

# LECTURE LXXIII.

## THE CIVIL MAGISTRATE.

### SYLLABUS.

1. State the two theories of the origin of civil government out of a "social contract," and out of the ordinance of God. Establish the true one.

2. What is civil liberty? What its limits?

3. What are the proper objects of the powers of the Civil Magistrate? What their limits? What the limits to the obedience of a Christian man to the Civil Magistrate? When and how far is the Christian entitled to plead a 'higher law'?

4. Is the citizen bound always to passive obedience? If not, when does the right of forcible resistance to an unjust government begin?

See Confession of Faith, ch. 23. Blackstone's Com. bk. i. Introduc. § 2. Paley's Moral Phil. bk. vi, ch. 1-5, *Montesquieu Esprit des Loix*, bk. i. ch. 11. *Burlemaqui*, Vol. iv, pt. i. Locke's Treatise of Civil Gov., bk. ii. Princeton Review, Jan., 1851. Bledsoe on Liberty and Slavery, ch. 1, So. Rev. Art. 'Civil Liberty.' Defence of Virginia and the South, ch. 7, § 3.

**T**HE duty of the Christian citizen to civil society is so extensive and important, and so many questions arise as to its limits and nature, the propriety of holding office, the powers exercised by the magistrate, &c., that the teacher of the Church should be well grounded in the true doctrine of the nature of the commonwealth. Hence, our Confession has very properly placed this doctrine in its 23d chapter. It is emphatically a doctrine of Scripture.

Three opposing theories have prevailed, among nominally Christian philosophers, as to the origin and extent of the Civil Magistrate's powers. The one traces them to a supposed social contract. Men are to be at first apprehended, they say, as insulated individuals, separate human integers, all naturally equal, and each by nature absolutely free, having a natural liberty to exercise his whole will, as a "Lord of Creation." But the experience of the exposure, inconveniences, and mutual violences of so many independent wills, led them, in time, to be willing to surrender a part of their independence, in order to secure the enjoyment of the rest of their rights. To do this, they are supposed to have conferred, and to have entered

Examined in its Christian Aspects Only.  
1. Theories of Government Origin.

into a compact with each other, binding themselves to each other to submit to certain rules and restraints upon their natural rights, and to obey certain ones selected to rule, in order that the power thus delegated to their hands might be used for the protection of the remaining rights of all. Subsequent citizens entering the society, by birth or immigration, are supposed to have given an assent, express or implied, to this compact. The terms of it form the organic law, or constitution of the commonwealth. And the reason why men are bound to obey the legitimate commands of the magistrate is, that they have thus bargained with their fellow-citizens to obey, for the sake of mutual benefits.

Many writers, as Blackstone and Burlamaqui, are too sensible not to see that this theory is false to the facts of the case; but they still urge, that although individual men never existed, in fact, in the insulated state supposed, and did not actually pass out of that state into a commonwealth state, by a formal social contract; yet such a contract must be assumed as implied, and as offering the virtual source of political power and obligation. Thus Blackstone, *ubi supra*, p. 47: "But though society had not its formal beginning from any convention of individuals, actuated by their wants and their fears; yet it is the sense of their weakness and imperfection which keeps mankind together; that demonstrates the necessity of this union; and that therefore is the solid and natural foundation, as well as the cement of civil society." To us it appears, that if the compact never occurred in fact, but is only a supposititious one, a legal fiction it is no basis for any theory, and no source for practical rights and duties.

The other theory may be called the Christian. It traces civil government to the will and providence of God, who, from the first, created man with social instincts and placed him under social relations (when men were few, the patriarchal, as they increased, the commonwealth). It teaches that some form of social government is as original as man himself. If asked, whence the obligation to obey the civil magistrate, it answers: from the will of God, which is the great source of all obligation. The fact that such obedience is greatly promotive of human convenience, well-being and order, confirms and illustrates the obligation, but did not originate it. Hence, civil government is an ordinance of God; magistrates rule by His providence and by His command, and are His agents or ministers. Obedience to them, in the Lord, is a religious duty, and rebellion against them is not only injustice to our fellow-men, but disobedience to God. This is the theory plainly asserted by Paul, Rom. xiii: 1-7, and 1 Peter ii: 13-18. It may be illustrated by the parental state.

This account of the matter has been also pushed to a most

Theory of Divine Right. vicious extreme, by the party known as Legitimists, or advocates of the Divine right of royalty. The Bible here teaches us, they assert, that the power the civil magistrate holds, is in no sense delegated from the people, but wholly from God; that the people have no option to select or change their form of government, any more than a child has to choose its parent, or a soul the deity it will worship; that no matter how oppressive or unjust the government may be, the citizen has no duty nor right but passive submission, and that the divinely selected form is hereditary monarchy—the form first instituted in the hand of Adam, continued in the patriarchal institution, re-affirmed in the New Testament, and never departed from except by heaven-defying republicans, &c.

Refutation, This servile theory we easily refute by many facts. Men in society do not bear to rulers the relation of children to parents, either in their greater weakness, inferiority of knowledge or virtue, or in the natural affection felt for them, but are, in the general, the natural equals of their rulers. Hence, the argument from the family to the commonwealth to prove that it is monarchical, utterly fails. 2d. The chosen form given by God to the Hebrew Commonwealth was not monarchical, but republican. And when He reluctantly gave them a king, the succession was not hereditary, but virtually elective, as witness the cases of David, Jeroboam, Jehu, &c. 3d. The New Testament does not limit its teachings to the religious obligation to obey kings, but says generally! "the Powers that be are ordained of God." "There is no power but of God": thus giving the religious source, equally to the authority of kings and constables, and giving it to any form of government which providentially existed *de facto*. The thing then, which God ordains, is not a particular form of government, but that men shall maintain some form of government. Last, it is peculiarly fatal to the Legitimist theory that the actual government of Rome, which the New Testament immediately enjoined Christians to obey, was not a legitimate, nor a hereditary monarchy, but one very lately formed in the usurpation of Octavius Cæsar, and not in a single instance transmitted by descent, so far as Paul's day.

The Ruler for the People. On the contrary, while we emphatically ascribe the fact of civil government and the obligation to obey it, to the will of God, we also assert that in the secondary sense, the government is, potentially, the people. The original source of the power, the authority and the obligation to obey it, is God, the human source is not an irresponsible Ruler, but the body of the ruled themselves, that is, the sovereignty, so far as it is human, resides in the people, and is held by the rulers, by delegation from them. It is, indeed, the ordinance of the supreme God, that

such delegation should be made, and the power so delegated be obeyed, by each individual; but still the power, so far as it is human, is the people's power, and not the ruler's. This is proved by two facts. All the citizens have a general native equality; they possess a common title, in the general, to the benefits of existence, as being all human beings and children of a common Creator. They are all alike under the golden rule, which is God's great charter of a general equality. Hence the second fact, that the government is for the governed, not for the especial benefit of the governors. The object of the institution, which God had in view, was the good of the community. The people are not for the rulers, but the rulers for the people. This is expressly stated by Paul, Rom. xiii: 3, 4. Now, as before stated, the rulers have no monopoly of sense, virtue, experience, natural right, over their fellow-citizens, and hence the power of selecting rulers should be in the citizens.

Having thus cleared the Scriptural theory from the odious Social Contract Re-  
futed. 1st. Not Found-  
 ed on Facts.
 perversions of the advocates of "legitimacy," I proceed to affirm it against the vain dream of a social contract, and the theory of obligation based upon it. 1st. It is notoriously false to the actual facts. Civil government is not only a theory, but a fact; the origin of it can therefore be only found in a fact, not in a legal fiction. The fact is, that men never rightfully existed for one moment in the state of independent insulation, out of which they are supposed to have passed, by their own option, into a state of society. God never gave them such independency. Their responsibility to Him, and their civic relations to fellow-men, as ordained by God, are as native as their existence is. They do not choose their civic obligations, but are born under them; just as a child is born to his filial obligations. And the simple, practical proof is, that if one man were now to claim this option to assume civic relations and obligations, or to decline them, and so forego the advantages of civic life, any civilized government on earth would laugh his claim to scorn, and would immediately compel his allegiance by force. The mere assumption of such an attitude as that imagined for the normal one of man, and of the act in which it is supposed government legitimately originates, would constitute him an outlaw; a being whom every civil society claims a natural right to destroy; the right of self-preservation.

The theory is atheistic, utterly ignoring man's relation to his Creator, the right of that Creator to determine under what obligations man shall live; and the great Bible fact, that God has determined he shall live under civic obligations.

It is utterly unphilosophical, in that, while the ethics of government should be an inductive science, this theory is, and by its very nature must be,

3d. Not Inductive.

utterly devoid of experimental evidence! Hence it has no claims to be even entertained for discussion, *in foro scientiæ*.

If the authority of laws and constitutions and magistrates originates in the social contract, then certain most inconvenient and preposterous consequences would logically follow. One is, that however inconvenient and even ruinous, the institutions of the country might become, by reason of the changes of time and circumstance, no majority could ever righteously change them, against the will of any minority; for the reason that the inconveniences of a bargain which a man has voluntarily made, are no justification for his breaking it. The righteous man must not change, though he has "sworn to his own hurt." Another inconvenience would be, that it could never be settled what were the terms agreed upon in the original social contract; and what part of the existing laws were the accretions of time and of unwarranted power, save where the original constitution was in writing. A worse consequence would be, that if the compact originated the obligation to obey the civil magistrate, then any one unconstitutional or unjust act of the ruler would break that compact. But when broken by one side, it is broken for both; and allegiance would be wholly voided.

Last: The civil magistrate is armed with some powers, which could not have been created by a social contract alone; because they did not belong to the contracting parties, viz: individual men cannot give, for instance, the right of life and death. No man's life belongs to him, but to God alone. He cannot transfer what does not belong to him; nor can one say, that although the individual may not have the right to delegate away a power over his own life which he does not possess, yet the community may be justified in assuming it, by the law of self-preservation. For there is no community as yet, until this theory of its derivation from a social contract is established. There is only a number of individual, unrelated, independent men.

To elucidate and establish these ideas farther, let us inquire

Natural Liberty What? what is the true difference between man's  
Civil Liberty how Differ- natural liberty and his civil liberty. The  
ing? advocates of the theory of a social compact

seem to consider, as indeed some of them define, men's natural liberty to be a freedom to do what they please. They all say that Government limits or restrains it somewhat, the individual surrendering a part in order to have the rest better protected. Hence it follows, that all government, even the republican, being of the nature of restraint, is in itself a natural evil, and a natural infringement on right, to be endured only as an expedient for avoiding the greater evil of anarchy! Well might such theorists deduce the consequence, that there is no ethical ground for obedience to government, except the implied assent

of the individual; the question would be, whether it is not a surrender of duty to come under such an obligation? They also, of course, confound a man's natural rights and natural liberties together; they would be still more consistent, if, with their great inventor, Hobbes, they denied that there was any such thing as rights, distinct from might, until they were factitiously created by the restraints of civil government.

This view I consider, although embraced in part by the current of Christian moralists, is only worthy of an atheist, who denies the existence of any original relations between the Creator and creature, and of any original moral distinctions. It ignores the great fact, that man's will never was his proper law; it simply passes over, in the insane pride of human perfectionism, the great fact of, original sin, by which every man's will is more or less inclined to do unrighteousness. It falsely supposes a state of nature, in which man's might makes his right; whereas no man is righteously entitled to exist in that state\*for one instant. But if you would see how simple and impregnable is the Bible theory of natural and civil liberty, take these facts, undisputed by any Christian. The rule of action is moral: moral obligations are as original (as natural) as man himself. The practical source and measure of them is God's will. That will, *ab initio*, binds upon man certain relations and duties which he owes to God and to his fellow man; and also defines his right, i. e., those things which it is the duty of other beings to allow him to have and to do. Man enters existence with those moral relations resting, by God's will, upon him. And a part of that will, as taught by His law and providence is, that man shall be a member of, and obey, civil government. Hence, government is as natural as man is. What then is man's natural liberty? I answer: it is freedom to do whatever he has a moral right to do. Freedom to do whatever a man is physically able to do, is not a liberty of nature or law, but a natural license, a natural iniquity. What is civil liberty then? I reply still, it is (under a just government) freedom to do whatever a man has a moral right to do. Perhaps no government is perfectly just. Some withhold more, some fewer of the citizen's moral rights: none withhold them all. Under all governments there are some rights left; and so, some liberty. A fair and just government would be one that would leave to each subject of it, in the general, (excepting exceptional cases of incidental hardship,) freedom to do whatever he had a moral right to do, and take away all other, so far as secular and civic acts are concerned. Such a government, then, would not restrain the natural liberty of the citizens at all. Their natural would be identical with their civic liberty. Government then does not originate our rights, neither can it take them away. Good government does

Radical Theory False.  
True Stated.

originate our liberty in a practical sense, i. e., it secures the exercise of it to us.

The instance most commonly cited, as one of a natural right surrendered to civil society, is the right of self-defence. We accept the instance, and assert that it fully confirms our view. For if it means the liberty of forcible defence at the time the unprovoked aggression is made, that is not surrendered; it is allowed under all enlightened governments fully. If it mean the privilege of a savage's retaliation, I deny that any human ever had such a right by nature. "Vengeance is mine, saith the Lord." If it mean the privilege to attach the righteous temporal penalty, and execute it ourselves, on the aggressor, so as to deter him and others from similar assaults, I deny that this is naturally a personal right; for nothing is more unnatural than for a man to be judge in his own case. Other instances of supposed loss of natural rights are alleged with more plausibility; as when a citizen is restrained by law from selling his corn out of the country, (a thing naturally moral *per se*) from some economic motive of public good; and yet the righteous citizen feels bound to obey. I reply: if the restriction of the government is not unjust, then there exists such a state of circumstances among the fellow citizens, that the sale of the corn out of the country, under those circumstances, would have been a natural breach of the law of righteousness and love towards them. So that, under the particular state of the case, the man's natural right to sell his corn had terminated. Natural rights may change with circumstances.

Here we may understand, in what sense "all men are by nature free and equal." Obviously no man is by nature free, in the sense of being born in possession of that vile license to do whatever he has will and physical ability to do, which the infidel moralists understand by the sacred name of liberty. For every man is born under obligation to God, to his parents, and to such form of government as may providentially be over his parents. (I may add the obligation to ecclesiastical government is also native). But all men have a native title to that liberty which I have defined, viz: freedom to do what they have a moral right to do. But as rights differ, the amount of this freedom to which given men have a natural title, varies in different cases. But all men are alike in this; that they all have the same general right by nature, to enjoy their own natural *quantum* of freedom, be it what it may. Again: are all men naturally equal in strength, in virtue, in capacity, or in rights? The thought is preposterous. The same man does not even continue to have the same natural rights all the time. The female child is born with a different set of rights in part, from the male child of the same parents; because born to different native capacities and

Natural Equality what?  
Golden Rule.

natural relations and duties. In what then are men naturally equal? I answer, first: in their common title to the several *quantums* of liberty appropriate to each, differing as they do in different men; second, they are equal in their common humanity, and their common share in the obligations and benefits of the golden rule. All men are reciprocally bound to love their neighbors as themselves; and to do unto others, as they would that others should do to them. See Job xxxi: 13-15. Here inspiration defines that equality as in full force between master and slave; and as entirely compatible with that relation. Here is the great charter of Bible republicanism. Men have by nature, a general equality in this; not a specific one. Hence, the general equality of nature will by no means produce a literal and universal equality of civil condition; for the simple reason that the different classes of citizens have very different specific rights; and this grows out of their differences of sex, virtue, intelligence, civilization, &c., and the demands of the common welfare. Thus, if the low grade of intelligence, virtue and civilization of the African in America, disqualified him for being his own guardian, and if his own true welfare (taking the "general run" of cases) and that of the community, would be plainly marred by this freedom; then the law decided correctly, that the African here has no natural right to his self-control, as to his own labour and locomotion. Hence, his natural liberty is only that which remains after that privilege is retrenched. Still he has natural rights, (to marriage, to a livelihood from his own labour, to the Sabbath, and to the service of God, and immortality, &c., &c). Freedom to enjoy all these constitutes his natural liberty, and if the laws violate any of it causelessly, they are unjust.

The two remaining questions are more practical, and may be discussed more briefly. We discard the

3. Proper Sphere of Civil Government. theocratic conception of civil government. The proper object of it is, in general, to secure to man his life, liberty, and property, i. e., his secular rights. Man's intellectual and spiritual concerns belong to different jurisdictions; the parental and the ecclesiastical. The evidence is, that the parental, and the ecclesiastical departments of duty and right are separately recognized by Scripture and distinctly fenced off, as independent circles. (See also Jno. xviii: 35, 36; Luke xii: 14; 2 Cor. x: 4; Matt. xxii: 21). The powers of the civil magistrate then, are limited by righteousness, (not always by facts) to these general functions, regulating and adjudicating all secular rights, and protecting all members of civil society in their enjoyment of their several proper shares thereof. This general function implies a number of others; prominently, these three: taxation, punishment, including capital for capital crimes, and defensive war. For the first, (see Matt. xxii: 21; Rom. xiii: 6, 7;) for the second, (see Gen. ix:

5, 6; Num. xxxv : 33 ; Rom. xiii : 1-5 ; ) for the third, (Ex. xvii : 9, and *passim* in Old Testament ; Luke iii : 14, 15 ; Acts x : 1, 2). The same thing follows from the power of capital punishment. Aggressive war is wholesale murder. The magistrate who is charged with the sword, to avenge and prevent domestic murder, is *a fortiori* charged to punish and prevent the foreign murderer.

But, few governments are strictly just ; and the inquiry therefore arises : How shall the Christian citizen act, under an oppressive command of the civil magistrate ? I reply, if the act which he requires is not positively a sin *per se*, it must be obeyed, although in obeying we surrender a clear, moral right of our own. The proof is the example of the Bible saints—the fact that the very government to which Paul and Peter challenged obedience as a Christian duty, was far from being an equitable one ; and the truth that a harsh and unjust government is a far less evil than the absence of all government. The duty of obedience, does not, as we have seen, spring out of our assent, nor from the government's being the one of our choice, but from the providence of God which placed us under it, coupled with the fact that government is His ordinance. If the thing commanded by the civil magistrate is positively sinful, then the Christian citizen must refuse obedience, but yield submission to the penalty therefor. Of course, he is entitled, while submitting either in this or the former case, to seek the peaceable repeal of the sinful law or command ; but that he is bound to disobey it in the latter case, is clear from the example of the apostles and martyrs : Acts iv : 19 ; v : 29 ; and from the obvious consideration, that since the civil magistrate is but God's minister, it is preposterous God's power committed to him should be used to pull down God's authority. But does not the duty of disobeying imply that there ought to be an immunity from penalty for so doing ? I reply, of course, in strict justice, there ought ; but this is one of those rights which the private Christian may not defend by violence, against the civil magistrate. The magistrate is magistrate still, and his authority in all things, not carrying necessary guilt in the compliance, is still binding, notwithstanding his unrighteous command. To suffer is not sin *per se* : hence, although when he commanded you to sin, you refused, when he commands you to suffer for that refusal, you acquiesce. It should be again remembered, that an unjust government is far better than none at all. It is God's will that such a government, even, should be obeyed by individuals, rather than have anarchy. If a man holds office under a government, and the official function enjoined upon him is positive sin, it is his duty to resign, giving up his office and its emoluments, along with its responsibilities, and then he has no more concern with the unrighteous law than any other private citizen. That

Duty of Christians  
to Unjust Civil Gov-  
ernment.

concern is simply to seek its repeal by constitutional means. If the majority, or other controlling force in the constitution make that appeal unattainable for him, then the private citizen is clear of the sin, and has no concern with the sinful law. He is neither bound, nor permitted to resist it by force. But for an official of government to hold office, promise official obedience, and draw his compensation therefor, and yet undertake to refuse to perform the official duties of his place, on the ground that his conscience tells him the acts are morally wrong; this is but a disgusting compound of pharisaism, avarice and perjury. Thus we have, in a nutshell, the true doctrine of a "higher law," as distinguished from the spurious.

One more question remains: Who is to be the judge when the act required of the citizen by law is morally wrong? I reply, the citizen himself, in the last resort. This is the great Protestant and Scriptural doctrine of private judgment. We sustain it by the obvious fact, that when the issue is thus made between the government and its citizen, if that is to be absolute judge in its own case, there is an end of personal independence and liberty. But the government's judgment being thus set aside, there remains no other human umpire. 2d. Every intelligent being lies under moral relations to God, which are immediate and inevitable. No creature in the universe can answer for him, in a case of conscience, or step between him and his guilt. Hence, it is the most monstrous and unnatural injustice that any power should dictate to his conscience, except His divine Judge. See Prov. ix : 12 ; Rom. xiv : 4. The clear example of Bible saints sustains this, as cited above ; for while they clearly recognized the legitimacy of the magistrate's authority, they claim the privilege of private judgment in disobeying their commands to sin. If it be said that this doctrine is in danger of introducing disorder and insubordination, I answer, no; not under any government that at all deserves to stand ; for when the right of private judgment is thus exercised, as an appeal to God's judgment, and with the fact before our faces, that if we feel bound to disobey the law, we shall be still bound to submit meekly to the penalty, none of us will be apt to exercise the privilege too lightly.

Thus far, we have considered the individual action of the citizen towards an unrighteous government, and have shown that, even when constrained to disobey an unrighteous law, he must submit to the penalty. Do we then inculcate the slavish doctrine of passive obedience, which asserts the divine and irresponsible right of kings, so that even though they so abuse their powers that the proper ends of government are lost, God forbids resistance? By no means. To Americans, whose national existence and glory are all founded on the "right of revolution," slight

4. Right of Revolution Discussed.

citizen towards an unrighteous government, and have shown that, even when constrained to disobey an unrighteous law, he must submit to the penalty.

arguments would probably be needed to support it. But, it is the duty of thinking men to have some better support for their opinions, than the popularity of them.

The argument for passive obedience, from Romans 13, is at first view, plausible, but will not bear inquiry. Note that the thing which is there declared to be of divine authority, is not a particular form of government, but submission to the government, whatever it is. God has not ordained what government mankind shall live under, but only that they shall live under a government. The end of government is not the gratification of the rulers, but the good of the ruled. When a form of government entirely ceases, as a whole, to subserve its proper end, is it still to subsist forever? This is preposterous. Who then is to change it? The submissionists say, Providence alone. But Providence works by means. Shall those means be external force or internal force? These are the only alternatives; for of course corrupt abuses will not correct themselves, when their whole interest is, to be perpetuated. External force is unauthorized; for nothing is clearer than that a nation should not interfere, uncalled, in the affairs of another. Again: we have seen that the sovereignty is in the people rather than the rulers; and that the power the rulers hold is delegated. May the people never resume their own, when it is wholly abused to their injury? There may be obviously a point then where "resistance to tyrants is obedience to God." The meaning of the apostle is, that this resistance must be the act, not of the individual, but of the people. The insubordination which he condemns, is that which arrays against a government, bad like that of the Cæsars perhaps, the worse anarchy of the individual will. But the body of the citizens is the commonwealth; and when the commonwealth arises and supersedes the abused authority of her public servants, the allegiance of the individual is due to her, just as before to her servants. But it may be asked, How can the commonwealth move to do this, except by the personal movement of individuals against the "powers that be?" I answer, (and this explains the true nature of the right of revolution): true: but if the individual moves, when he is not inspired by the movement of the popular heart; when his motion is not the exponent, as well as the occasion, of theirs, he has made a mistake—he has done wrong—he must bear his guilt. It is usually said, as by Paley, that a revolution is only justifiable when the evils of the government are worse than the probable evils of the convulsive change; and when there is a reasonable prospect of success. The latter point is doubtful. Some of the noblest revolutions, as that of the Swiss, were rather the result of indignation at intolerable wrong, and a generous despair, than of this calculation of chances of success.