdoms Christian, any canon devised by the clergy alone in their synods, whether provincial, national, or general, hath by mere force of their agreement taken place as a law, making all men constrainable to be obedient thereunto, without any other approbation from the king before or afterwards required in that behalf? But what speak we of ancient kingdoms, when at this day, even in^a the papacy itself, the very Tridentine^b council hath not every where as yet obtained to have in all points the strength of ecclesiastical law^c. Did not Philip, king of Spain, publishing that council in the Low Countries, add thereunto¹ an express clause of special provision, that the same should in no wise prejudice, hurt, or diminish any kind of privilege which the king or his vassals aforesaid had enjoyed, either touching^d possessory judgments of ecclesiastical livings, or concerning nominations thereunto, or belonging to whatsoever rights^e they had else in such affairs? If therefore the king's exception² taken against^f some part of the canons contained in that council, were a sufficient

^a whereby E.Q.C.L. ^b in *om.* E.C.L. ^c Tridentine E. ^d laws E.
^e touching either E.Q.C.L. ^f right E.Q.C.L. ^g again D.

¹ Boet. Epo, Heroic. Quæst. lib. i. sect. 284. ["Ecclesiasticarum sive Heroicarum Quæstionum libri sex." No date, but some time before 1588, in which year were published three additional books, "De jure Sacro." The author was Boetius Epo, a native of Friesland, [1529-1599] Professor of Canon Law at Douay, 1578. The editor has not obtained a sight of the work here quoted. It appears from the continuation of it, that the writer was a strenuous assertor of the pope's plenary power: and from the preface to his "Antiquit. Ecclesiast. Syntagmata," that he had once been a Protestant. (Moreri; Hurter, Nomenclator Liter. i. 228.)

² [It should seem from Strada's account, b. iv. p. 106, 107, that no formal exception was made, but from Fra Paolo, viii. 85, that the publication took place in the king's name and not in the pope's; and

from Brandt, (Hist. of the Reform. in the Low Countries, b. v. Eng. Transl. t. i. 153,) that the "temporal magistrates were directed to assist the prelates. . . and to be conformable to the canons of the council in every thing, save only where they might seem to derogate from his majesty's prerogatives or from the rights of any of his vassals." This statement is confirmed by the original documents as they stand in Le Plat, Monum. Hist. Concil. Trid. t. vii. especially the king's final letter to the duchess of Parma, p. 91. The points specified by Hooker about patronage, &c. are specified not in the king's letter, but in various memorials, given by Le Plat, from the councils of Namur, Brabant, &c. (p. 71, 83,) and forwarded by the duchess to Philip: which memorials occasioned the letter.]

bar to make them of none effect within his territories; it followeth^g that the like exception against any other part had been also of like efficacy, and so consequently that no part thereof had obtained the strength of a law, if he which excepted against a part had so done against the whole: as, what reason was there but that the same authority which limited might quite and clean have refused that council? Whoso alloweth the said act of the Catholic King^h for good and lawful, must grant that the canons even of general councils have but the forceⁱ of wise men's opinions concerning that whereof they treat, till they be publicly assented unto, where they are to take place as laws; and that, in giving such public assent, as maketh a Christian kingdom subject unto those laws, the king's authority is the chiefest. That which an University of men, a Company or Corporation^k doth without consent of their Rector, is as nothing. Except therefore we make the king's authority over the clergy less in the greatest things, than the power of the meanest governor is in all things over the college or society which is under him; how should we think it a matter decent, that the clergy should impose laws, the supreme governor's assent not asked^l?

[10.] There are which wonder that we should count^m any statute a law, which the high court of parliament in England hath established about the matter of church regiment; the prince and court of parliament having, as they suppose, no more lawful means to give order to the Church and clergy in theseⁿ things, than they have to make laws for the hierarchies of angels in heaven¹: that the parliament being a mere temporal court, can neither by the law of nature, nor of God,

^g follows E.C.L. ^h king's E.C. Kings Gaud. ⁱ face E.L. ^k a corporation E.
^l Here the printed editions since Gauden, and all the MSS., insert a passage, which will be found below, as a note by way of Appendix to this book. The reasons for omitting it here will be found elsewhere. The Dublin MS. then proceeds as in § 14. "And concerning," to "over the Church." But as that MS. is clearly erroneous and incoherent in one part of this arrangement, the transposition has not been adopted. ^m account E.Q.C.L. ⁿ those E.C.L.

¹ [Allen, Apol. 1583, c. iv. p. 69. "Veritas est, nec regem nec parlamentum habere potestatem legitimam præscribendi ordinem ecclesiæ vel clero in hac parte, magis quam hierarchiis angelorum in

"cælo commorantium." The points which he had just been mentioning were the royal supremacy and the validity of the protestant episcopal orders.]

BOOK VIII. have competent power to define of such matters¹; that supremacy of power^o in this kind cannot belong unto kings, as kings, because pagan emperors, whose princely power was notwithstanding^p true sovereignty, never challenged thus^q much over the² Church: that power, in this kind, cannot be the right of any earthly crown, prince, or state, in that they be Christian, forasmuch as if they be Christians, they all owe subjection unto the pastors of their souls³: that the prince therefore not having it himself cannot communicate it unto the parliament, and consequently cannot make laws, hear^r, or determine of the Church's regiment by himself, parliament, or any other court in such sort^s subjected unto him⁴.

[11.] The parliament of England together with the convocation annexed thereunto, is that whereupon the very essence of all government within this kingdom doth depend; it is even the body of the whole realm; it consisteth of the king, and of all that within the land are subject unto him: for they all are there present, either in person or by such as they

^o of power *om. E.* ^p notwithstanding *om. E.C.L.* ^q so *E.* ^r laws here *E.C.L.Q. and D. read as in the text.* ^s in such sort *om. E.C.*

¹ [Ibid. p. 64. "Parlamentum autem est conventus plane civilis, in quo nec episcopi aliter quam ut regni barones jus suffragandi obtinent, nec ut barones ullam habent tractandi aut definiendi negotia, aliam quam quæ ad civilem status gubernationem spectant, potestatem: cum omnis potestas, quam vel episcopi vel alii in illo loco exercent, sit à Principe et Rep. civili derivata; ad quos nec lege divina nec naturali hujusmodi rerum definitio spectat."]

² [Ibid. 65. "Non ad paganos imperatores hoc spectabat, (quamvis non minus olim imperiales et regales quam nunc temporis extiterint) nec ab illis expetebatur; nam sub Nerone, præcipui Apostoli ecclesiam Romanam gubernabant."]

³ [Ibid. 67. "Hoc itaque regimen non est jus regi terreno, principi, aut statui ulli debitum: hi enim omnes (si Christiani sunt)

"tenentur subesse pastoribus animarum suarum et ecclesiæ Christiani."]

⁴ [Ibid. "Nec eam ecclesia concessit, nec unquam concedere potest, cum nec a natura illis, ut patet in ethnicis, competat, nec jure Christianitatis, cujus virtute omnes quotquot in universo orbe vivunt, ecclesiæ Christi obedire tenentur, non eidem imperare; nec ulla civilis resp. eam principi suo auctoritatem largiri potest quam nulla vi naturæ possidet: unde princeps cum hanc potestatem nec a populo nec a majoribus per naturalem propagationem aut alia ratione acceptam consecutus sit, eam parlamento haud communicare potest, et consequenter nullas ferre leges, nec audire nec determinare, per se vel per parlamentum aut aliud quodcunque tribunal modo jam dicto sibi subjectum, quidquam de ecclesiæ gubernatione potest."]

BOOK VIII. voluntarily have derived their very personal right unto⁴. The parliament is a court not so merely temporal as if it might meddle with nothing but only leather and wool¹. Those days of Queen Mary are not yet forgotten, wherein the realm did submit itself unto the legate of Pope Julius²: at which time had they been persuaded as this man seemeth now to be, had they thought that there is no more force in laws made by parliament concerning the^x Church affairs, than if men shall^{xx} take upon them to make orders for the hierarchies of angels in heaven, they might have taken all former statutes in^y that kind as cancelled, and by reason of nullity abrogated in themselves^z. What need was there that they should bargain with the cardinal, and purchase their pardon by promise made beforehand, that what laws they had made, assented unto, or executed against the bishop of Rome's supremacy, the same they would in that present parliament effectually abrogate and repeal? Had they power to repeal laws made, and none to make laws concerning the regiment of the Church?

Again, when they had by suit obtained his confirmation for such foundations^a of bishoprics, cathedral churches, hospitals, colleges, and schools; for such marriages before made, for such institutions unto^b livings ecclesiastical, and for all such judicial processes, as having been ordered according to laws^c before in force, but contrary to the canons and orders of the church of Rome, were in that respect thought defective; although the cardinal in his letters of dispensation did give validity unto those acts, even *apostolicæ firmitatis robur*, "the very strength of apostolical solidity;" what had all this been without those

⁴ For they . . . unto *om. E.* ¹ Jule D. ^x the *om. E.Q.C.L.* ^{xx} should *E.* ^y of *E.Q.C.L.* ^z in themselves *om. E.* ^a foundation *D.* ^b into *E.* ^c the laws *E.C.*

¹ [Saravia. de Honore Præsulibus et Presbyteris debito, c. 25. "Coriarii, tintores, textores, cocatores, comitia celebrant, de Republ. sententiam dicunt (quod equidem in libero populo non improbo): sed pastores ecclesiarum excludi, contra æquabile jus civium est, qui sub iisdem legibus et magistratu vivunt, et communia ferunt cum cæteris civibus onera:

"de quorum vita et fortunis, de iisque omnibus a quibus tum ipsorum privata salus, tum ecclesiarum publica pendet, non minus deliberatur, quam de pannis, de lana, de piscibus, de coriis cæterisque mercibus importandis aut exportandis. Num minor pastoribus ecclesiarum cura Reip. esse debet, quam Burgimagistris?"]