

BOOK VIII. "Church¹," himself, "of those without the Church:" how
 Ch. viii. 8. Augustine² witnesseth, that the emperor not daring to judge
 of the bishops' cause, committed it unto the bishops; and
 was to crave pardon of the bishops, for that by the Donatists' importunity, which made no end of appealing unto him, he was, being weary of them, drawn to give sentence in a matter of theirs³: how Hilary⁴ beseecheth the emperor Constance to provide that the governors of his provinces should not presume to take upon them the judgment of ecclesiastical causes, to whom commonwealth matters only^r belonged: how Ambrose⁵ affirmeth, that palaces belong unto the emperor,

^r only commonwealth matters E.

¹ Euseb. de Vita Constant. lib. iv. [c. 24. Ἐν ἐστίαισι ποτὲ δεξιού-
 μενος ἐπισκόπους, λόγον ἀφῆκεν, ὡς
 ἄρα εἶη καὶ αὐτὸς ἐπίσκοπος, ὡδὲ πη
 αὐτοῖς εἰπὼν ῥήμασιν ἐφ' ἡμετέροις
 ἀκοαῖς· ἀλλ' ὑμεῖς μὲν τῶν εἰσῶ τῆς
 ἐκκλησίας, ἐγὼ δὲ τῶν ἐκτὸς ὑπὸ Θεοῦ
 καθιστάμενος ἐπίσκοπος ἂν εἶην.]

² Aug. Ep. 162. [al. 43. c. 7. t. ii. 297. "Neque enim ausus est Christianus imperator sic eorum tumultuosas et fallaces querelas suscipere, ut de iudicio episcoporum qui Romæ sederant ipse iudicaret; sed alios, ut dixi, episcopus de-
 dit." Ep. 166. [al. 105. c. 2.] t. ii. 299, [43. 20. "Eis" (Donatistis) ipse cessit, ut de illa causa post episcopos iudicaret, a sanctis antistitibus postea veniam petiturus." t. ii. 97.]

³ Besides these testimonies of antiquity which Mr. Cartwright bringeth forth, D. Stapleton, who likewise (Doct. Prin. l. 5. cont. 2. c. 18.) citeth them one by one to the same purpose, hath augmented the number of them by adding other of the like nature: namely, how Hosius the bishop of Corduba (apud Athan. in. Ep. ad Solit. Vit.

* [Hist. Arian. ad Monach. t. i. 371. ed. Bened. Μὴ τίθει σεαυτὸν εἰς τὰ ἐκκλησιαστικά, μηδὲ σὺ περὶ τούτων ἡμῖν παρακελεύου· ἀλλὰ μάλλον παρ' ἡμῶν σὺ μάθανε ταῦτα· σοὶ βασιλείαν ὁ Θεὸς ἐνεχείρισεν, ἡμῖν δὲ τὰ τῆς ἐκκλησίας ἐπίστευσε.]

† [Θαυμάζω, ὅπως ἕτερα διέπειν ταχθεῖς, ἑτέροις ἐπιχειρεῖς στρατιωτικῶν μὲν καὶ πολιτικῶν πραγμάτων προεστηκώς, ἐπίσκοπος δὲ περὶ τῶν εἰς μόνους ἐπισκόπους ἡκόντων διαταττόμενος. This is conjectured to be an extract from Philostorgius.]

agentes*) answered the emperor, saying, "God hath committed to thee empire; with those things that belong to the Church he hath put us in trust." How Leontius bishop of Tripolis (Suid. in verb. Leontius †) also told the selfsame emperor as much: "I wonder how thou, which art called unto one thing, takest upon thee to deal in another. For being placed in military and politic affairs, in things that belong unto bishops alone thou wilt bear rule."

⁴ Hilar. ad Constant. lib. i. § 1. ["Provideat et decernat clementia tua, ut omnes ubique iudices, quibus provinciarum administrationes creditæ sunt, ad quos sola cura et sollicitudo publicorum negotiorum pertinere debet, a religiosa se observantia absteineant." col. 1218. ed. Bened.]

⁵ Ambros. lib. v. Ep. 33. [al. 20. § 16. by an error of the press in the Benedictine edition, for § 19. "Ad imperatorem palatia pertinent, ad sacerdotem ecclesiæ. Publicorum tibi mœnium jus commissum est, non sacrorum." II. 857.]

churches to the minister; that the emperor hath authority^a over the common walls of the city, and not in holy things¹; for which cause² he never would yield to have "the causes of the Church³ debated in the prince's consistory⁴;" but "excused himself to the emperor Valentinian, for that being convented to answer concerning church matters in a civil court, he came not⁵:" we may by these testimonies drawn from antiquity, if we list to consider them, discern how requisite it is that authority should always follow received laws in the manner of proceeding. For inasmuch as there was at the first no certain law, determining what force the principal civil magistrate's authority should be of, how far it should reach, and what order it should observe; but Christian emperors from time to time did what themselves thought most reasonable in those affairs; by this mean^x it cometh to pass that they in their practice vary, and are not uniform.

Virtuous emperors, such as Constantine the Great was, made conscience to swerve unnecessarily from the customs^y which had been used in the Church, even when it lived under infidels. Constantine, of reverence to bishops and their spiritual authority, rather abstained from that which himself might lawfully do, than was willing to claim a power not fit or decent^z for him to exercise. The order which had^a been before, he ratified^b, exhorting bishops^c to look to the Church, and promising that he would do the office of a bishop over the commonwealth: which very Constantine notwithstanding, did

^a the authority E.Q.C.L. ¹ consistories E.C.L. ^y D inserts here *in the text*, "Besides these testimonies," &c. (as in note 3, p. 440.) ^z means E.C.L.Q. ^y custom E.Q.C.L. ² fit and lawful C. ^a hath E. ^b ratifieth E.Q.L. ^c the bishops E.Q.C.L.

¹ ["Ambrose hath a worthy saying, wherein he plainly noteth both what a Christian prince may do in these things that appertain unto the Church, and how a godly bishop should in that case behave himself. 'When it was proposed unto me,' saith he, 'that I should deliver the plate or vessel of the Church, I made this answer: If there were any thing required that was my own, either land, house, gold or silver, being of my own private right, that I would willingly deliver it:

"but that I could not pull any thing from the Church of God. And moreover I said, that in so doing I had regard to the emperor's safety, because it was not profitable either for me to deliver it, or for him to receive it. Let him receive the words of a free minister of God: if he will do that is for his own safety, let him forbear to do Christ injury." Bishop Cooper's Adm. p. 212.] ² [T. C. i. 193. al. 154. ap. Whitg. Def. 700.] ³ [See Epistle 21, throughout.]

BOOK VIII. not thereby so renounce all authority in judging of spiritual^d causes, but that sometime he took, as St. Augustine witnesseth¹, even personal cognition of them; howbeit whether as purposing to give therein judicially any sentence, I stand in doubt. For if the other, of whom St. Augustine elsewhere speaketh, did in such sort judge, surely there was cause why he should excuse it as a thing not usually done. Otherwise there is no let, but that any such great person may hear those causes to and fro debated, and deliver in the end his own opinion of them, declaring on which side himself doth judge that the truth is. But this kind of sentence bindeth no side to stand thereunto; it is a sentence of private persuasion, and not of solemn jurisdiction, albeit a king or an emperor pronounce it.

Again, on the contrary part, when governors infected with heresy were possessed of the highest power, they thought they might use it as pleased^e themselves, to further by all means therewith^f that opinion which they desired should prevail; they not respecting at all what was meet, presumed to command and judge all men in all causes, without either care of orderly proceeding, or regard to such laws and customs as the Church had been wont to observe. So that the one sort feared to do even that which they might; and that which the other ought not they boldly presumed upon; the one sort of modesty^g, excused themselves where they scarce needed; the other, though doing that which was^h inexcusable, bare it out with main power, not enduring to be told by any man how far they roved beyond their bounds. So great oddsⁱ between them whom before we mentioned, and such as the younger Valentinian, by whom St. Ambrose being commanded to yield up one of the churches under him unto the Arians, whereas they which were sent on the^k message alleged, that the emperor did but use his own right, forasmuch as all things were in his power: the answer which the holy bishop gave them was²,

^d special E. ^e it pleased C.L. ^f therewith om. E.Q.C.L. ^g sort modestly D. ^h is E.C. ⁱ odds was between E.Q. is C. ^k his E.Q.C. this L.

¹ Ep. 68. [D. al. 88. § 3. t. ii. "dere, nec tibi accipere, imperator, 162. C, D. Ed. Bened. Antwerp. "expedit. Domum privati nullo 1700.] "potes jure temerare, domum Dei
² Ep. xx. § 16. (19.) "Manda- "existimas auferendam?" Allega-
"tur denique, 'Trade basilicam.' "tur, imperatori licere omnia, ipsius
"Respondeo, 'Nec mihi fas est tra- "esse universa. Respondeo, 'Noli

BOOK VIII. "That the Church is the house of God, and that those things Ch. viii. 9. "which be¹ God's are not to be yielded up, and disposed of "at the emperor's will and pleasure; his palaces he might "grant unto whomsoever^m, but God's own habitationsⁿ not "so." A cause why many times emperors did^o more by their absolute authority than could very well stand with reason, was the over great importunity of heretics^p, who being enemies to peace and quietness, cannot otherwise than by violent means be supported.

[9.] In this respect therefore we must needs think the state of our own church much better settled than theirs was; because our laws have with far more certainty prescribed bounds unto each kind of power. All decisions^q of things doubtful, and corrections of things amiss, are proceeded in by order of law, what person soever he be unto whom the administration of judgment belongeth. It is neither permitted unto prelate^r nor prince to judge and^s determine at their own discretion, but law hath prescribed what both shall do. What power the king hath he hath it by law, the bounds and limits of it are known; the entire community giveth general order by law how all things publicly are to be done, and the king as head^t thereof, the highest in authority over all, causeth according to the same law every particular to be framed and ordered thereby. The whole body politic maketh laws, which laws give^u power unto the king, and the king having bound himself to use according unto law that power, it so falleth out, that the execution of the one is accomplished by the other in most religious and peaceable sort. There is no cause given unto any to make supplication, as Hilary did, that civil governors, to whom commonwealth-matters only belong, might^v not presume to take upon them the judgment of ecclesiastical causes. If the cause be spiritual, secular courts do not meddle with it: we need not excuse ourselves with Ambrose, but boldly and lawfully we may refuse to answer before any civil

¹ that are E. which are Q.C.L. ^m whomsoever he pleaseth, but E. ⁿ habitation E.Q.C. ^o do E. ^p wicked heretics E.Q.C.L. ^q decision E.L. correction C. ^r prelates E.D. ^s or D. ^t the head E.D.L. ^u gave E. ^v may E.Q.C.L.

"te gravare, imperator, ut putes te "esto Deo subditus. Scriptum est, "in ea, quæ divina sunt, imperiale "quæ Dei Deo, quæ Cæsaris Cæ- "aliquid jus habere. Noli te ex- "sari." t. ii. 857.]
"tollere, sed si vis diutius imperare,

BOOK VIII. judge in a matter which is not civil, so that we do not mis-
Ch. ix. 1. take the nature either^x of the cause or of the court, as we
easily may do both, without some better direction than can
be had^y by the rules of this new-found discipline. But of
this most certain we are, that our laws do neither suffer
a spiritual court¹ to entertain those causes which by law^z are
civil, nor yet if the matter be indeed spiritual, a mere civil
court to give judgment of it.

Touching supreme power therefore to command all men,
in all^a manner of causes of judgment to be highest, let thus
much suffice as well for declaration of our own meaning, as
for defence of the truth therein^b.

IX. The last thing of all which concerns the king's supre-
macy is, whether thereby he may be exempted from being
subject to that judicial power which ecclesiastical consistories
have over men. It seemeth, first, in most men's judgments
to be requisite that on earth there should not be any alive
altogether without standing in awe of some by whom they
may be controlled and bridled.

The good estate of a commonwealth within itself is thought
on nothing to depend more than upon these two special affec-
tions, fear and love: fear in the highest governor himself; and
love, in the subjects that live under him. The subject's love
for the most part continueth as long as the righteousness of

^x either the nature E.Q.C.L. ^y had *om.* E. ^z the law E.C.L. ^a and
in all E.Q.C.L. ^b What follows is all found in D. alone of the MSS. with
an interval of a blank leaf. But § 1, 2. is printed in Clavi Trabales, p. 92-94:
as far as "to any," p. 446. ^c Harding *om.* E. (?)

¹ See the statute of Edw. I. and
Edw. II. [13 Edw. I. st. 4. *Circum-
specte agatis*; 24 Edw. I. *De Con-
sultatione*; 9 Edw. II. st. 1.] and
Nat. Brev. touching Prohibition, [p.
30. Lond. Tottell, 1584.] See also
in Bracton these sentences, lib. v.
[Tract. v.] cap. 2. "Est jurisdictio
"quædam ordinaria, quædam dele-
"gata, quæ pertinet ad sacerdotium,
"et forum ecclesiasticum, sicut in
"causis spiritualibus et spiritualitati
"annexis. Est etiam alia jurisdic-
"tio ordinaria vel delegata, quæ
"pertinet ad coronam, et dignita-
"tem regis, et ad regnum in causis
"et placitis rerum temporalium in
"foro seculari." Again: "Cum

"diversæ sint hinc inde jurisdic-
"tiones, et diversi judices, et diver-
"sæ causæ, debet quilibet ipsorum
"imprimis æstimare, an sua sit ju-
"risdictio, ne falcem videatur po-
"nere in messem alienam." Again:
"Non pertinet ad regem injungere
"poenitentias, nec ad iudicem secu-
"larem; nec etiam ad eos pertinet
"cognoscere de iis, quæ sunt spiri-
"tualibus annexa, sicut de decimis
"et aliis ecclesiæ proventionibus." Again:
"Non est laicus convenien-
"dus coram iudice ecclesiastico de
"aliquo, quod in foro seculari ter-
"minari possit et debeat." [fol. 400,
401. ed. 1569.]

BOOK VIII. kings doth last; in whom virtue decayeth not as long as they
Ch. ix. 2. fear to do that which may alienate the loving hearts of their
subjects from them. Fear to do evil groweth from the harm
which evildoers are to suffer. If therefore private men, which
know the danger they are subject unto, being malefactors, do
notwithstanding so boldly adventure upon heinous crimes,
only because they know it is possible for some transgressor
sometimes to escape the danger of law: in the mighty upon
earth, (which are not always so virtuous and holy that their
own good minds will bridle them,) what may we look for, con-
sidering the frailty of man's nature, if the world do once hold
it for a maxim that kings ought to live in no subjection: that,
how grievous disorders^d soever they fall into, none may have
coercive power over them? Yet so it is that this we must
necessarily admit, as a number of right well learned men are
persuaded.

[2.] Let us therefore set down first, what there is which^e
may induce men so to think; and then consider their several
inventions or ways, who judge it a thing necessary, even for
kings themselves, to be punishable, and that by men. The
question itself we will not determine. The reasons of each
opinion being opened, it shall be best for the wise to judge
which of them is likeliest to be true. Our purpose being not
to oppugn any save only that which reformers hold; and of
the rest, rather to inquire than to give sentence. Inducements
leading men to think the highest magistrate should not be
judged of any, saving God alone, are specially these. 1. First,
as there could be in natural bodies no motion of any thing,
unless there were some which moveth^f all things and con-
tinueth unmoveable^g; even so in politic societies there must
be some unpunishable, or else no man shall suffer punishment.
For sith punishments proceed always from superiors, to whom
the administration of justice belongeth, which administration
must have necessarily a fountain that deriveth it to all others,
and receiveth it^h not from any; because otherwise the course
of justice should go infinitely in a circle, every superior having
his superior without end, which cannot be: therefore a well-
spring it followeth there is, and a supreme head of justice,

^d disorder Cl. Tr. ^e that. ^f moved. ^g immoveable. ^h it *om.*

BOOK VIII. whereunto all are subject, but itself in subjection to none.
Ch. ix. 3.
Which kind of preeminence if some ought to have in a kingdom, who but the king should have it? Kings therefore no man can have lawfully power and authority to judge. If private men offend, there is the magistrate over them, which judgeth. If magistrates, they have their prince. If princes, there is Heaven, a tribunal, before which they shall appear: on earth they are not accountable to any.

2. Which thing likewise the very original of kingdoms¹ doth shew.

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[3.] "His second point, whereby he would make us odious, is, that we think the prince may be subject to excommunication; that is, that he is a brother¹, that he is not without but within the Church². If this be dangerous, why is it printed and allowed in the famous writings of bishop Jewel³: 'In that the high priest⁴ doth his office when he excommunicates and cuts off a dead member from the body, so far forth the prince, be he never so mighty, is inferior to him. 'Yea not only to a bishop, but to a simple priest?' Why is it suffered which Mr. Nowell hath written⁵, 'The prince ought patiently to abide excommunication at the bishop's hands?' Why are not the worthy examples of emperors rased⁶ out of the histories, seeing they have been subject to his [this] censure⁷?"

¹ kingdom.

¹ Deut. xvii. 15. Matt. xviii. 15.
² 1 Cor. v. 12, 13.
³ Def. Apol. part 6. p. 720. [c. 12. div. 1. p. 582. ed. 1611.]
⁴ [Jewel, and the Counterpoison, both read *priest*, not *high priest*.]
⁵ Tom. ii. f. 53. ["The Reproof of M. Dorman his proof of certain Articles of Religion, &c. continued by Alexander Nowell. With a Defence of the chief Authority and Government of Christian Princes as well in causes ecclesiastical as civil within their own dominions, by M. Dorman maliciously oppugned." Lond. 1566. f. 51. "We profess, as doth Calvin, that the prince himself ought to be obedient to the ecclesiastical

"minister executing these his offices according to God's word; yea though it be against the prince himself, according as Theodosius the emperor was in this case obedient to St. Ambrose."]
⁶ Euseb. l. vi. c. 14. Theod. v. c. 18.
⁷ Counter[poison,] page 174. [Comp. T. C. iii. 93, for the whole of this except the reference to Bp. Jewel. And Eccl. Disc. 142, 143. "Neque vero hic magistratus, etsi in reliqua ecclesia politicæ auctoritatis ratione emineant, se ab hoc parendi et ecclesiasticis magistratibus obediendi præcepto et mandato eximendos esse arbitrentur. "Quum enim non minus de magis-

The Jews were forbidden to choose an alien king over them; inasmuch as there is not any thing more natural than that the head and the body subject thereunto should always, if it were possible, be linked in that bond of nearness also which birth and breeding as it were in the bowels of one common mother usually causeth. Which being true did not greatly need to be alleged for proof that kings are in the Church of God of the same spiritual fraternity with their subjects: a thing not denied nor doubted of.

Indeed the king is a brother; but such a brother as unto whom all the rest of the brethren are subject. He is a sheaf of the Lord's field as the rest are; howbeit, a sheaf which is so far raised up above the rest¹ that they all owe reverence unto it. The king is a brother which hath dominion over all his brethren. A strange conclusion to gather hereby, that therefore some of his brethren ought to have the authority of correcting him. We read that God did say unto David, "If Solomon thy son forget my laws, I will punish his transgressions with a rod." But that he gave dominion unto any of Solomon's brethren to chastise Solomon, we do not read.

It is a thing very much alleged, that the church of the Jews had the sword of excommunication. Is any man able to allege where the same was ever drawn forth against the king? Yet how many of their kings how notoriously spotted?

Our Saviour's words are, "If thy brother offend thee." And St. Paul's, "Do ye not judge them that are within?" Both which speeches are but indefinite. So that neither the one nor the other is any let but some brother there may be

"trorum quam de aliorum salute illos sollicitos esse oporteat, et illius etiam animam, ut cæterorum, sua cura contineant, illis etiam non minus quam reliquis parentum est, et ecclesiasticorum magistratum justæ auctoritati obtemperandum. Atque cum illi Jesu Christi non solum auctoritate præsent, sed ipsam quodammodo personam sustineant, quum nullo suo imperio, sed illius solo verbo et mandato omnia administrent ;

"annon æquum est, illis vel summos magistratus et reges ipsos obtemperare? Huic enim omnes orbis principes et monarchæ fasces suos submittere et parere decet [debent]; quem Deus regni sui hæredem, et cœli atque terræ Dominum constituit." Then he proceeds to give examples, and dwells especially upon the cases of Philip and Theodosius.]

¹ Gen. xxxvii. 7.

BOOK VIII. Ch. ix. 3. whose person is exempt from being subject to any such kind of proceeding: some within, yet not therefore under, the jurisdiction of any other. Sentences, indefinitely uttered, must sometimes universally be understood: but not where the subject or matter spoken of doth in particulars admit that difference which may in reason seclude any part from society with the residue of that whole, whereunto one common thing is attributed. As in this case it clearly fareth where the difference between kings and others of the Church is a reason sufficient to separate the one from the other in that which is spoken of brethren, albeit the name of brethren itself do agree to both. Neither doth our Saviour nor the Apostle speak in more general sort¹ of ecclesiastical punishments than Moses in his law doth of civil: "If there be found men or the man "amongst you that hath served other gods²." Again, "The man that committeth adultery." The punishment of both which transgressions being death, what man soever did offend therein, why was not Manasses for the one, for the other why not David accordingly executed? "Rex judicat, "non judicatur," saith one. The king is appointed a judge of all men that live under him; but not any of them his judge.

^aThe king³ is not subject unto laws; that is to say, the punishment which breach of laws doth bring upon inferiors

^a D. has a space of half a page here.

¹ [T. C. iii. 92. "Who could be ignorant that our Saviour Christ speaketh generally when he saith, "if thy brother," &c. whereby he comprehendeth all those that are members of one church and children of one heavenly Father. "In which number the Scripture reckoneth the king, whilst in that he is both called a brother, and calleth his subjects brethren. Or who could be ignorant that St. Paul subjecteth all unto this order, saving those only which are strangers from the Church. So that to say that princes are not subject unto this order, is all one as if he should say that princes pertain not to the kingdom of heaven, are none of the Church,

"have no part with Christ, &c. "Thus is both Christ robbed of his honour, which in contempt of his order (as though it were too base for princes to go under) is himself contemned; and princes defrauded of a singular aid of salvation, and way to draw them to repentance, when they, through the common corruption, fall into such diseases against which this medicine was prepared."]

² Deut. xvii. 2.

³ Ὁ βασιλεὺς νόμοις οὐχ ὑπόκειται, ἤγγουν ἀμαρτήσας οὐ κολάζεται. Καὶ κατὰ βασιλείως οἱ γενικοὶ ἤγγουν οἱ καθολικοὶ κρατεῖτωσαν νόμοι. Harmenop. [Promptuarium Juris] l. i. c. i. § 48 et 39. [ed. Gothofred. 1587.]

BOOK VIII. Ch. ix. 4. taketh not hold on the king's person; although the general laws which all mankind is bound unto do tie no less the king than others, but rather more. For the grievousness of sin is aggravated by the greatness of him that committeth it: for which cause it also maketh him by so much the more obnoxious unto Divine revenge, by how much the less he feareth human.

[4.] Touching Bishop Jewel's opinion hereof¹, there is not in the place alleged any one word or syllable against the king's prerogative royal to be free from the coercive power of all spiritual, both persons and courts, within the compass of his own dominions. "In that," saith he, "the priest doth "his office, in that he openeth God's word, or declareth his "threats, or rebuketh sin, or excommunicateth and cutteth "off a dead member from the body; so far forth the prince, "be he never so mighty, is inferior unto him. But in this "respect the prince is inferior not only to the pope or bishop, "but also to any other simple priest." He disputeth earnestly against that supremacy which the bishop of Rome did challenge over his sovereign lord the emperor: and by many allegations he laboureth to shew that popes have been always subject unto his supreme dominion, not he to theirs; he supreme judge over them, not they over him. Now whereas it was objected, that within the Church, when the priest doth execute his office, the very prince is inferior to him; so much being granted by Mr. Jewel, he addeth that this doth no more prove the pope than the simplest priest in the Church to be lord and head over kings. For although it doth hereby appear that in those things which belong to his priestly office the pope may do that which kings are not licensed to meddle with; in which respect it cannot be denied but that the emperor himself hath not only less power than the chiefest bishop, but even less than the meanest priest within his empire, and is consequently every priest's inferior that way: nevertheless, sith this appertaineth nothing at all to judicial authority and power, how doth this prove kings and emperors to be by way of subjection inferior to the pope as to their ecclesiastical judge? Impertinently therefore is the answer,

¹ Def. p. 6. c. 12. div. 1.