

CHAPTER XXIII

OF THE POWER

OF FATHERS, AND

OF PATRIMONIAL

KINGDOM

1. Of three ways by which a man becometh subject to another, mentioned section 2. chap. ult., namely voluntary offer, captivity and birth, the former two have been spoken of, under the name of subjects and servants. In the next place, we are to set down the third way of subjection, under the name of children; and by what title one man cometh to have propriety in a child, that proceedeth from the common generation of two, (viz.) of male and female. And considering men again dissolved from all covenants one with another, and that (Part I. chap. XVII, sect. 2) every

man by the law of nature, hath right or propriety to his own body, the child ought rather to be the propriety of the mother (of whose body it is part, till the time of separation) than of the father. For the understanding therefore of the right that a man or woman hath to his or their child, two things are to be considered: first what title the mother or any other originally hath to a child new born; secondly, how the father, or any other man, pretendeth by the mother.

2. For the first: they that have written of this subject have made generation to be a title of dominion over persons, as well as the consent of the persons themselves. And because generation giveth title to two, namely, father and mother, whereas dominion is indivisible, they therefore ascribe dominion over the child to the father only, ob praesentiam sexus; but they shew not, neither can I find out by what coherence, either generation inferreth dominion, or advantage of so much strength, which, for the most part, a man hath more than a woman, should generally and universally entitle the father to a propriety in the child, and take it away from the mother.

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not from the generation, but from the preservation of it; and therefore in the estate of nature, the mother in whose power it is to save or destroy it, hath right thereto by that power, according to that which hath been said Part I. chap. XIV, sect. 13. And if the mother shall think fit to abandon, or expose her child to death, whatsoever man or woman shall find the child so exposed, shall have the same right which the mother had before; and for the same reason, namely for the power not of generating, but preserving. And though the child thus preserved, do in time acquire strength, whereby he might pretend equality with him or her that hath preserved him, yet shall that pretence be thought unreasonable, both because his strength was the gift of him, against whom he pretendeth; and also because it is to be presumed, that he which giveth sustenance to another, whereby to strengthen him, hath received a promise of obedience in consideration thereof. For else it would be wisdom in men, rather to let their children perish, while they are infants, than to live in their danger or subjection, when they are grown.

4. For the pretences which a man may have to dominion over a child by the right of the mother,

they be of divers kinds. One by the absolute subjection of the mother: another, by some particular covenant from her, which is less than a covenant of such subjection. By absolute subjection, the master of the mother, hath right to her child, according to section 6, chap. XXII whether he be the father thereof, or not. And thus the children of the servant are the goods of the master in perpetuum.

5. Of covenants that amount not to subjection between a man and woman, there be some which are made for a time and some for life; and where they are for a time, they are covenants of cohabitation, or else of copulation only. And in this latter case, the children pass by covenants particular. And thus in the copulation of the Amazons with their neighbours, the fathers by covenant had the male children only, the mothers retaining the females.

6. And covenants of cohabitation are either for society of bed, or for society of all things; if for society of bed only, then is the woman called a CONCUBINE. And here also the child shall be his or hers, as they shall agree particularly by covenant; for although for the most part a concubine is supposed to yield up the right of her children to the father, yet doth not concubinate enforce so much.

7. But if the covenants of cohabitation be for society of all things, it is necessary that but one of them govern and dispose of all that is common to them both; without which (as hath been often said before) society cannot last. And therefore the man, to whom for the most part the woman yieldeth the government, hath for the most part also the sole right and dominion over the children. And the man is called the HUSBAND, and the woman the WIFE; but because sometimes the government may belong to the wife only, sometimes also the dominion over the children shall be in her only; as in the case of a sovereign queen, there is no reason that her marriage should take from her the dominion over her children.

8. Children therefore, whether they be brought up and preserved by the father, or by the mother, or by whomsoever, are in most absolute subjection to him or her that so bringeth them up, or preserveth them. And they may alienate them, that is, assign his or her dominion, by selling or giving them in adoption or servitude to others; or may pawn them for hostages, kill them for rebellion, or sacrifice them for peace, by the law of nature, when he or she, in his or her conscience, think it to be

necessary.

9. The subjection of them who institute a commonwealth amongst themselves, is no less absolute, than the subjection of servants. And therein they are in equal estate; but the hope of those is greater than the hope of these. For he that subjecteth himself uncompelled, thinketh there is reason he should be better used, than he that doth it upon compulsion; and coming in freely, calleth himself, though in subjection, a FREEMAN; whereby it appeareth, that liberty is not any exemption from subjection and obedience to the sovereign power, but a state of better hope than theirs, that have been subjected by force and conquest. And this was the reason, that the name that signifieth children, in the Latin tongue is liberi, which also signifieth freemen. And yet in Rome, nothing at that time was so obnoxious to the power of others, as children in the family of their fathers. For both the state had power over their life without consent of their fathers; and the father might kill his son by his own authority, without any warrant from the state. Freedom therefore in commonwealths is nothing but the honour of equality of favour with other subjects, and servitude the es-

tate of the rest. A freeman therefore may expect employments of honour, rather than a servant. And this is all that can be understood by the liberty of the subject. For in all other senses, liberty is the state of him that is not subject.

10. Now when a father that hath children, hath servants also, the children (not by the right of the child, but by the natural indulgence of the parents) are such freemen. And the whole consisting of the father or mother, or both, and of the children, and of the servants, is called a FAMILY; wherein the father or master of the family is sovereign of the same; and the rest (both children and servants equally) subjects. The same family if it grow by multiplication of children, either by generation or adoption; or of servants, either by generation, conquest, or voluntary submission, to be so great and numerous, as in probability it may protect itself, then is that family called a PATRIMONIAL KINGDOM, or monarchy by acquisition; wherein the sovereignty is in one man, as it is in a monarch made by political institution. So that whatsoever rights be in the one, the same also be in the other. And therefore I shall no more speak of them, as distinct, but as of monarchy in general.

11. Having shewed by what right the several sorts of commonwealths, democracy, aristocracy, and monarchy, are erected; it followeth to shew by what right they are continued. The right by which they are continued, is called the right of succession to the sovereign power; whereof there is nothing to be said in a democracy, because the sovereign dieth not, as long as there be subjects alive; nor in an aristocracy, because it cannot easily fall out, that the optimates should every one fail at once; and if it should so fall out, there is no question, but the commonwealth is thereby dissolved. It is therefore in a monarchy only, that there can happen a question concerning the succession. And first: forasmuch as a monarch, which is absolute sovereign, hath the dominion in his own right, he may dispose thereof at his own will. If therefore, by his last will, he shall name his successor, the right passeth by that will.

12. Nor if the monarch die without any will concerning the succession declared, is it therefore to be presumed that it was his will, his subjects which are to him as his children and servants, should return again to the state of anarchy, that is, to war and hostility; for that were expressly against the law of nature, which commandeth to procure peace,

and to maintain the same. It is therefore to be conjectured with reason, that it was his intention to bequeath them peace, that is to say, a power coercive, whereby to keep them from sedition amongst themselves; and rather in the form of monarchy, than any other government; forasmuch as he, by the exercise thereof in his own person, hath declared that he approveth of the same.

13. Further, it is to be supposed his intention was, that his own children should be preferred in the succession, (when nothing to the contrary is expressly declared) before any other. For men naturally seek their own honour, and that consisteth in the honour of their children after them.

14. Again, seeing every monarch is supposed to desire to continue the government in his successors, as long as he may; and that generally men are endued with greater parts of wisdom and courage, by which all monarchies are kept from dissolution, than women are; it is to be presumed, where no express will is extant to the contrary, he preferreth his male children before the female. Not but that women may govern, and have in divers ages and places governed wisely, but are not so apt thereto in general as men.

15. Because the sovereign power is indivisible, it cannot be supposed, that he intended the same should be divided, but that it should descend entirely upon one of them, which is to be presumed should be the eldest, assigned thereto by the lot of nature; because he appointed no other lot for the decision thereof. Besides, what difference of ability soever there may be amongst the brethren, the odds shall be adjudged to the elder, because no subject hath authority otherwise to judge thereof.

16. And for want of issue in the possessor, the brother shall be the presumed successor. For by the judgment of nature, next in blood is next. in love; and next in love is next to preferment.

17. And as the succession followeth the first monarch, so also it followeth him or her that is in possession; and consequently, the children of him in possession shall be preferred before the children of his father or predecessor.