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A SHORT  
INTRODUCTION  
TO  
MORAL PHILOSOPHY,  
IN THREE BOOKS;  
CONTAINING THE  
ELEMENTS OF ETHICKS  
AND THE  
LAW OF NATURE.

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TRANSLATED FROM THE LATIN.

SECOND EDITION.

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# ADVERTISEMENT

BY THE TRANSLATOR.

**T**HE Author of this book had no inclination that it should be translated, as he wishes that all our students were much enured to the Latin tongue, which for the two last centuries, (and in many preceeding, in such style as they had) was the common channel of communication among the Learned through all Europe. He was abundantly aware that such compends, wrote in the most succinct manner their authors could, and yet touching at a great variety of subjects, with hints of the principal topics of reasoning, must appear very jejune and unpleasant to common readers: not to mention the unavoidable terms of art, which can scarce be turned into easy common language. But he found that the preventing a translation was impossible; as it

## ADVERTISEMENT.

was designed in London soon after the publication of the first edition. He therefor thought proper it should be rather done in Glasgow. The English reader must excuse the translator in the use of some few Latin terms of art in the 2d and 3d books, and in the omission of a section or two relating solely to some Latin ways of speaking in the civil law. He has sometimes inserted a short sentence, or added a note or two, to make some points clearer. He needs the reader's indulgence too, if, in following the original pretty closely, he sometimes makes sentences too long, or not so smooth and easy as our native tongue would require.



## T O T H E

## STUDENTS IN UNIVERSITIES.

**T**HE celebrated division of philosophy among the ancients was into the rational or logical, the natural, and the moral. Their moral philosophy contained these parts, ethicks taken more strictly, teaching the nature of virtue and regulating the internal dispositions; and the knowledge of the law of nature. This latter contained, 1. the doctrine of private rights, or the laws obtaining in natural liberty. 2. Oeconomicks, or the laws and rights of the several members of a family; and 3. Politicks, shewing the various plans of civil government, and the rights of states with respect to each other. The following books contain the elements of these several branches of moral philosophy; which if they are carefully studied may give the youth an easier access to the well known and admired works either of the antients, Plato, Aristotle, Xenophon, Cicero; or of the moderns, Grotius, Cumberland, Puffendorf, Harrington and others, upon this branch of philosophy.

The learned will at once discern how much of this compend is taken from the writings of others, from Cicero and Aristotle; and to name no other moderns, from Puffendorf's smaller work, *de officio hominis et civis*, which that worthy and ingenious man the late Professor Gershom Carmichael of Glasgow, by far the best commentator on that book, has so supplied and corrected that the notes are of much more value than the text. The

*reasons of my undertaking to compose anew a compend of this branch of philosophy, after so many such compends have been published by very learned men, were these; every teacher must use his own judgment on these subjects, use his own method, and that disposition of the several parts, and those arguments which seem to him of greatest force, best suited to the apprehensions of the students, and aptest to touch their hearts on such subjects. And as the method and order which pleased me most is pretty different from what has of late prevailed; if it can be of any advantage in education, it must be of use to the students to have in their hands an abridgement, containing the method and the principal heads of argument, to recall to their memories the points more largely insisted upon in their lectures.*

*The design of Cicero's books de officiis, which are so very justly admired by all, has been mistaken inconsiderately by some very ingenious men, who speak of these books as intended for a compleat system of morals or ethicks. Whereas Cicero expressly declares, that the doctrine concerning virtue, and the supreme good, which is the principal part of ethicks, is to be found elsewhere. Nay in his own books de finibus, and Tusculan questions, he had previously treated these subjects more copiously\*. And he tells us expressly,† that in his book de officiis he follows the*

\* As we find from Cicero's first book de finibus that Brutus had wrote a book de virtute addressed to Cicero; this might be the reason why no book of Cicero's bears such a title; tho' 'tis manifest to any who read the books de finibus and the Tusculan questions, that the fundamental doctrine of morals is copiously delivered in them, and presupposed in the books de officiis, and passed over in a section or two.

† See Book I. ch. i. ii. and Book III. ch. iii.

*Stoicks, and uses their way of treating this subject. Now 'tis well known that the Stoicks made such difference between virtue, which they counted the sole good, and the officia, or external duties of life, that they counted these duties among the things indifferent, neither morally good nor evil. \* The design then of these books de officiis is this; to shew how persons in higher stations, already well instructed in the fundamentals of moral philosophy, should so conduct themselves in life, that in perfect consistence with virtue they may obtain great interest, power, popularity, high offices and glory.*

*In the second impression of this book some few additions seemed necessary and several amendments. The author once intended to have made references all along to the more eminent writers, antient or modern, who treated the several subjects. But considering that this could be of no use except to those who have the cited books at hand, and that such could easily by their indexes find the corresponding places for themselves: he spared himself that disagreeable and unnecessary labour. All who have looked into such subjects know that the general doctrine and foundations of morals may be found in the antients above-mentioned, and in Dr. Cumberland, and in Lord Shaftesbury: and that scarce any question of the law of nature and nations is not to be found in Grotius, Puffendorf,*

\* Nay he also declares l. iii. c. 3. that he writes only *de mediis officiis*, which might be performed both by the wise and the unwise; and yet in the latter they allowed no virtue. Besides, the antients generally delivered all the *jurisprudentia naturalis*, and their doctrine about civil government in their *politica*, or books *de legibus*, of which there's little or nothing in the books *de officiis*; tho' these are parts of the moral philosophy of the antients.

*especially with Barbeyrac's copious notes, Harrington, Locke, or Bynkershoek, to mention no more. Nay in Barbeyrac one finds the principal authors who have published large dissertations on particular heads. Such as want more full discussions of any such points, must have recourse to these authors.*

*These elementary books are for your use who study at Universities, and not for the learned. When you have considered them well, go on to greater and more important works. Go to the grand fountains of all the sciences, of all elegance; the inventers and improvers of all ingenious arts, the Greek and Roman writers: and while you are drawing from them what knowledge you can, have recourse also to yet purer fountains, the holy Scriptures which alone give to sinful mortals any sure hopes of an happy immortality; that you may adorn your souls with every virtue, prepare yourselves for every honourable office in life, and quench that manly and laudable thirst you should have after knowledge. Let not philosophy rest in speculation, let it be a medicine for the disorders of the soul, freeing the heart from anxious solitudes and turbulent desires; and dispelling its fears: let your manners, your tempers, and conduct be such as right reason requires. Look not upon this part of philosophy as matter of ostentation, or shew of knowledge, but as the most sacred law of life and conduct, which none can despise with impunity, or without impiety toward God: and whose precepts whoever seriously endeavours to obey, as far as he is capable, shews the truest worth and excellence, and the highest wisdom; and is truly the most prosperous as to his greatest interests in life.*

It is a great pleasure to me to see you well and happy in the world.

And I am sure you will find it so, for it is a great pleasure to me to see you well and happy in the world.

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**C**hoose the best course of life, and custom will make it the most pleasant. *Pythagoras.*

Assume to yourself to live like a perfect man, or one who has made great proficiency in philosophy, and let it be an inviolable law, to act the part that appears most virtuous.

*Epictetus.*

Other animals are committed to the government of men, but God has committed men to the government of their own natural conscience. This governor we never should disobey; for it is offensive to God, and makes us enemies to the conscience within us. *Epictet. Fragm.*

Choose rather to correct your own passions, than to be corrected and punished on their account. *The same author.*

In this one thing delight and rest yourself, in going on constantly from one social action to another with remembrance of the Deity. *Marcus Antonin.*

In every design, or attempt whether great or small we ought to invoke God. *Plato.*

Give joy to the immortal Gods and those that love you.  
*An unknown Poet in Antonin.*

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C H A P. I.

*Of HUMAN NATURE and its PARTS.*

I. **A**S all other arts have in view some good to be obtained, as their proper end, Moral Philosophy, which is the art of regulating the whole of life, must have in view the noblest end; since it undertakes, as far as human reason can go, to lead us into that course of life which is most according to the intention of nature, and most happy, to which end whatever we can obtain by other arts should be subservient. Moral Philosophy therefore must be one of these commanding arts which directs how far the other arts are to be pursued. And since all Philosophers, even of the most opposite schemes, agree in words at least, that "Happiness either consists in virtue and virtuous offices, or is to be obtained and secured by them:" The chief points to be enquired

into in Morals must be, what course of life is according to the intention of nature? wherein consists happiness? and what is virtue?

All such as believe that this universe, and human nature in particular, was formed by the wisdom and counsel of a Deity, must expect to find in our structure and frame some clear evidences, shewing the proper business of mankind, for what course of life, what offices we are furnished by the providence and wisdom of our Creator, and what are the proper means of happiness. We must therefore search accurately into the constitution of our nature, to see what sort of creatures we are; for what purposes nature has formed us; what character God our Creator requires us to maintain. Now the intention of nature with respect to us, is best known by examining what these things are which our natural senses or perceptive powers recommend to us, and what the most excellent among them? and next, what are the aims of our several natural desires, and which of them are of greatest importance to our happiness? In this inquiry we shall lightly pass over such natural powers as are treated of in other arts, dwelling chiefly upon those which are of consequence in regulating our morals.

In this art, as in all others, we must proceed from the subjects more easily known, to those that are more obscure; and not follow the priority of nature, or the dignity of the subjects: and therefore don't deduce our first notions of duty from the divine Will; but from the constitution of our nature, which is more immediately known; that from the full knowledge of it, we may discover the design, intention, and will of our Creator as to our conduct. Nor will we omit such obvious

evidences of our duty as arise even from the considerations of our present secular interests; tho' it will perhaps hereafter appear, that all true virtue must have some nobler spring than any desires of worldly pleasures or interests.

II. FIRST then, Human nature consists of soul and body, each of which has its proper powers, parts, or faculties. The inquiry into the body is more easy, and belongs to the Physicians. We only transiently observe, that it is plainly of a more noble \* structure than that of other animals. It has not only organs of sense and all parts requisite either for the preservation of the individual or of the species, but also such as are requisite for that endless variety of action and motion, which a rational and inventive spirit may intend, and these organs formed with exquisite art. One cannot omit the dignity of its erect form, so plainly fitted for enlarged contemplation; the easy and swift motions of the joints; the curious structure of the hand, that great instrument of all ingenious arts; the countenance, so easily variable as to exhibit to us all the affections of the soul; and the organs of voice, so nicely fitted for speech in all its various kinds, and the pleasure of harmony. These points are more fully explained by Anatomists.

This curious frame of the human body we all see to be fading and perishing; needing daily new recruits by food, and constant defence against innumerable dangers from without, by cloathing, shelter, and other conveniences. The charge of it therefore is committed to a soul endued with forethought and sagacity,

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\* See this explained by Dr. Cumberland, *de Legibus Naturae*.

which is the other, and by far the nobler part in our constitution.

III. THE parts or powers of the soul, which present us with a more glorious view, are of various kinds: \* but they are all reducible to two classes, the *Understanding* and the *Will*. The former contains all the powers which aim at knowledge; the other all our desires pursuing happiness and eschewing misery.

We shall but briefly mention the several operations of the understanding, because they are sufficiently treated of in Logicks and Metaphysics. The first in order are the *senses*: under which name we include every “ constitution or power of the soul, by which certain feelings, ideas or perceptions are raised upon “ certain objects presented.” Senses are either *external*, or *internal* and mental. The external depend on certain organs of the body, so constituted that upon any impression made on them, or motion excited, whether by external impulses or internal forces in the body, a certain feeling or notion is raised in the soul. The feelings are generally either agreeable, or at least not uneasy, which ensue upon such impressions and changes as are useful or not hurtful to the body: but uneasy feelings ensue upon those which are destructive or hurtful.

Tho’ bodily pleasure and pain affect the soul pretty vehemently, yet we see they are of short duration and fleeting; and seldom is the bare remembrance of past bodily pleasures agreeable, or the remembrance of past

\* Concerning human nature, beside *Aristotle’s* moral writings, *Nemefius de homine*, *Locke*, and *Malebranch*; many excellent observations are made in *Cicero’s* 5th book *de finibus*, *Arrian*, and *Lord Shaftesbury’s Inquiry*, and *Rhapsody*.

pain in it self uneasy, when we apprehend no returns of them.

By these senses we acquire the first notions of *good* and *evil*. Such things as excite grateful sensations of this kind, we call *good*; what excites painful or uneasy sensations, we call *evil*. Other objects also when perceived by some other kinds of senses, exciting also agreeable feelings, we likewise call good, and their contraries evil. *Happiness* in general, is “a state wherein there is plenty of such things as excite these grateful sensations of one kind or other, and we are free from pain.” *Misery* consists in “frequent and lasting sensations of the painful and disagreeable sorts, excluding all grateful sensations.”

There are also certain perceptions dependent on bodily organs, which are of a middle nature as to pleasure or pain, having a very small degree of either joined immediately with them: these are the perceptions by which we discern the primary qualities of external objects and any changes befalling them, their magnitude, figure, situation, motion or rest: all which are discerned chiefly by *sight* or *touch*, and give us neither pleasure nor pain of themselves; tho’ they frequently intimate to us such events as occasion desires or aversions, joys or sorrows.

Bodily pleasures and pains, such as we have in common with the brutes, are of some importance to our happiness or misery. The other class of perceptions, which inform us of the qualities and states of things external to us, are of the highest use in all external action, in the acquiring of knowledge, in learning and practising the various arts of life.

Both these kinds of external perceptions may be cal-

led *direct* and *antecedent*, because they presuppose no previous ideas. But there's another class of perceptions employed about the objects of even the external senses, which for distinction we call *reflex* or *subsequent*, because they naturally ensue upon other ideas previously received: of these presently. So much for external sensation.

IV. INTERNAL senses are those powers or determinations of the mind, by which it perceives or is conscious of all within itself, its actions, passions, judgments, wills, desires, joys, sorrows, purposes of action. This power some celebrated writers call *consciousness* or *reflection*, which has for its objects the qualities, actions or states of the mind itself, as the external senses have things external. These two classes of sensation, external and internal, furnish our whole store of ideas, the materials about which we exercise that noblest power of *reasoning* peculiar to the human species. This also deserves a fuller explication, but it belongs to Logick.

'Tis by this power of reason, that the soul perceives the relations and connexions of things, and their consequences and causes; infers what is to ensue, or what preceded; can discern resemblances, consider in one view the present and the future, propose to itself a whole plan of life, and provide all things requisite for it.

By the exercise of reason it will easily appear, that this whole universe was at first framed by the contrivance and counsel of a most perfect intelligence, and is continually governed by the same; that it is to him mankind owe their preeminence above other animals in the power of reason, and in all these excellencies

of mind or body, which clearly intimate to us the will of our munificent Creator and Preserver ; and shew us what sort of offices, what course of life he requires of us as acceptable in his sight.

V. SINCE then every sort of good which is immediately of importance to happiness, must be perceived by some immediate power or sense, antecedent to any opinions or reasoning: (for 'tis the business of reasoning to compare the several sorts of good perceived by the several senses, and to find out the proper means for obtaining them :) we must therefore carefully inquire into the several sublimer perceptive powers or senses ; since 'tis by them we discover what state or course of life best answers the intention of God and nature, and wherein true happiness consists. But we must premise some brief consideration of the *Will*, because the motions of the will, our affections, desires and purposes, are the objects of these more subtile senses, which perceive various qualities and important differences among them.

As soon as the mind has got any notion of good or evil by grateful or uneasy sensations of any kind, there naturally arise certain motions of the *Will*, distinct from all sensation ; to wit, *Desires* of good, and *Aversions* to evil. For there constantly appears, in every rational being, a stable essential propensity to desire its own happiness, and whatever seems to tend to it, and to avoid the contraries which would make it miserable. And altho' there are few who have seriously inquired what things are of greatest importance to happiness ; yet all men naturally desire whatever appears to be of any consequence to this end, and shun the contrary : when several grateful objects occur, all

which it cannot pursue together, the mind while it is calm, and under no impulse of any blind appetite or passion, pursues that one which seems of most importance. But if there should appear in any object a mixture of good and evil, the soul will pursue or avoid it, according as the good or the evil appears superior.

Beside these two calm primary motions of the Will, *desire* and *aversion*, there are other two commonly ascribed to it, to wit, *Joy* and *Sorrow*. But these two are rather to be called new states, or finer feelings or senses of the soul, than motions of the will naturally exciting to action. In this manner however we make up these four species mentioned by the antients, all referred to the *Will*, or *rational appetite*: when good to be obtained is in view, there arises *Desire*; when evil to be repelled, *Aversion*: when good is obtained or evil avoided, arises *Joy*; when good is lost, or evil befallen us, *Sorrow*.

VI. But beside the calm motions or affections of the soul and the stable desire of happiness, which employ our reason for their conductor, there are also others of a very different nature; certain vehement turbulent Impulses, which upon certain occurrences naturally agitate the soul, and hurry it on with a blind inconsiderate force to certain actions, pursuits, or efforts to avoid, exerted about such things as we have never deliberately determined to be of consequence to happiness or misery. Any one may understand what we mean by these blind impetuous motions who reflects on what he has felt, what violent propensities hurried him on, when he was influenced by any of the keener passions of lust, ambition, anger, hatred, envy, love, pity, or fear; without any previous deliberate opini-



on about the tendency of these objects or occurrences which raised these several passions to his happiness or misery. These passions are so far from springing from the previous calm desire of happiness, that we find them often opposing it, and drawing the soul contrary ways.

These several passions the antients reduce to two classes, to wit, the *passionate Desires*, and the correspondent *Aversions*; both which they teach to be quite distinct from the Will; the former aiming at the obtaining some pleasure or other, and the latter the warding off something uneasy. Both are by the schoolmen said to reside in the *sensitive appetite*; which they subdivide into the \* *concupiscible* and *irascible*; and their impulses they call *Passions*. The *sensitive appetite* is not a very proper name for these determinations of the soul, unless the schoolmen would use the word *senses* in a more extensive signification, so as to include many perceptive powers of an higher sort than the bodily senses. For 'tis plain that many of the most turbulent passions arise upon certain occurrences which affect none of the external senses; such as ambition, congratulation, malicious joy, the keen passions toward glory and power, and many others, with the turbulent aversions to their contraries. The schoolmen however refer to this *sensitive appetite* all the vehement inconsiderate motions of the will, which are attended with confused uneasy sensations, whatever their occasions be.

Of these passions there are four general classes: such as pursue some apparent good are called *passionate Desires* or *Cupidity*; such as tend to ward off evil are cal-

\* ἐπιθυμία ἔ θυμὸς.

led *Fears*, or *Anger*: such as arise upon obtaining what was desired or the escaping evil, are turbulent *Joys*; and what arise upon the loss of good, or the befalling of evil, *Sorrows*. [nor have we in our language words appropriated so as to distinguish between the several calm and passionate motions of the will.] Of each class there are many subdivisions according to the variety of objects about which they are employed, which will be further explained hereafter.

VII. THERE'S also another division of the motions of the will whether calm or passionate, according as the advantage or pleasure in view is for ourselves or others. That there is among men some disinterested goodness, without any views to interests of their own, but pursuing ultimately the interests of persons beloved, must be evident to such as examine well their own hearts, the motions of friendship or natural affection; and the love and zeal we have for worthy and eminent characters: or to such as observe accurately the cares, the earnest desires, of persons on their death-beds, and their friendly offices to such as they love even with their last breath: or, in the more heroic characters, their great actions and designs, and their marching willingly and deliberately to certain death for their children, their friends, or their country.

The disinterested affections are either calm, or turbulent and passionate, even as the selfish in which one pursues what seems advantageous or pleasant to himself. And the several affections or passions, whether more simple or complicated, have a variety of names as their objects are various, as they regard one's self, or regard others, and their characters, fortunes, endearments, and the several social bonds with us or with

each other; or the enmities or dissensions by which they are set at variance; or as their former conduct or designs have occasioned these events which excite our passions.

These particular kind passions are quite different from any calm general good-will to mankind, nor do they at all arise from it. They naturally arise, without premeditation or previous volition, as soon as that species or occasion occurs which is by nature adapted to raise them. We shall have a more proper place to explain them a little further after we have mentioned the more sublime perceptive powers; without the knowledge of which many motions of the will must remain unknown.

What any sense immediately relishes is desired for itself ultimately; and happiness must consist in the possession of all such objects, or of the most important and excellent ones. But when by the use of our reason we find that many things which of themselves give no pleasure to any sense, yet are the necessary means of obtaining what is immediately pleasant and desirable, all such *proper means* shall also be desired, on account of their *ends*. Of this class are, an extensive influence in society, riches, and power.

But as beside the several particular passions of the selfish kind there is deeply rooted in the soul a steady propensity or impulse toward its own highest happiness, which every one upon a little reflection will find, by means whereof he can repress and govern all the particular selfish passions, when they are any way opposite to it; so whosoever in a calm hour takes a full view of human nature, considering the constitutions, tempers, and characters of others, will find a like

general propension of soul to wish the universal prosperity and happiness of the whole system. And whosoever by frequent impartial meditation cultivates this extensive affection, which the inward sense of his soul constantly approves in the highest degree, may make it so strong that it will be able to restrain and govern all other affections, whether they regard his own happiness or that of any smaller system or party.

VIII. HAVING given this summary view of the Will, we next consider these senses we called *reflex* or subsequent, by which certain new forms or perceptions are received, in consequence of others previously observed by our external or internal senses; and some of them ensuing upon observing the fortunes of others, or the events discovered by our reason, or the testimony of others. We shall only transiently mention such of them as are not of much importance in morals, that we may more fully explain those which are more necessary.

The external senses of Sight and Hearing we have in common with the Brutes: but there's superadded to the human Eye and Ear a wonderful and ingenious Relish or Sense, by which we receive subtiler pleasures; in material forms *gracefulness, beauty and proportion*; in sounds *concord and harmony*; and are highly delighted with observing exact *imitation* in the works of the more ingenious arts, Painting, Statuary and Sculpture, and in motion and Action; all which afford us far more manly pleasures than the external senses. These are the Pleasures to which many arts both mechanic and liberal are subservient; and men pursue them even in all that furniture, those utensils, which are otherways requisite for the conveniency of

life. And the very *grandeur* and *novelty* of objects excite some grateful perceptions not unlike the former, which are naturally connected with and subservient to our desires of knowledge. Whatever is grateful to any of these perceptive powers is for it self desirable, and may on some occasions be to us an ultimate end. For, by the wise contrivance of God, our senses and appetites are so constituted for our happiness, that what they immediately make grateful is generally on other accounts also useful, either to ourselves or to mankind.

Among these more humane pleasures, we must not omit that enjoyment most peculiarly suited to human nature, which arises from the discovery of Truth, and the enlarging of our knowledge; which is ultimately desirable to all; and is joyful and pleasant in proportion to the dignity of the subject, and the evidence or certainty of the discovery.

IX. THERE are other still more noble senses and more useful: such is that *sympathy* or fellow-feeling, by which the state and fortunes of others affect us exceedingly, so that by the very power of nature, previous to any reasoning or meditation, we rejoice in the prosperity of others, and sorrow with them in their misfortunes; as we are disposed to mirth when we see others chearful, and to weep with those that weep, without any consideration of our own interests. Hence it is that scarce any man can think himself sufficiently happy tho' he has the fullest supplies of all things requisite for his own use or pleasure: he must also have some tolerable stores for such as are dear to him; since their misery or distresses will necessarily disturb his own happiness.

By means of this sympathy and of some disinterested affections, it happens, as by a sort of contagion or infection, that all our pleasures, even these of the lowest kind, are strangely increased by their being shared with others. There's scarce any chearful or joyful commotion of mind which does not naturally require to be diffused and communicated. Whatever is agreeable, pleasant, witty, or jocose naturally burns forth, and breaks out among others, and must be imparted. Nor on the other hand is there any thing more uneasy or grievous to a man than to behold the distressing toils, pains, griefs, or misery of others, especially of such as have deserved a better Fate.

X. BUT further: that man was destined by nature for action plainly appears by that multitude of active instincts and desires natural to him; which is further confirmed by that deeply implanted sense approving or condemning certain actions. The soul naturally desires action; nor would one upon any terms consent to be cast into a perpetual state of sleep, tho' he were assured of the sweetest dreams. If a sleep like that of \* *Endymion* were to befall ourselves or any person dear to us, we would look upon it as little better than Death. Nature hath therefore constituted a certain *sense* or natural *taste*, to attend and regulate each active power, approving that exercise of it which is most agreeable to nature and conducive to the general interest. The very brute animals, tho' they have none of these reflex senses we mentioned, yet by certain instincts, even previously to any experience or

\* Who in the old fable continued to live, but never awoke out of a sleep he was cast into by Diana.

prospect of pleasure, are led, each according to its kind, to its natural actions, and finds in them its chief satisfactions. Human nature is full of like instincts; but being endued with reason and the power of reflecting on their own sentiments and conduct, they have also various reflex senses with a nice discernment and relish of many things which could not be observed by the grosser senses, especially of the exercise of their natural powers. By these senses that application of our natural powers is immediately approved which is most according to the intention of nature, and which is most beneficial either to the individual or to mankind; and all like application by others is in like manner approved, and thus made matter of joy and glorying. In the very posture and motion of the body, there is something which immediately pleases, whether in our own, or that of others: in the voice and gesture, and the various abilities of body or mind, in the ingenious arts of imitation, in external actions and exercises, whether about serious business or recreations, we discern something graceful and manly, and the contrary ungraceful and mean, even without any appearance of moral virtue in the one, or vice in the other. But still it is chiefly in these abilities and exercises which are peculiar to mankind that grace and dignity appear; such as we have in common with beasts appear of less dignity. And among the human pursuits which yet are different from moral virtues, the pursuits of knowledge are the most venerable. We are all naturally inquisitive and vehemently allured by the discovery of truth. Superior knowledge we count very honourable; but to mistake, to err, to be ignorant, to be imposed upon, we count evil and shameful.

But to regulate the highest powers of our nature, our affections and deliberate designs of action in important affairs, there's implanted by nature the noblest and most divine of all our senses, that *Conscience* by which we discern what is graceful, becoming, beautiful and honourable in the affections of the soul, in our conduct of life, our words and actions. By this sense, a certain turn of mind or temper, a certain course of action, and plan of life is plainly recommended to us by nature; and the mind finds the most joyful feelings in performing and reflecting upon such offices as this sense recommends; but is uneasy and ashamed in reflecting upon a contrary course. Upon observing the like honourable actions or designs in others, we naturally favour and praise them; and have an high esteem, and goodwill, and endearment toward all in whom we discern such excellent dispositions: and condemn and detest those who take a contrary course. What is approved by this sense we count *right* and *beautiful*, and call it *virtue*; what is condemned, we count *base* and *deformed* and *vicious*.

The Forms which move our approbation are, all kind affections and purposes of action; or such propensions, abilities, or habits of mind as naturally flow from a kind temper, or are connected with it; or shew an higher taste for the more refined enjoyments, with a low regard to the meaner pleasures, or to its own interests; or lastly such dispositions as plainly exclude a narrow contracted selfishness aiming solely at its own interests or sordid pleasures. The forms disapproved are either this immoderate selfishness; or a peevish, angry, envious or ill-natured temper, leading us naturally to hurt others; or a mean selfish sensuality.



That this sense is implanted by nature, is evident from this that in all ages and nations certain tempers and actions are universally approved and their contraries condemned, even by such as have in view no interest of their own. Many artful accounts of all this as flowing from views of interest have been given by ingenious men; but whosoever will examine these accounts, will find that they rather afford arguments to the contrary, and lead us at last to an immediate natural principle prior to all such views. The agent himself perhaps may be moved by a view of advantages of any sort accruing only to himself, to approve his own artful conduct; but such advantages won't engage the approbation of others: and advantages accruing to others, would never engage the agent, without a moral sense, to approve such actions. How much soever the agent may be moved by any views of his own interest; yet this when 'tis known plainly diminishes the beauty of the action, and sometimes quite destroys it. Men approve chiefly that beneficence which they deem gratuitous and disinterested; what is pretended, and yet only from views of private interest, they abhor. When the agent appears to have in view the more obvious interests of getting glory, popularity, or gainful returns, there appears little or nothing honourable. 'Tis well known that such advantages are attainable by external actions, and hypocritical shews, without any real inward goodness.

But further, does not every good action appear the more honourable and laudable the more toilsome, dangerous or expensive it was to the undertaker? 'Tis plain therefore that a virtuous course is not approved under that notion of its being *profitable to the agent*.

Nor is it approved under the notion of *profitable to those who approve it*, for we all equally praise and admire any glorious actions of antient Heroes from which we derive no advantage, as the like done in our own times. We approve even the virtues of an enemy that are dreaded by us, and yet condemn the useful services of a Traytor, whom for our own interest we have bribed into perfidy. Nay the very Dissolute frequently dislike the vices of others which are subservient to their own.

Nor can it be alleged that the notion under which we approve actions is their tendency to obtain applause or rewards: for this consideration could recommend them only to the agent. And then, whoever expects praise must imagine that there is something in certain actions or affections, which in its own nature appears laudable or excellent both to himself and others: whoever expects rewards or returns of good offices, must acknowledge that goodness and beneficence naturally excite the love of others. None can hope for Rewards from God without owning that some actions are acceptable to God in their own nature; nor dread divine punishments except upon a supposition of a natural *demerit* in evil actions. When we praise the divine Laws as holy, just and good, 'tis plainly on this account, that we believe they require what is antecedently conceived as morally good, and prohibit the contrary, otherwise these Epithets would import nothing laudable.

That this sense is implanted by nature, and that thus affections and actions of themselves, and in their own nature, must appear to us right, honourable, beautiful and laudable, may appear from many of the

most natural affections of the Will, both calm and passionate, which are naturally raised without any views of our own advantage, upon observing the conduct and characters and fortunes of others ; and thus plainly evidence what Temper nature requires in us. - Of these we shall speak presently. This moral sense diffuses itself through all conditions of life, and every part of it ; and insinuates itself into all the more humane amusements and entertainments of mankind. Poetry and Rhetorick depend almost entirely upon it ; as do in a great measure the arts of the Painter, Statuary, and Player. In the choice of friends, wives, comrades, it is all in all ; and it even insinuates itself into our games and mirth. Whosoever weighs all these things fully will agree with *Aristotle* " That as the Horse " is naturally fitted for swiftness, the Hound for the " chace, and the Ox for the plough, so man, like a " sort of mortal Deity, is fitted by nature for know- " ledge, and action."

Nor need we apprehend, that according to this scheme which derives all our moral notions from a sense, implanted however in the soul and not dependent on the body, the dignity of virtue should be impaired. For the constitution of nature is ever stable and harmonious : nor need we fear that any change in our constitution should also change the nature of virtue, more than we should dread the dissolution of the Universe by a change of the great principle of Gravitation. Nor will it follow from this scheme, that all sorts of affections and actions were originally indifferent to the Deity, so that he could as well have made us approve the very contrary of what we now approve, by giving us senses of a contrary na-

ture. For if God was originally omniscient, he must have foreseen, that by his implanting kind affections, in an active species capable of profiting or hurting each other, he would consult the general good of all; and that implanting contrary affections would necessarily have the contrary effect: in like manner by implanting a sense which approved all kindness and beneficence, he foresaw that all these actions would be made immediately agreeable to the agent, which also on other accounts were profitable to the system; whereas a contrary sense (whether possible or not we shall not determine,) would have made such conduct immediately pleasing, as must in other respects be hurtful both to the agent and the system. If God therefore was originally wise and good, he must necessarily have preferred the present constitution of our sense approving all kindness and beneficence, to any contrary one; and the nature of virtue is thus as immutable as the divine Wisdom and Goodness. Cast the consideration of these perfections of God out of this question, and indeed nothing would remain certain or immutable.

XI. THERE are however very different degrees of approbation and condemnation, some species of virtues much more beautiful than others, and some kinds of vices much more deformed. These maxims generally hold. “Among the kind motions of the Will of equal extent, the calm and stable are more beautiful than the turbulent or passionate.” And when we compare calm affections among themselves, or the passionate among themselves, “the more extensive are the more amiable, and these most excellent which are most extensive, and pursue the greatest happiness of the whole system of sensitive nature.”

It was already observed that our esteem of virtue in another, causes a warmer affection of good-will toward him : now as the soul can reflect on all its powers, dispositions, affections, desires, senses, and make them the objects of its contemplation ; a very high relish for moral excellence, a strong desire of it, and a strong endearment of heart toward all in whom we discern eminent virtues, must itself be approved as a most virtuous disposition ; nor is there any more lovely than the highest love towards the highest moral excellency. Since then God must appear to us as the Supreme excellence, and the inexhaustible fountain of all good, to whom mankind are indebted for innumerable benefits most gratuitously bestowed ; no affection of soul can be more approved than the most ardent love and veneration toward the Deity, with a steady purpose to obey him, since we can make no other returns, along with an humble submission and resignation of ourselves and all our interests to his will, with confidence in his goodness ; and a constant purpose of imitating him as far as our weak nature is capable.

The objects of our condemnation are in like manner of different degrees. Ill-natured unkind affections and purposes are the more condemned the more stable and deliberate they are. Such as flow from any sudden passionate desire are less odious ; and still more excusable are those which flow from some sudden fear or provocation. What we chiefly disapprove is that fordid selfishness which so engrosses the man as to exclude all human sentiments of kindness, and surmounts all kind affections ; and disposes to any sort of injuries for one's own interests.

We justly also reckon Impiety toward God to be the

greatest depravation of mind, and most unworthy of a rational Being, whether it appears in a direct contempt of the Deity; or in an entire neglect of him, so that one has no thoughts about him, no veneration, no gratitude toward him. Nor is it of any avail either to abate the moral Excellence of Piety, or the deformity of impiety, to suggest that the one cannot profit him, nor the other hurt him. For what our conscience or moral sense chiefly regards are the affections of the heart, and not the external effects of them. That man must be deemed corrupt and detestable who has not a grateful heart toward his benefactor, even when he can make no returns: who does not love, praise and celebrate the virtues of even good men, tho' perhaps he has it not in his power to serve or promote them. Where there is a good heart, it naturally discovers itself in such affections and expressions, whether one can profit those he esteems and loves or not. These points are manifest to the inward sense of every good man without any reasoning.

XII. THIS nobler sense which nature has designed to be the guide of life deserves the most careful consideration, since it is plainly the judge of the whole of life, of all the various powers, affections and designs; and naturally assumes a jurisdiction over them; pronouncing that most important sentence, that in the virtues themselves, and in a careful study of what is beautiful and honourable in manners, consists our true dignity, and natural excellence, and supreme happiness. Those who cultivate and improve this sense find that it can strengthen them to bear the greatest external evils, and voluntarily to forfeit external advantages, in adhering to their duty toward their friends, their coun-

try, or the general interest of all: and that in so doing alone it is that they can thoroughly approve themselves and their conduct. It likewise punishes with severe remorse and secret lashes such as disobey this natural government constituted in the soul, or omit through any fear, or any prospect of secular advantages, the Duties which it requires.

That this Divine Sense or Conscience naturally approving these more extensive affections should be the governing power in man, appears both immediately from its own nature, as we immediately feel that it naturally assumes a right of judging, approving or condemning all the various motions of the soul; as also from this that every good man applauds himself, approves entirely his own temper, and is then best pleased with himself when he restrains not only the lower sensual appetites, but even the more sublime ones of a selfish kind, or the more narrow and contracted affections of love toward kindred, or friends, or even his country, when they interfere with the more extensive interests of mankind, and the common prosperity of all. Our inward conscience of right and wrong not only prefers the most diffusive goodness to all other affections of soul, whether of a selfish kind, or of narrower endearment: but also abundantly compensates all losses incurred, all pleasures sacrificed, or expences sustained on account of virtue, by a more joyful consciousness of our real goodness, and merited glory; since all these losses sustained increase the moral dignity and beauty of virtuous offices, and recommend them the more to our inward sense: \* which is a circumstance

\* What the Author here intends is obvious, and of such importance as deserves a fuller explication. In a voluptuous

peculiar to this case, nor is the like found in any other sense, when it conquers another of less power than its own. And further, whoever acts otherways cannot thoroughly approve himself if he examines well the inward sense of his soul: when we judge of the characters and conduct of others, we find the same sentiments of them: nay, this subordination of all to the most extensive interests is what we demand from them; nor do we ever fail in this case to condemn any contrary conduct; as in our judgments about others we are under no byas from our private passions and interests. And therefore altho' every event, disposition, or action incident to men may in a certain sense be called *natural*; yet such conduct alone as is approved by this diviner faculty, which is plainly destined to command the rest, can be properly called *agreeable* or *sui- ted to our nature*.

XIII. WITH this moral sense is naturally connected that other of Honour and Shame, which makes the life the more a man has impaired his health, his fortune, his character, or the more he has obstructed his progress in knowledge, or in the more elegant pleasures, the more also he must condemn and be dissatisfied with his own temper and conduct, and so must every observer. In the pursuits of honours and power, or the splendor of life; the more one has impaired his fortune or health, and the more of his natural pleasures and enjoyments he has sacrificed to these purposes, the more he must be dissatisfied with his own measures, and be disapproved by others. But in following the dictates of conscience, in adhering to his duty and the practice of virtue, the greater sacrifice he has made of all other enjoyments, the more he himself and all others approve his conduct and temper, and he answers the more compleatly the wishes and expectations of all who love and esteem him.



approbations, the gratitude, and esteem of others who approve our conduct, matter of high pleasure; and their censures, and condemnation, and infamy, matter of severe uneasiness; even altho' we should have no hopes of any other advantages from their approbations, or fears of evil from their dislike. For by this sense these things are made good or evil immediately and in themselves: and hence it is that we see many solicitous about a surviving fame, without any notion that after death they shall have any sense of it, or advantage by it. Nor can it be said \* that we delight in the praises of others only as they are a testimony to our virtue and confirm the good opinion we may have of our selves: for we find that the very best of mankind, who are abundantly conscious of their own virtues, and need no such confirmation, yet have pleasure in the praises they obtain.

That there's a natural sense of honour and fame, founded indeed upon our moral sense, or presupposing it, but distinct from it and all other senses, seems manifest from that natural modesty, which discovers itself by the very countenance in blushing; which nature has plainly designed as a guardian not only to moral virtue, but to all decency in our whole deportment, and a watchful check upon all the motions of the lower appetites. And hence it is that this sense is of such importance in life, by frequently exciting men to what is honourable, and restraining them from every thing dishonourable, base, flagitious, or injurious.

In these two senses, of moral good and evil, and of honour and shame, mankind are more uniformly con-

\* This is suggested by Aristotle *Ethic. ad Nicom.* L. i. c. 5.

stituted than in the other senses ; which will be manifest if the same immediate forms or species of actions be proposed to their judgment ; that is, if they are considering the same affections of heart whether to be approved or condemned, they would universally agree. If indeed they have contrary opinions of happiness, or of the external means of promoting or preserving it, 'tis then no wonder, however uniform their moral senses be, that one should approve what another condemns. Or if they have contrary opinions about the divine Laws, some believing that God requires what others think he forbids, or has left indifferent ; while all agree that it is our duty to obey God : or lastly, if they entertain contrary opinions about the characters of men or parties ; some believing that sect or party to be honest, pious and good, which others take to be savage or wicked. On these accounts they may have the most opposite approbations and condemnations, tho' the moral sense of them all were uniform, approving the same immediate object, to wit, the same tempers and affections.

XIV. WHEN by means of these senses, some objects must appear beautiful, graceful, honourable, or venerable, and others mean and shameful ; should it happen that in any object there appeared a mixture of these opposite forms or qualities, there would appear also another sense, of the *ridiculous*. And whereas there's a general presumption of some dignity, prudence and wisdom in the human species ; such conduct of theirs will raise laughter as shews “ some  
“ mean error or mistake, which yet is not attended  
“ with grievous pain or destruction to the person : ”  
for all such events would rather move pity. Laugh-

ter is a grateful commotion of the mind; but to be the object of laughter or mockery is universally disagreeable, and what men from their natural desire of esteem carefully avoid.

Hence arises the importance of this sense or disposition, in refining the manners of mankind, and correcting their faults. Things too of a quite different nature from any human action may occasion laughter, by exhibiting at once some venerable appearance, along with something mean and despicable. From this sense there arise agreeable and sometimes useful entertainments, grateful seasoning to conversation, and innocent amusements amidst the graver business of life.

XV. THESE various senses men are indued with constitute a great variety of things good or evil; all which may be reduced to these three classes, the goods of the soul, the goods of the body, and the goods of fortune or external ones. The goods of the soul are ingenuity and acuteness, a tenacious memory, the sciences and arts, prudence, and all the *voluntary virtues*, or good dispositions of Will. The goods of the body are, perfect organs of sense, strength, sound health, swiftness, agility, beauty. External goods are liberty, honours, power, wealth. Now as all objects grateful to any sense excite desire, and their contraries raise aversion; the affections of the will, whether calm or passionate, must be equally various. We already mentioned the four general classes to which they may be reduced, to wit, *desire, aversion, joy and sorrow*: nor have we names settled to distinguish always the calm from the passionate, as there are in some other languages. But of each of these four there are many subdivisions, and very different kinds, according to the

very different objects they have in view, and according as they are selfish or disinterested, respecting our own fortunes or those of others. And then among those which respect the fortunes of others there are great diversities, according to the different characters of the persons, their fortunes, and different attachments, friendships or enmities, and their various causes.

To pursue all these distinctions, and examine the several divisions made by the learned, would be tedious. We shall briefly mention the principal Passions, the names of which are also often used for the calm steady affections of the will; [nay the same name is often given to desires and joys, to aversions and sorrows.]

1. The several species of *desire* of the selfish kind respecting one's own body or fortune, are the natural appetites of food, whether plainer or more exquisite, lust, ambition, the desires of praise, of high offices, of wealth. Their contraries are repelled by the *aversions* of fear and anger, and these of various kinds.

The goods of the soul we pursue in our desires of knowledge, and of virtue, and in emulation of worthy characters. Their contraries we avoid by the *aversions* of shame and modesty; we are on this subject often at a loss for appropriated names.

2. The disinterested *Desires* respecting any sort of prosperity to others, are benevolence or good-will, parental affections, and those toward kinsmen. The affections of *desire* toward worthy characters, are favour or good wishes, zealous veneration, gratitude. The *aversions* raised by their misfortunes, are fear, anger, compassion, indignation. The prosperity of bad characters moves the *aversions* of envy and indignation.

3. The several species of *Joy* respecting one's own prosperous fortunes, are delectation, pride, arrogance, ostentation. And yet a long possession of any advantages of the body or fortune often produces satiety and disgust. From the contrary evils arise sorrow, vexation, despair. *Anger* indeed by the Ancients is always made a species of *desire*, to wit, that of punishing such as we apprehend have been injurious.

From our possessing the goods of the soul, especially virtuous affections, arise the internal *joyful* applauses of conscience, an honourable pride and glorying. From the contrary evils arise shame, remorse, dejection, and brokenness of spirit, which are species of *sorrow*.

4. The virtues of others observed raise *joyful* love, and esteem, and veneration, and where there's intimacy, the affections of Friendship. The vices of others move a sort of *sorrowful* hatred, contempt or detestation. The prosperity of the virtuous, or of our benefactors, raises a *joyful* congratulation; their adversities raise grief, pity, and indignation. The adversities of the vicious often raise joy and triumph, and their prosperity grief and indignation.

Whoever is curious to see large catalogues of the several motions of the Will may find them in *Aristotle's Ethics*, *Cicero's 4th Tuscul.* and *Andronicus*. But from what is above mentioned 'tis manifest that there's some natural sense of right and wrong, something in the temper and affections we naturally approve for it self, and count honourable and good; since 'tis from some such moral species or forms that many of the most natural passions arise; and opposite moral characters upon like external events raise the most opposite affections, without any regard to the private interests of the observer.

XVI. SOME of these affections are so rooted in nature that no body is found without them. The appetites toward the preservation of the body are excited in every stage of life by the uneasy sensations of hunger, and thirst, and cold. The desire of offspring at a certain age, and parental affection is also universal; and in consequence of them the like affections toward kinsmen. The other affections when the objects are presented are equally natural, tho' not so necessary. The appearance of virtue in another raises love, esteem, friendship: Honourable designs are followed with favour, kind wishes, and zeal: their successes move joyful congratulation, and their disappointment sorrow and indignation; and the contrary affections attend the prosperity of the vicious, even tho' we apprehend no advantage or danger to ourselves on either side. Benefits received with a like natural force raise gratitude; and injuries, resentment and anger; and the sufferings of the innocent, pity. We also justly count natural the desires of knowledge, of the several virtues, of health, strength, beauty, pleasure, and of all such things as are grateful to any sense.

XVII. THERE are some other parts of our constitution not to be omitted, which equally relate to the understanding and will. Such as that natural disposition to *associate* or conjoin any ideas, or any affections, however disparate or unlike, which at once have made strong impressions on our mind; so that whenever any occasion excites one of them, the others will also constantly attend it, and that instantly, previous to any desire. To this association is owing almost wholly our power of memory, or recalling of past events, and even the faculty of speech. But from

such associations incautiously made we sometimes are hurt in our tempers. The meaner pleasures of sense, and the objects of our lower appetites, acquire great strength this way, when we conjoin with them some far nobler notions, tho' not naturally or necessarily allied to them, so that they cannot easily be separated. Hence by some notions of elegance, ingenuity, or finer taste, of prudence, liberality and beneficence, the luxurious ways of living obtain a much greater reputation, and seem of much more importance to happiness than they really are. Hence 'tis of high consequence in what manner the young are educated, what persons they are intimate with, and what sort of conversation they are inured to; since by all these, strong associations of ideas are formed, and the tempers often either amended or depraved.

Of a like nature to these are *Habits*, for such is the nature both of the soul and body that all our powers are increased and perfected by exercise. The long or frequent enjoyment of pleasures indeed abates the keenness of our sense; and in like manner custom abates the feelings of pain. But the want of such gratifications or pleasures as we have long been enured to is more uneasy, and our regret the keener. And hence men are more prone to any pleasures or agreeable courses of action they are accustomed to, and cannot so easily be restrained from them.

We have already shewed that whatever is ultimately desirable must be the object of some immediate sense. But as men are naturally endued with some acuteness, forethought, memory, reason, and wisdom, they shall also naturally desire whatever appears as the proper *means* of obtaining what is im-

mediately desirable ; such means are riches and power, which may be subservient to all our desires whether virtuous or vicious, benevolent or malicious ; and hence it is that they are so universally desired.

To finish this structure of human Nature, indued with such powers of Reason, such sublime perceptive powers, such social bonds of affection, God has also superadded the powers of speech and eloquence, by which we are capable of obtaining information of what we were ignorant of, and of communicating to others what we know : by this power we exhort, by this we persuade, by this we comfort the afflicted, and inspire courage into the fearful ; by this we restrain immoderate foolish transports, by this we repress the dissolute desires and passionate resentments ; this power has conjoined us in the bonds of justice and law and civil polity, this power has reclaimed Mankind from a wild and savage life.

Altho' all these several powers and faculties we have mentioned are so common to all mankind, that there are scarce any entirely deprived of any one of them ; yet there is a wonderful variety of tempers : since in different persons different powers and dispositions so prevail that they determine the whole course of their lives. In many the sensual appetites prevail ; in others there's an high sense of the more humane and elegant pleasures ; in some the keen pursuits of knowledge, in others either ambition or anxious avarice : in others the kind affections, and compassion toward the distressed, and beneficence, with their constant attendants and supporters, an high sense of moral excellence and love of virtue : others are more prone to anger, envy, and



the ill-natured affections. In the present state of mankind which we plainly see is depraved and corrupt, sensuality and mean selfish pursuits are the most universal: and those enjoyments which the higher powers recommend, the generality are but little acquainted with, or are little employed in examining or pursuing them.

This diversity of Tempers, sometimes observable from the cradle, is strangely increased by different customs, methods of education, instruction, habits, and contrary examples; not to speak of the different bodily constitutions, which belong to the art of Medicine. The same causes often concur to corrupt the manners of men, tho' our depravation in our present state cannot wholly be ascribed to them. For such is the present condition of mankind, that none seem to be born without some weaknesses or diseases of the soul, of one kind or other, tho' in different degrees. Every one finds in himself the notion of a *truly good man*, to which no man ever comes up in his conduct. Nay the very best of mankind must acknowledge that in innumerable instances they come short of their duty, and of that standard of moral goodness they find within them. And altho' nature has given us all some little sparks as it were to kindle up the several virtues; and sown as it were some seeds of them; yet by our own bad conduct and foolish notions we seldom suffer them to grow to maturity. But a full and certain account of the original of these disorders, and of the effectual remedies for them, in all the different degrees in which they appear in different persons, will never be given by any mortal without a divine revelation. And yet whosoever will set himself heartily to inquire

into the true happiness of human nature, to discover the fallacious appearances of it, and to cultivate the nobler faculties of the soul, he will obtain a considerable power over the several turbulent passions, and amend or improve in a great degree his whole temper and disposition, whether it be what nature first gave him, or what his former conduct and circumstances have made it.

XVIII. THE consideration of all that variety of Senses or tastes, by which such a variety of objects and actions are naturally recommended to mankind, and of a like multiplicity of natural desires; and all of them pretty inconstant and changeable, and often jarring with each other, some pursuing our own interests or pleasures of one or other of the various kinds mentioned, and some pursuing the good of others; as we have also a great many humane kind affections: This complex view, I say, must at first make human nature appear a strange chaos, or a confused combination of jarring principles, until we can discover by a closer attention, some natural connexion or order among them, some governing principles naturally fitted to regulate all the rest. To discover this is the main business of Moral Philosophy, and to shew how all these parts are to be ranged in order: and we shall find that with wonderful wisdom

*God and kind nature has this strife composed.*

Of this we may have some notion from what is above explained about that moral Power, that sense of what is becoming and honourable in our actions. Nor need we long dissertations and reasoning, since by inward reflection and examining the feelings of our hearts, we shall be convinced, that we have this moral power or

Conscience distinguishing between right and wrong, plainly destined and fitted to regulate the whole of life; which clearly discovers to us that course and conduct, which alone we can entirely approve; to wit, 'that in which all kind affections are cultivated, and at the same time an extensive regard maintained toward the general happiness of all; so that we pursue our own interests, or those of our friends, or kinsmen, no further than the more extensive interests will allow; always maintaining sweetness of temper, kindness, and tender affections; and improving all our powers of body or mind with a view to serve God and mankind. This same moral sense also filling the soul with the most joyful satisfaction and inward applauses, and with the most cheering hopes, will strengthen it for all good offices, even tho' attended with toil and dangers, and reward our efforts with the most glorious recompense.

Nay our reason too reviewing the evidence exhibited to us in the whole order of nature, will shew us that the same course of life which contributes to the general prosperity, procures also to the agent the most stable and most worthy felicity; and generally tends to procure that competency of external things which to a good mind is in its kind the most joyful. The same reason will shew us that the world is governed by the wisest and best Providence; and hence still greater and more joyful hopes will arise. We shall thence conclude that all these practical truths discovered from reflection on our own constitution and that of Nature, have the nature and force of divine Laws pointing out what God requires of us, what is pleasing to him, and by what conduct we may obtain his approbation and favour. Hence the hopes of future happiness after death,

and a strength and firmness of soul in all honourable designs. Hence the soul shall be filled with the joys of Piety and Devotion; and every good mind shall expect every thing joyful and glorious under the protection of a good Providence, not only for itself but for all good men, and for the whole universe. And when one is persuaded of these truths, then both our social and our selfish affections will harmoniously recommend to us one and the same course of life and conduct.

## C H A P. II.

*Concerning the SUPREME GOOD.*

**H**AVING in the former chapter premised a pretty full description of human Nature and its several powers, we proceed to inquire into the Supreme Good or Evil, and wherein the chief Happiness of mankind consists, with the proper plan of life in order to obtain it.

We shall lightly pass over certain celebrated questions about the mutual powers of the *understanding* and *will* over each other, which properly belong to Pneumatics or Metaphysics. We only suggest in passing, 1. That what is wholly unknown cannot be the object of desire, and yet there are certain natural propensities or instincts in each species toward certain objects or actions, as soon as it obtains any notion of them, and aversions to their contraries. These the schoolmen call the *first simple motions of Will*. When these are so strong as to call off the mind from any other objects it may have been employed about, and surmount its sloth, or any dispositions to rest, it raises also a desire of searching out the proper means of obtaining the objects desired, and of discovering which of them are most eligible: and when this point is settled, then, according to the *Stoicks*, we are determined to execute these means, or there arises the *effectual purpose* of action. Many of the *Peripateticks* deny that the Will is certainly determined to follow even the last *practical judgments*, tho' it generally does so. They alledge that it has an inherent power, notwithstanding any

judgments or desires about the proper ends or means, of determining itself to act or abstain; nay some add, that it can determine itself to either of the contraries, to pursue good, or to pursue evil even under that notion. Let Metaphysicians determine these points. This in general seems true that we cannot properly ascribe any active power to the *understanding*, about our conduct in life. 'Tis its business only to discover *Truth*; whereas *willing, ordering, commanding, purposing*, are acts of Will.

The *will* again seems to have no other power over the *understanding* than this, that a man may as he wills turn his understanding to consider all the evidence on either side, and where the highest evidence does not occur, he can suspend any peremptory assent, and resolve upon a further hearing of the cause. But wherever full, certain evidence appears, he cannot at pleasure withhold his assent, or assent to the other side. Nay where on one side he sees superior probabilities, he cannot avoid judging that side to be more probable.

II. WE also pass over some speculative questions about the general notions of Good, and Final Causes or Ends, and their divisions; as they are easy and belong to other sciences. These maxims seem evident. 1. The objects of desire are pursued either ultimately for themselves, or as means to something further, or on both accounts. 2. Whatever is ultimately desirable is either recommended by some immediate sense or some natural instinct or impulse, prior to all reasoning. 'Tis the business of reason to find out the *means* of obtaining what we desire: or if various objects of desire interfere, to inquire which of them is of most importance to happiness, and what the best means of obtaining such ob-

jects. 3. Things are recommended to our pursuit, under one or other of these three forms or notions, either as *pleasant*, *profitable*, or *honourable*. Under the notion of pleasure are such things pursued in which we have only in view some grateful sensation to ourselves; and yet moral writers seldom include under this branch of *pleasant*, either the moral virtues, or the sciences and ingenious arts. These things are called *profitable* which are desired as means of somewhat further. The *honourable* are the several virtues either intellectual or moral, which recommend themselves by their own peculiar dignity, very different from the lower sorts of pleasures. 4. The importance or moment of any good toward our felicity depends on its dignity and duration. There's a great difference among the several sorts of good in point of dignity. When we compare together the goods corresponding to senses of the same order, such as those relating to the external senses, the dignity is just the intenseness of the pleasure in the sensation. But the objects of the superior senses have their own peculiar excellence, not to be compared with the lower pleasures, appearing of itself, and raising the desires of such as know them; so that we approve and praise, and count the persons happy, and wise in their conduct, who despise all bodily pleasures in comparison with them. 'Tis thus we plainly judge of the man who prefers the joys of knowledge and of virtue and virtuous action to all others, and devotes himself entirely to them, in opposition to even the highest sensual enjoyments.

To a rational being therefor who is indued with forethought these must be the characters of his supreme Good: "It must be something ultimately desirable to

“ which most other things are referable; which has  
“ the highest dignity, which is stable or durable, and  
“ sufficient to satisfy or make happy.”

III. IN our inquiries after happiness, which must either consist in the full enjoyment of all sorts of good, or at least in that of the principal sorts, we must observe, that 'tis impossible for one to ensure to himself the full enjoyment of all sorts of pleasure, and an immunity from all evil. According to the uncertain fleeting nature of human affairs, all external enjoyments must be uncertain. The objects themselves are perishable; and our own tastes and relishes are changeable; our health of body on which many enjoyments depend is very unstable: external objects depend not on our power, but as 'tis commonly said, are the Gifts of Fortune, or more properly, depend upon the Divine Providence, which has ensured no man in the constant possession of them.

Need we also mention that there are many inconsistencies among the several enjoyments, so that one cannot vigorously pursue or enjoy them all: nay such is the dignity of the superior enjoyments, that they scorn such conjunction with the lower; their beauty and highest joy arises from our having despised and sacrificed to them the lower pleasures, and even resolutely exposed ourselves to toils and distresses on their account.

Since then there's no obtaining a full enjoyment of all sorts of good, or avoiding of all evil, we must carefully enquire which sorts of good are the most important to happiness, and what evils are the most grievous, and most everfive of tranquillity and happiness. We must therefor compare together the several goods



which affect the various senses, and that both in respect to dignity and duration : and in like manner compare the several evils to discover which of them are most grievous and destructive.

IV. WE may here transiently notice, that tho' we grant to *Hieronymus* of Rhodes, and some others of antiquity, that upon the mere removal of all pain there naturally ensues a state in itself grateful and pleasant : and that a stable sort of tranquillity and joy accompanies an intire immunity from uneasy sensations, so kind is the constitution of our nature, provided the mind is not disturbed by any keen desires or fears ; so that their maxim is true, that wherever there's freedom from all evil there must be the possession of some good : yet 'tis plain that beings endued with so many senses and active appetites and desires, cannot be made happy by mere indolence. - This pleasure is but of a low kind, nor has it any dignity ; much less can it have such force upon the soul as to be the spring of our actions and conduct in life. Happiness therefor must depend upon other sorts of goods suited to our perceptive powers. And here

In the first place 'tis plain that bodily pleasures have none of that dignity which is the object of praise. Were the sensations never so intense, yet they all are plainly mean, and many of them shameful : they are transient too and fleeting ; nor does the remembrance of past enjoyments give any such pleasure, or yield any such matter of joy or glorying, which could allay any sorrows or distresses in life, or support us under them.

Nor can it be justly alledged, that the common sentiments of mankind seem to make these the highest of all, because we see the greater part of men much de-

voted to them alone. This is so far from truth, that there are few to be found, who, when the fervor of their passions is a little cooled, won't own, that such pleasures are quite insufficient to happiness. The most worthless characters have some imperfect notions of virtues almost continually influencing them ; some friendships, some kind offices towards such as either nature or acquaintance hath attached to them, and whom they rashly happen to esteem. Nor can any one deem himself happy in constant inactivity or sensual enjoyments : they must conjoin with them frequent actions and offices, which according to their notions are virtuous. But, how strong soever the lower appetites may be in proportion to the nobler, yet still that diviner faculty naturally destined to govern the rest, and from whose dictates we are chiefly to judge of the intention of God and nature, rather scorns and rejects sensual enjoyments, as below the dignity of the rational nature, and will not allow them to make a part of the true happiness.

Need we further insist that sensual pleasures are almost continually recommended by some borrowed colours of a moral kind, of friendship, humanity, beneficence, or an elegant taste ; otherways they would be despicable and shameful. Nay our conscience or moral sense seldom appears in opposition to them ; since by the strange deceit of the passions, we generally persuade ourselves of their innocence. But on the other hand the virtues charm and make us happy by their own native beauty and dignity : nor are we to imagine that happiness is found only in mirth, gayety, lasciviousness or diversions, the amusements of weaker minds. There's an higher happiness to the grave who are in-

tent on serious business, from their own goodness, strength of mind, and steadiness.

There's just cause too of appealing from the judgment of the voluptuous, who given up to sensuality, seldom experience the joys of a virtuous sort most becoming the rational nature, and never feel the pleasures of entire stable integrity and goodness. They are corrupt judges, having the nobler senses of the soul much stupified. But the external senses are never imagined to be any way impaired by the greatest dignity and steadiness of soul in all the moral virtues. The good man knows all the good in sensual pleasures, and despises it that he may adhere to virtue; finding upon full knowledge of both, that in virtue consists the supreme good. These honourable enjoyments are never blended with sensual pleasures, or recommended to us as the means of obtaining them; on the contrary, they are chiefly recommended by the labours, troubles and dangers incurred;

*Midst losses, deaths, deriving force*

*And spirit from the hostile sword.*      HOR.

Nay we have in this cause frequent testimonies from the voluptuous themselves. How few are such abandoned wretches as not to be much more affected with the beauty of some virtues, than with any bodily pleasures? Who won't sometimes in serving a friend, or maintaining their own moral characters, or refuting certain calumnies, expose themselves to toils and danger, and forego pleasures? How few are devoted to mere solitary sensuality without any social friendly affections and joys? The few who are so, the world looks upon as monsters, and detests them. And then how transient and fleeting are these pleasures, since

they depend entirely upon the continuance of the appetite? when the natural craving is sated, all pleasure is gone; and there must be long, tedious and disagreeable intervals, unless they are filled up with more honourable pursuits.

A little reflection too will shew us, what is of high importance in this matter, that in a temperate course of life, filled up with the most virtuous pursuits, till the natural appetites recur, there is generally that enjoyment of the lower pleasures which is both safest and most delightful; since moderation and abstinence heightens the enjoyment. With such goodness is our nature constituted by God, so gentle is the reign of virtue, that it restrains not its subjects from that enjoyment of bodily pleasures, which upon a right estimate will be found the sweetest: altho' this the demands, that we should still preserve so lively a sense of the superior pleasures, as may be sufficient to controul the lower appetites, when they make any opposition. But on the other hand under the empire of sensuality there's no admittance for the virtues; all the nobler joys from a conscious goodness, a sense of virtue, and deserving well of others, must be banished; and generally along with them even the rational manly pleasures of the ingenious arts.

V. LET us next consider that pleasure which arises from the elegance and grandeur of life: this no doubt is of a far superior kind to brutal sensuality, and yet is neither very great nor durable. Such things can give small alleviation to any of the important evils of life, such as bodily diseases, or those of the mind, which are often more severe, our own anxieties, sollicitudes, sorrows. While these matters of ornament, elegance

or grandeur are new to us, they are pretty agreeable ; but being a short while enured to them puts an end to their pleasure : we are soon cloyed ; and if the taste continues, we fall a hunting after something new, with a strange caprice and inconstancy ; exposing ourselves to innumerable chagrins and sollicitudes, to obtain what again we shall presently be cloyed with and nauseate.

Need we insist further that all these things require also some friendly society : their principal charm is in some notions of liberality, kindness, good-will, and sharing of pleasures with others : by these chiefly they are made joyful to us and matter of glorying. And then such things may be enjoyed by the very worst and most wretched of mankind as well as by the most worthy.

Let us subjoin to these the pleasures of the ingenious arts, and that most truly manly sort which we enjoy in knowledge and the sciences : these the sense of every one who has any tolerable genius or gentlemanly taste, must indeed prefer far above any bodily pleasures ; and they are also far more durable and stable. Whenever therefore we have leisure from the honourable offices of life, what study or pains we employ about them is truly laudable, and the remembrance of it will be agreeable. This is the natural food of the rational nature, and a pleasure suited to it ; this is the proper exercise and improvement of that diviner part : these pleasures are of a purer kind, and more honourable and joyful, and friendly too to the voluntary virtues. And yet we may easily see that they alone are not sufficient to happiness : they are not absolutely the highest ; and are plainly in their own na-

ture destined for something further, even for these honourable offices by which we may serve our friends or our country. And hence it is that all men must approve one who would throw aside even the most delightful studies about the most important subjects, when he were called to succour his friends or his country, or to perform any kind or friendly office.

Let us imagine with ourselves a person possessed of every ornament and elegance of life, along with all the means of bodily pleasures, and this by some miraculous providence; and that he were employed in the noblest contemplations with uninterrupted leisure, and yet void of all social affection, neither loving any nor beloved, without any opportunities of friendly offices: or imagine him retaining the natural affections toward others, but that all his kinsmen, all the objects of his love are calamitous and miserable: Is there any man so divested of humanity as to wish for such a lot to himself, or think it desirable? must not every one look upon it as miserable and detestable? Imagine further, that the morose unkind affections also arise, envy, hatred, suspicion, fear; passions which generally fill up the vacancy of the kind affections in our hearts, even when we live in the greatest affluence: surely this state of life must be deemed most miserable, void of all true pleasure, and more to be dreaded than even a painful death. And yet on the other hand, friendly society in life, mutual love and confidence, and virtuous offices, can make a laborious toilsome life, even amidst distresses, desirable and glorious.

VI. LET us proceed to another source of happiness or misery, our sympathy or social feelings with others, by which we derive joys or sorrows from their prospe-

rity or adversity. And this all must allow to be of great importance. For, in the name of all that's sacred ! who would not prefer beyond all comparison the liberty, virtue, and felicity of his children, his kinsmen and friends, his countrymen, not only to sensual pleasures, but to the noblest pleasures of a selfish sort in the arts and sciences ? who would not rather forego them all than behold all such as are dear to him in a condition either miserable or shameful ? While there's any life or vigour in the natural affections of the social kind, scarce any thing can more affect our happiness or misery than the fortunes of others. What powerful relief under our own misfortunes arises from seeing the prosperity of such as are dear to us ! and how is all our enjoyment of life destroyed and beat to pieces by seeing their misery !

This social sympathy we naturally approve : to be touched deeply with the misfortunes of others is honourable ; nor can we wish to be divested of this sense even when it occasions to us severe distresses and sorrows : and the contrary temper, the hard insensible heart, tho' free from such cares and sorrows, we naturally detest, and deem it miserable because it is odious and base.

The joys or sorrows of this class may also be very lasting, according as the prosperity or adversity of the persons we love continues. Nay we have deep sorrow in reflecting upon the distresses or deaths of friends for a long time after these events : this duration of these sensations adds exceedingly to their importance.

What happiness we derive from this source is plainly independent of us, and is determined by Providence.

No man can insure it to himself any more than external pleasures. Nor is it of consequence to prevent sympathetic pain, to think that men are generally the guilty causes of their own miseries. Nay this very thing is chiefly deplorable and most pityable, that men are made miserable by their own faults, placing their hopes of happiness in such mean perishing objects. All who deem themselves miserable are truly so, even altho' a change in their own tempers would, in the same external circumstances, make them happy.

There's plainly no other refuge from these evils, no other foundation for tranquillity or stable joy to a kind heart, but a constant regard to the Deity and his wisdom and goodness governing this world; with a stable persuasion that all is ordered in the wisest and best manner for the universal felicity; and that all that variety of evil we behold is yet no more or greater than what is requisite for the prosperity and perfection of the universe, and may at last also frequently tend to the real good of these very persons whose misfortunes we bewail.

VII. THE next source of happiness or misery naturally connected with the former, is that *conscience* or *sense* of what is right and honourable, which is also of great importance in life. This any one may perceive who can recollect any offices he has done for others with vigour, friendliness, an high sense of duty, or fortitude; and observes with what joy the remembrance must fill his soul. What are our sentiments of others? with what endearment, what ardent good-will do we embrace such as are engaged in such offices? and how happy do we deem them even amidst their toils and dangers; nay when they are voluntarily exposing



themselves to certain death for their friends, their country, or for the propagation of true religion? The very reveries of men at leisure, when they are imagining to themselves, or those they love, a whole plan of life of the greatest dignity and happiness they can conceive, sufficiently shew that they can have no notion of an happy course of life without a continued course of steady virtue, display'd amidst toils and dangers. These sentiments appear rooted in our hearts from our childhood. The whole frame of our nature shews that we are destined for action, and that in virtuous action alone we can find the highest happiness, in comparison with which all sensual pleasures appear despicable.

And then, with what joy, with what tranquillity and confidence must a good man be filled, who endeavouring to resemble the Deity as far as he can, is persuaded that he has the Deity for his propitious kind Ruler, Father, and munificent Rewarder; who, being assured that all events are governed and disposed of by his Providence, willingly embraces whatever befalls him, firmly trusting that it is ordered with perfect wisdom, and shall tend to his good: one who knows and loves the Supreme excellence, and is frequently employed in the contemplation and imitation of it.

Add to all this, that these joys are the most stable and durable which arise from a consciousness of our good dispositions, and of having acted according to them. The honourable toils and troubles are soon over, and are succeeded by joyful and glorious reflections. The taste is not changeable or inconstant; the practice of virtue is never cloying; nay it rather whets anew our appetite for further good offices of the same

or a nobler kind. To this are joined these further pleasures, when we congratulate with those we have served effectually; when we justly expect the approbation and praises of mankind; when we have the joyful hopes of obtaining from God and men whatever is requisite for our safety and felicity. Nor need any one fear the want of opportunities for exercising his virtues in good offices, if he is heartily set upon them, according to the condition of life allotted him. The indigent or weak may not be capable of important services to others in external things. But such a one, having most ardent wishes for the prosperity of mankind, and resolved to profit them at least by his example of piety, and by such mean offices as are in his power, may with an humble confidence and joy approve this goodness of his heart, these honourable affections to God the most equitable judge, and to the wisest of mankind, and expect their favour, approbation and protection.

VIII. WHAT naturally ensues upon this sense, is that of *honour* and *infamy*, which is a very keen and lively one. Praise and glory when they are founded upon virtue, make no small accession to happiness; but without this foundation they are of little consequence. That must be an unfair and trifling mind which can be delighted with praises it knows not to be due to it. True glory like a lively tree spreads its roots deep, and diffuses its branches: but false glory like the blossoms, must soon fall. No man can be assured that groundless honours can remain with him even for a day. Such is the power of truth, that it frequently prevails beyond all expectation, either in the unmasking of ostentatious hypocrites or in vindicating the in-

jured character, and rescuing virtue from calumnies. And since the true object of praise is virtue alone; that natural strong passion for praise should excite every wise man to regulate his whole life according to the rules of virtue, and employ himself continually in some truly honourable offices.

IX. THAT we may not quite omit another source of enjoyment tho' of a lower kind; that which consists in mirth and gaiety, amidst sports, diversions and jesting; we shall only briefly suggest, that unless the nobler powers be much stupified, and we cast aside all manly thought and reflection, indulging a base negligence about the most important concerns, we can no other way than by virtue and a careful regard to the duties of life, promise to ourselves either tranquillity or cheerfulness. For when the soul is galled and ulcered either with remorse, or with the ill-natured envious passions opposite to virtue, or with fears and suspicions, there can be no undisturbed enjoyment of any satisfaction. In this matter the common similitude holds, "whatever is poured into a sour cask must soon grow acid." 'Tis then alone we can be truly easy and cheerful, fit to relish all manly pleasantries and mirth, when we are possessed of a courteous, humane, sweet temper, with a good conscience, and maintaining a friendly social intercourse with good men. Whatever therefore is valuable in gayety and mirth, should also excite us to cultivate all kinds of virtue, and persuade us to activity in discharge of all the duties of life.

X. As to wealth and power; whatever good is in them, should naturally lead a wise man into the same virtuous course: since it is by obtaining the favour

and good-will of others, and maintaining credit in society, that wealth and power are easiest obtained and preserved: nor can the greatest wealth or power secure its possessor against a general hatred or resentment. But as wealth and power are not desired for themselves, but for further purposes; from what we have shewn to be the noblest pleasures of life, and our highest advantage and happiness, it must appear, that they alone reap the true fruits, and have the safest and sweetest and most honourable enjoyment of wealth or power, who employ them in liberality and beneficence.

But since one of the first and strongest principles in all animals is the desire of self-preservation, we must offer a few thoughts on this head. 'Tis plain this desire like most others may be too strong: nor is mere living so much the object of it, as an happy life: and 'tis certain that in some circumstances life ceases to be desirable: as for instance, when we cannot preserve it without great baseness, ignominy and remorse; or must continue it under grievous bodily pain. The most friendly heart would wish for the death of his friend, when he cannot otherways escape these evils. Death is a certain event to all, and no man knows how soon it may happen. It must therefore often be wise conduct for one's own interest to expose his life to the greatest dangers when any sacred duty requires it, that he may not for the preservation of life lose all that makes it worth retaining. We ought therefore to fortify our minds against the terrors of death: for one who dreads an evil always impendent, and that may surprize us every moment, can retain no tranquillity. And this strength of mind is to be obtained by deep meditation

from our youth, that after death, if it destroys the mind as well as the body, 'tis impossible there can be any evil, or any uneasy sensation. But if our souls perish not in death, which we justly conclude both from the goodness of God and the divine powers of the soul itself; then all good men may hope for a joyful state, and that this fading mortal life shall be succeeded by a new life of a nobler kind, which alone deserves that name.

The whole former reasonings unite in this conclusion, that happiness consists in the virtues of the soul, and in the continued exercise of them in good offices: to the completion of which however some moderate advantages with respect to the body and fortune are requisite, at least that we enjoy health, and such a competence of external things as may satisfy the painful cravings of nature. From the possession of virtue alone life is to be counted happy: but to make it compleatly so there must be a moderate degree of external prosperity.

XI. THE same conclusion is further confirmed by comparing the several evils contrary to the several sorts of good already compared. And here in the first place, 'tis plain that the strength and force of bodily pain is greater in proportion than that of bodily pleasures; and this wisely ordered, that we may be the more strongly excited to our own preservation: and yet they are not to be looked upon as the greatest of evils. Men are often led into this mistake by comparing some smaller kinds of moral turpitude, even when they are excused in some measure or alleviated by the greatness of the temptation, with the highest bodily tortures. But some crimes are so detestable, and must occasion

such self abhorrence, and torturing remorse, and some sorrows and distresses occasioned by the misery of persons very dear to us are so deep, as to occasion misery superior to any bodily torments.

And then as to duration, the pain of the body, as well as its pleasures, can seldom be very durable. Such pain as is lasting must generally be of a lighter sort, or admit of frequent intervals of ease. The severer kinds must generally soon end in death: and the remembrance of past pain when we dread no returns of the like, has nothing uneasy in it, nay is sometimes sweet, and matter of glorying.

The more elegant pleasures of the arts, from beauty, harmony, and ingenious imitation, and all these things which relate to the ornament or grandeur of life, have no proper pain opposite to them. These more sublime senses are the avenues of pleasure and not of pain. Where indeed men have indulged strong desires of such gratifications, or affect glory and eminence by them, it may be very uneasy to be disappointed, and we may regret much the want of them. But an absolute want of them is not a natural necessary cause of any misery. Nay we see that the greater part of men are abundantly easy without them, and therefor have no solicitude to procure them.

But 'tis of the highest use to observe, that virtue of itself has no natural tendency to expose us to any of these external losses or pains: nay it rather prevents or removes them. But if it should be our fortune to incur such losses or pain, from which surely the vicious are no more secured than the virtuous; or if sometimes on account of virtue we should be exposed to such evils, which is sometimes the case, (tho' men are

much more frequently involved by their vices in such evils, and that in a more shameful base way) Virtue can teach us to bear such evils with resolution, or to conquer them; or will afford us a variety of strong consolations under them. Just reflection will shew us that such events are the proper matter of exercise for the most glorious virtues, the course in which they must run, and train themselves, acquiring daily new force: that it is by bearing them with patience that our resignation to God, our submission, and magnanimity must be display'd, strengthened, and at last gloriously rewarded.

The miseries of the sympathetick kind from the distresses of others are often more severe, nor can they be allayed by any sensual pleasures or any external objects. Such distresses are also very lasting: since all remembrance or reflection upon any grievous misfortune or infamy of any person dear to us must always be matter of great uneasiness. There is scarce any consolation under such distress except what must be derived from resignation and trust in the Deity; by which alone it is that good men can support their spirits in all events.

But still the most grievous of all evils is the moral turpitude of a depraved heart conscious of its own baseness. This makes a man odious to himself; and makes his own temper, what's most essential and intimate to him, appear base and shameful, nay ignominious and detestable. This evil too is of the most lasting nature; since the remembrance of our past crimes or impieties must ever be grievous and shameful. Nor can we shake off this uneasy tormenting feeling unless by an entire alteration of temper, and reparation of

any injuries we have done ; nor will this itself do it effectually. Its common attendants too are solitudes, fears, anxieties ; and, as such persons have deserved ill of God and mankind, they must live in a perpetual dread that they shall be repaid according to their demerits.

Along with these inward causes of misery, comes also infamy ; which when justly deserved gives severe and lasting torment, excludes all hopes of true friendship or favour with others, and of obtaining their faithful assistances for our advantage.

From all this we see that it was with the justest reason the old Academy and the Peripateticks placed happiness in “ a constant activity according to the highest “ virtue in a prosperous course of life.” This the schoolmen call the *supreme formal good*. The same therefore is the summary notion of happiness and of virtue: to wit, “ that we should love and reverence the “ Deity with all our soul, and have a stedfast good- “ will toward mankind, and carefully improve all our “ powers of body and mind by which we can promote “ the common interest of all ;” which is the life according to nature.

XII. But we ought always to keep this in our thoughts, that we entirely depend on God ; that all the goods either of mind or body, all our virtues, have been derived from him, and must be preserved or increased by his gracious Providence: and since every good temper must always extend its views abroad, studiously pursuing the happiness of others, which also entirely depends on the will of God, and cannot be ensured by human power: there can be no other stable foundation of tranquillity and joy than a constant



trust in the goodness, wisdom and power of God, by which we commit to him ourselves, our friends, and the whole universe, persuaded that he will order all things well. The schoolmen therefor justly call God the supreme object of happiness, or the *supreme objective good*, from the knowledge and love of whom, with the hopes of being favoured by him, our supreme happiness must arise.

## C H A P. III.

*Concerning the CHIEF DIVISIONS of VIRTUE.*

**H**AVING shewn that our chief good consists in virtuous activity, our next Inquiry must be, what are the several virtues? and what actions flow from them? and toward what objects?

In explaining our natural conscience or sense of what is good and honourable, we shewed that the chief virtues of the soul are kind affections and beneficent purposes of action: and that of these the calm and stedfast are more excellent than the passionate, and that the most extensive are the most excellent. Amongst the most excellent too we placed an ardent love of moral excellence, an earnest desire of increasing it in ourselves, and an high esteem and love toward all who are possessed of it, with the highest love toward the supreme excellence. Whence appeared our duty of loving God with the highest veneration, and the sacred obligations we are under to cultivate such affections.

In the middle or lower classes of virtues we placed these narrower affections which either nature or acquaintance have excited: of these the more lovely are such as arise in a virtuous heart upon observing in others the like virtuous dispositions: and hence such friendships as virtue has begot and nourished must appear very lovely. There's also something very engaging in a general courtesy, and sweetness of deportment toward all we have any intercourse with.

We reckon also among the virtues all these habits

or dispositions, which tend to improve the nobler powers of the soul, or are naturally joined with or subservient to generous affections; and all such too as tend to restrain the meaner sensual appetites, the ordinary obstacles to virtue, and gives us a power to controul them: all these we immediately esteem for themselves. For by the wise contrivance of our Creator, our natural taste is so formed, that we immediately approve and esteem all such affections or powers, the more in proportion as they are of greater importance to the general good. And hence it is that we not only approve and love the kind affections of a more contracted kind, which are so necessary in the several relations of life, while they are not opposite to any more extensive interest; but we also immediately approve a *sincere, ingenuous, candid temper*; we praise *abstinence* or contempt of wealth and pleasure, and *fortitude*: as all these naturally evidence a mind possessed of an high taste for moral excellence, confirmed by an indifference about, or contempt of sensuality, and external advantages, or disadvantages. Nay we immediately relish such a state or motion in the body as carries natural indications of virtue; and all the contrary dispositions whether of mind or body appear disagreeable and offensive.

Need we mention again some natural sense, different from the moral one, but not unlike it, by which we relish and value some powers of the mind and the body quite different from any of the voluntary virtues. To all the powers God has given us there's conjoined some sort of sense or relish, recommending that exercise of them we call natural, which is also the most subservient to the general good. Hence we highly approve the pursuits of knowledge and the ingenious arts,

a capacity of application, industry, and perseverance. Nay even in bodily exercises and recreations, we most approve these which either shew something of ingenuity or strength, or tend to encrease them.

II. HAVING given this general rude draught of the virtues, 'tis proper to consider their several kinds, that each of them displaying its beauty to us, may more allure us to pursue them. Virtue in the largest acceptation, may denote any power or quality which is subservient to the happiness of any sensitive being. In its stricter acceptation it denotes any habit or disposition which perfects the powers of the soul; and thus virtues are divided into the *intellectual*, which include all improvements of the mind by ingenious arts and sciences; and *moral*, which are chiefly counted virtues, being perfections of the *will* and *affections*; and these are the chief object of Ethicks.

And yet the intellectual virtues are not to be altogether omitted in Morals; not only because they afford a noble branch of happiness, pleasures exceedingly becoming our rational nature; to which whosoever is enured, and has got an high taste for them, is enabled to condemn the meaner enjoyments which lead to vice; whence the sciences have justly been deemed *purifications of the soul*\*: but because they give a more direct aid to the moral virtues. For from a deeper enquiry into nature and the universe, the perfections of the great Creator are displayed, our dutiful veneration toward him increased, the mind led into a just contempt for the low worldly pursuits of mankind; and that *humility*, or deep consciousness of our own

\* Pythagoras and Plato called them καθάρματα ψυχῆς.

weakness and manifold imperfections, is obtained, which is a chief ornament and perfection in a good character. Nay, without a great deal of knowledge in the lower and ordinary affairs of life, we must be deficient in that practical prudence which is always necessary in our conduct. But these virtues or accomplishments belong principally to other branches of philosophy, or arts. This we suggest only in general, that in the pursuits of knowledge these two faults are to be cautiously avoided, the one that of rash precipitate assenting; and for this purpose we must both take time and make vigorous application, and bring along a mind free from prejudices and prepossessions, or any passionate attachments. The other fault is employing too much keenness upon subjects, perhaps difficult, but of small use or necessity in life.

As to the moral virtues seated in the will; the divisions given of them by different authors are very different. The followers of Aristotle, having this principally in view, that 'tis by immoderate ungoverned passions that we are led into vice, while yet all these passions have been wisely implanted in our nature by the Deity for necessary purposes, they define virtue, "a considerate habit of the soul preserving a mediocrity according to right reason;" as indeed it is a great part of the office of virtue to keep the several affections, which are frequently disorderly, from both the extremes of *excess* and *defect*. In this view, to explain the several virtues they go through the several natural passions, and their several degrees, when they are either too languid or too vehement; and shew that the middle degrees are the safest, the most advantageous, and the most graceful; and these they count vir-

tuous. Now the several habits by which this mediocrity is preserved, according to a celebrated division among the Antients, they reduce to four classes, which are called the *Cardinal Virtues*; *Prudence*, *Justice*, *Temperance* and *Fortitude*: from which they derive all the several branches of virtue.

III. PRUDENCE they describe “a cautious habit  
“ of consideration and forethought, discerning what  
“ may be advantageous or hurtful in life;” which must be acquired and preserved by experience and frequent meditation. This habit no doubt is necessary in all the business of life. But one would think prudence were rather to be ranked among the intellectual than the moral virtues: and yet no man can attain to the true solid prudence, whose heart is not improved by the moral virtues, with an high sense of moral excellence; and who has not deeply imbibed the more generous sentiments of goodness. Others may have a sort of crafty sagacity in worldly affairs, which assumes to it self the title of Prudence and Wisdom, but yet is very remote from it. The vices opposite to this virtue are *rashness*, *inconsiderateness*, *a foolish self-confidence*, and *craft*.

Fortitude they define to be “that virtue which  
“ strengthens the soul against all toils or dangers we  
“ may be exposed to in discharge of our duty:” ’tis this virtue which represses all vain or excessive fears, and gives us a superiority to all the external accidents of our mortal state; grounded on a thorough knowledge of their nature, that no external advantages are to be compared in point of happiness with the possession of virtue, and gaining the approbation of our own hearts, and of God, to whom our tempers must be per-

fectly known; and that nothing ought so much to be dreaded as vice and the moral deformity of the soul: and consequently, since death must soon befall us in all events, that an early death with virtue and honour is highly preferable to the longest ignominious life. On such principles as these must be founded that true greatness and elevation of mind which is not to be disturbed by external accidents.

This true grandeur of mind is discovered in these three things; in an high relish and love of moral excellence; in that superiority to and contempt of external accidents just now mentioned; and in a tranquillity free from passion. There is therefore no true fortitude in not dreading moral turpitude or just infamy: the truly brave and wise avoid these things above all; as they will also decline any dangers to which no virtuous offices call them. Now as our passionate motions are of two kinds; one, that of passionate desires, the other that of aversions, fears or anger; and fortitude regulates these latter, as Temperance does the former; among the branches of Fortitude, are reckoned beside Magnanimity, Constancy, Hardiness, and Patience, *Lenity* also of temper and *Clemency*; and, when the publick interest requires it, *Rigour* and *Severity*, with such just Resentment as is requisite to repell or restrain injuries.

The vices opposite to Fortitude on one hand, are *Pusillanimity* and *Cowardice*, and their common attendant *Cruelty*; on the other hand, furious *boldness* and *Temerity*, which is often attended with *obstinacy* and *ambition*, or too keen desires of eminence, inconsistent with that equality of right which should be maintained in every free state.

*Temperance* is that virtue which restrains and regulates the lower appetites toward sensual pleasures; as 'tis by them that men are most frequently ensnared into all manner of vices, and into a neglect of every thing honourable. In this virtue most remarkably appears the grace and beauty of manners, which is quite destroyed by sensuality.

The several branches of Temperance are *Moderation of Mind, Modesty, Chastity, Frugality, a Contentment* with, or Relish for plain simple fare, and a *Severity* of manners in opposition to all obscenity and lewdness. The opposite vices are *Luxury, Gluttony, Drunkenness, Impudence, Wantonness, Obscenity*, effeminate *Softness*, and *Delicacy* as to food and other cares about the body.

But *Justice* they make the sovereign virtue to which all the rest should be subservient: this they define "an habit constantly regarding the common interest, and " in subserviency to it, giving or performing to each " one whatever is due to him upon any natural claim. Under it they include all the kind dispositions of heart by which a friendly intercourse is maintained among men, or which leads us to contribute any thing to the common interest. Such as *Liberality, Beneficence, Friendliness, Gratitude, Magnificence, Courtesy, Humanity, Veracity, Fidelity, Hospitality, Love of our Country, Dutiful affection* in the sacred relations of life, and principally *Piety* toward God, who is conceived as the Ruler and Father of that most venerable and sacred political Body, the Rational Creation, of which our several countries are but small parts. The nature of the three former cardinal virtues may be known from what was said above about the supreme Good, and the com-



parisons made of the several objects of our natural desires: and the nature of Justice will be more fully explained in the second Book, \* where we treat of the several rights of mankind.

These four virtues they maintain to be naturally connected and inseparable not only in their highest degree, which they call the *Heroic*; but in the middle degree, called that of *Temperance*, when the lower appetites are easily governed: altho' they may be separated in the first weaker disposition called the degree of *Continence*. And yet from each of them some peculiar duties are derived which they dilate upon very agreeably. But so far for this subject.

IV. THERE arises here a question of some little difficulty about the original of virtue, whether it arises from the very constitution of our nature, or from instruction and habit, or by some divine influence or power. On which subject we briefly suggest, that whatever flows from any natural principles is as much owing to God, and we are as much indebted to him for it, as if it had in an extraordinary manner been effected by his power. Nor ought our gratitude to be less for any benefit, on this account that the liberal Donor has diffused the like goodness amongst many, or that these benefits have been bestowed upon us in a certain regular method, according to some fixed laws, in consequence of a stable series of causes determined at first by the goodness and wisdom of the Author of nature; or because he has used other voluntary agents as his ministers and instruments, whom he has inclined or excited to do us such good offices. Any virtues therefor

\* See Book ii. Chap. 2, and 4.

which we find in ourselves should be the chief matter of thanksgiving and praises to God. And yet there's nothing incredible in this that the universal Governor of the world should also by his power inspire and excite men to whatever is glorious and honourable: nay 'tis rather improbable that he who had displayed such goodness in bestowing external advantages on us, should not also exert the same goodness and power in bestowing the more noble benefits \*. The concurrence of these three causes to be sure must undoubtedly make men virtuous. We sometimes see an happy natural disposition, with something like a divine impulse, produce great matters without much aid from instruction or discipline: but without some tolerable natural disposition, at least without a natural taste or capacity for virtue (which however scarce any one wants altogether) instruction or custom would be of little or no effect. Of these two a good natural disposition seems of greater consequence, as nature is a more stable principle. And yet instruction and habit wonderfully improve the natural disposition; and 'tis but seldom that without their aids we can expect to see any thing great and eminent.

We shall not dwell further upon that mediocrity insisted on so much by *Aristotle*: for tho' it well deserves our consideration, yet 'tis plain that the primary notion of virtue does not consist in it. And however it may hold not only as to our lower appetites, and some of the more sublime ones by which we are

\* This cannot appear strange to those who ascribe to the constant operation of God those forces in the material world by which its frame is preserved. See *Antoninus* B. i. c. 17. and B. ix. c. 42.

purſuing more manly enjoyments of a ſelfiſh kind, but even in the more narrow affections of good-will, that a middle degree, equally removed from both the extremes of exceſs and defect, is the moſt laudable ; yet there can be no exceſs in theſe affections in which virtue chiefly conſiſts, to wit in the love of God, and in that extenſive good-will toward all, or in the love of moral excellence, provided we have juſt notions of it.

V. THERE'S another diviſion more obvious and perhaps more natural, according to the ſeveral objects toward whom our virtues are to be exerciſed, into *Piety* toward God, and *Good-will* toward Men: to which a third branch may be added of ſuch virtues as immediately relate to ourſelves, by which a man immediately aims at his own perfection. And altho' there be nothing morally lovely in mere ſelf-love, and it muſt be ſome reference to our duty to God, or to that toward men, which muſt make a man's duties toward himſelf appear venerable or amiable; yet this third branch muſt not be omitted, ſince it is by means of a proper ſelf-culture that we muſt be prepared for any honourable ſervices to God or mankind; and with this reference they are exceedingly amiable.

In purſuit of this laſt diviſion, we firſt explain the duties of *Piety*, both to ſhew their true nature, and their importance toward our happineſs; next we conſider our duties toward our fellows; and laſtly that ſelf-culture which is ſubſervient to *Piety* and *Humanity*.

## C H A P. IV.

## O U R D U T I E S T O W A R D G O D.

**P**IETY consists in these two essential parts, first in just opinions and sentiments concerning God, and then in affections and worship suited to them.

The just opinions concerning God are taught in natural Theology or Metaphysics: to wit, that the Deity is the original independent Being, compleat in all possible perfection, of boundless power, wisdom and goodness, the Creator, Contriver and governor of this world, and the inexhaustible source of all Good. We take these principles as granted in treating of Morals, and inquire what affections of soul, what worship internal or external is suited to them.

The inward sense of the heart must shew at once, that this preeminence and infinite grandeur of the original cause of all, ought to be entertained with the highest admiration and praise and submissive veneration of soul: and since there's no desire more becoming the rational nature than that of knowledge, and of discovering the natures and causes of the greatest subjects, no occupation of the mind can be more honourable, or even delightful, than studying to know the divine perfections: nor indeed without ascending to the knowledge of the supreme Excellency, can these honourable intellectual powers we are endued with find a proper object fully to exercise and satisfy them.

II. As to the moral Attributes of God: that original and most gracious Power which by its boundless

Force, Goodness, and Wisdom has formed this Universe, granting to each being its proper nature, powers, senses, appetites, or reason, and even moral excellencies; and with a liberal hand supplying each one with all things conducive to such pleasure and happiness as their natures can receive; this Power, I say, should be acknowledged with the most grateful affections, with generous love, and the highest praises and thanksgiving; and with a joyful hope and confidence, purified from all vanity, pride, or arrogance, since we are such dependent creatures, who owe to it all we enjoy.

If we more fully consider the divine Goodness and moral Perfection; that the Deity must delight in all virtue and goodness; that he must approve and love all good men: this will suggest to all such still more joyful hopes, with an higher and more delightful confidence and trust, and more ardent love of virtue and of the Deity. Hence will arise a stable security and tranquillity of the soul, which can commit itself and all its concerns to the divine Providence. Hence also a constant endeavour to imitate the Deity, and cultivate in ourselves all such affections as make us resemble him; with a steady purpose of exerting all our powers in acting well that part which God and nature has assigned us, whether in prosperity or adversity.

Such contemplations of the venerable and adorable Excellency and gratuitous Goodness of God, whom every good man regards as the witness and approver of his actions, will lead us to an ultimate resting in virtue: that highest purity of it, by which we look upon conformity to the divine Will, the discharging the

duty assigned us by him, and performing our part well, as the chief good, the chief fruit of virtue. Nor without this knowledge of the Deity, and these affections, can a good benevolent heart find any sure ground of hope and security, either as to itself or the dearest objects of its affection, or as to the whole state of the universe. Nor can the virtuous mind, which extends its affectionate concerns to all mankind, or the love of moral excellence itself, ever be satisfied and at rest, unless it be assured that there's some excellent Being complete in every perfection, in the knowledge and love of which, with a prospect of being beloved by it, it can fully acquiesce, and commit itself and the dearest objects of its cares, and the whole of mankind to his gracious providence with full security.

And altho' there's none of human race who are not involved in manifold weaknesses and disorders of soul, none who upon reflection won't find themselves intangled in many errors and misapprehensions about matters of the greatest importance to the true happiness of life; and in the guilt of manifold crimes committed against God and our fellow-creatures; on account of which they may justly dread the divine justice, and apprehend some impendent punishments: yet such is the divine goodness and clemency; with such long-suffering and mercy has he continued for many ages to exercise his gracious providence about weak corrupted mortals, that such as sincerely love him, and desire, as far as human weakness can go, to serve him with duty and gratitude, need not entirely lose hopes of his favour. Nay they have some probable ground to expect, that God will be found propitious and placable to such as repent of their sins and are exerting

their utmost endeavours in the pursuits of virtue; and that his infinite wisdom and goodness will find out some method of exercising his mercy toward a guilty world, so as not to impair the authority of his laws and the sanctity of his moral administration, tho' human wisdom should never particularly discover it. And further, what is sufficient for our purpose in the present question can admit of no debate; that the perfection of virtue, must constitute our supreme felicity; and that the ardent desires, and sincere efforts to attain it, cannot fail of a most important effect, either in obtaining complete felicity, or at least some lower degree of it, or a great alleviation of misery.

The sublimer powers of the soul of their own nature lead us to the Deity: as they are derived from him, they powerfully draw us back to him again. Our high powers of reason, our benevolent affections of the more extensive kinds, and our natural sense and love of moral excellence, have all this natural tendency. By these bonds all rational beings are as it were connected with and affixed to the Deity, if they have any care to cultivate these higher powers. Nor is the spring of this divine love the mere prospect of our own felicity to be found in him: for from our natural sense and approbation of moral excellence, wheresoever it is discovered, there must arise a disinterested love and veneration, detached from all considerations of our own interests.

And further since all the more lively affections of the soul naturally display themselves in some natural expressions, and by this exercise are further strengthened; the good man must naturally incline to employ himself frequently and at stated times in some acts of de-

votion, contemplating and adoring the divine excellencies; giving thanks for his goodness; humbly imploring the pardon of his transgressions; expressing his submission, resignation, and trust in God's Providence; and imploring his aid in the acquisition of virtue, and in reforming his temper, that he may be furnished for every good work. For the frequent meditation upon the supreme and perfect model of all goodness must powerfully kindle an ardent desire of the same in every ingenuous heart.

But here we must avoid any imaginations that our piety or worship can be of any advantage to the Deity, or that he requires it of us, for any interest of his own. 'Tis rather our own interest that is promoted by it, and 'tis for our sakes that God enjoins it; that we may obtain the truest felicity, and excellence, and the purest joys. By entertaining these sentiments concerning the worship of God, we shall be secured from both the extremes, of *impiety* on one hand, which consists in a neglect and contempt of all religious worship; and *superstition* on the other, which is an abject dread of a cruel or capricious Daemon men form to themselves, which they conceive appeasable by savage or fantastick rites.

III. HITHERTO we have treated of internal worship. But our nature scarcely relishes any thing in solitude; all our affections naturally discover themselves before others, and infect them as with a contagion. This shews that God is not only to be worshipped in secret, but in publick; which also tends to increase our own devotion, and to raise like sentiments in others, and makes them thus partakers of this sublime enjoyment. This social worship is not only the natu-



ral result of inward piety, but is also recommended by the many advantages redounding from it; as it has a great influence in promoting a general piety: and from a general sense of religion prevailing in a society all its members are powerfully excited to a faithful discharge of every duty of life, and restrained from all injury or wickedness. And hence it is that mankind have always been persuaded, that religion was of the highest consequence to engage men to all social duties, and to preserve society in peace and safety.

The external worship must be the natural expressions of the internal devotion of the soul; and must therefore consist in celebrating the praises of God, and displaying his perfections to others; in thanksgivings, and expressions of our trust in him; in acknowledging his power, his universal Providence and goodness, by prayers for what we need; in confessing our sins, and imploring his mercy; and finally in committing ourselves entirely to his conduct, government, and correction, with an absolute resignation.

Where such devout sentiments are cherished, and affections suitable to them, there must be kindled an ardent desire of inquiring into all indications of the Divine will. And whatever discoveries we find made of it, whether in the very order of nature, or by any supernatural means, which some of the wisest of the Heathens seem to have expected, the good man will embrace them with joy.

## C H A P. V.

## OUR DUTIES TOWARD MANKIND.

**T**HE duties to be performed toward others are in like manner pointed out to us by our natural sense of right and wrong; and we have many natural affections exciting us to them. There are many sorts of kind affections in the several relations of life, which are plainly implanted by nature. Thus nature has implanted in the two sexes a strong mutual affection, which has a wonderful power, and has in view not so much the low gratification common to us with brutes, as a friendly society for life, founded upon that endearment which arises from a mutual good opinion of each others moral characters, of which even beauty of form gives some evidence. There's also implanted a strong desire of offspring, and a very tender peculiar affection toward them. In consequence of this, there are also natural affections among brothers, sisters, cousins, and remoter kindred, and even such as are allied by marriages.

But there are still more subtle social bonds. Good men who know each other have a natural affection not unlike that among kinsmen. 2. Men are still further bound by an intercourse of mutual offices. 3. But benevolent affections still spread further, among acquaintance and neighbours, where there's any measure even of the commonest virtues. 4. Nay they diffuse themselves even to all our Countrymen, members of the same polity, when multitudes are once united in a political body for their common interest. 5. And in men

of reflection there's a more extensive good-will embracing all mankind, or all intelligent natures. 6. Along with these, there's a tender compassion toward any that are in distress, with a desire of succouring them; and a natural congratulation with the prosperous, unless there has intervened some cause of aversion or enmity.

These kind affections are immediately approved for themselves: every one feels a complacence in them, and applauds himself in indulging them as some way suited to his nature: but the contrary affections which are occasionally incident to men, such as anger, hatred, envy, revenge, and malice, are of themselves uneasy; nor can any one applaud himself in remembering them, or approve like passions in others: they are often matter of shame and remorse; and even when they seem justifiable and necessary, yet they contain nothing joyful, nothing glorious.

II. WE have abundantly shewn how much these kind affections with the suitable virtuous offices contribute to our happiness. All men who have not quite divested themselves of humanity, and taken up the temper of savage beasts, must feel that without mutual love, good-will and kind offices, we can enjoy no happiness: and that solitude, even in the greatest affluence of external things, must be miserable. We also shewed that the calm, steady affections were more honourable than the turbulent. But we must still remember, that mere kind affection without action, or slothful wishes will never make us happy. Our chief joy consists in the exercise of our more honourable powers; and when kind affections are tolerably lively they must be the spring of vigorous efforts to do good.

This therefore is the sum of all social virtues, that with an extensive affection toward all, we exert our powers vigorously for the common interest, and at the same time cherish all the tender affections in the several narrower relations, which contribute toward the prosperity of individuals, as far as the common interest will allow it.

III. BUT as there are very few who have either abilities or opportunities of doing any thing which can directly and immediately affect the interests of all; and yet every one almost can contribute something toward the advantage of his kinsmen, his friends or his neighbours, and by so doing plainly promotes the general good; 'tis plainly our duty to employ ourselves in these less extensive offices, while they obstruct no interest more extensive, and we have no opportunities of more important services. In doing so we follow nature and God its author, who by these stronger bonds has made some of mankind much dearer to us than others, and recommended them more peculiarly to our care.

We must not therefor, from any airy views of more heroic extensive offices, check or weaken the tender natural affections, which are great sources of pleasure in life, and of the greatest necessity. Nay 'tis our duty rather to cherish and encrease them, in proportion to their importance to the common interest. But at the same time we should chiefly fortify the most extensive affections, the love of moral excellence, and the steady purpose of conformity to the divine will. While these nobler affections have the controul of all the rest, the strengthening the tender affections in the several narrower attachments of life will rather tend to compleat the beauty of a moral character, and the harmo-

ny of life. The interest too of each individual should lead him to this cultivation of all kind affections; since, as we shall presently shew, so are we formed by nature that no man in solitude, without the aids of others and an intercourse of mutual offices, can preserve himself in safety or even in life, not to speak of any pleasure or happiness. Now 'tis plain, that 'tis only by kind offices and beneficence that we can procure the good-will of others, or engage their zeal to promote our interests: whereas by contrary dispositions, by a sordid selfishness, and much more by violence and injuries, we incur the hatred of others; wrath and discord must arise, and we must live in perpetual dread of the evils which the resentments of others may occasion to us. Nay further from such conduct there naturally arise in our own minds all the fullen, uneasy passions of suspicion, jealousy, and too well grounded fears: since not only the persons immediately injured, but all others who have any regard to the common interest, are roused by a just indignation to repell and revenge any injuries attempted against their neighbours.

Nor should we omit some other wonderful contrivances in nature to preserve a social life among men and avert injuries. What a manifest accession of beauty is made to the countenance from friendly mirth, and cheerfulness, and an affectionate sympathy and congratulation with others? How much grace arises from a resolute conscious virtue, and the inward applauses of a good heart? What charms in the countenance, what gentle flames sparkle in the eyes of a friend, or of one who is full of gratitude for any kindness received. On the other hand, when an injury is received or apprehended, and there's hope of avenging and repelling

it, in what forms of countenance does resentment discover itself, and what wrathful flames flash from the eyes? But when there's no hopes of repelling the injuries intended, with what powerful eloquence has nature instructed even the dumb animals, as well as mankind, under any oppressive sorrow or pain, or any great terror? How moving is that mournful wailing voice, that dejected countenance, weeping and downcast eyes, sighs, tears, groans? How powerfully do they move compassion in all, that they may either give succour in distress, or desist from the intended injuries?

IV. IN this place we must not pass by the virtue of *Friendship*, which is so lovely and so useful in life. To alledge that this ardent affection of such admirable force, arises merely from a sense of our own weakness and indigence, that so what one cannot obtain by his own power, he may by the aids of others; is ascribing to it a mean and despicable original, and a very unstable foundation: since at this rate any change of interest, so that we apprehended trouble or inconvenience by our friendliness, must at once destroy all affection or good-will: nay indeed there could be no real love, but a mere hypocritical profession of it, from such views of interest.

The true spring of friendship therefor must be that natural approbation and love of moral excellence already mentioned. For whensoever virtue appears in the manners of those with whom we are acquainted, there must arise immediately, without views of interest, an high esteem and love toward them. For the Good, as a sort of kindred souls naturally love and desire the society of each other. This love when it is strengthened by seeing each others friendly zeal, and by an inter-

course of mutual services, becomes at last as strong as any ties of blood; so that we have the same ultimate concern about our friends that we have about ourselves.

But as vicious men are naturally inconstant and variable, with such opposite passions as hinder them from either pleasing themselves long, or being agreeable to others; stable friendship is only to be found among the Good: since it must both be produced and preserved by virtue. And hence flows the grand rule of friendship, that we neither ought to desire our friends concurrence in any thing vicious, nor concur in it at his request; least we undermine its only foundation. Friendship therefor is “the affectionate union of minds resembling each other in virtuous manners.” Which whosoever enjoys, will find it the most agreeable companion in the road to virtue and happiness. What can be sweeter, what more useful than to have a wise worthy friend with whom we may converse as freely as with our own soul: what enjoyment could we have of prosperity without the society of one who as much rejoices in it as we do ourselves? and for adversity, ’tis hard to bear it without the society of such as perhaps suffer more by sympathy than we do. In both fortunes we need exceedingly the wise counsel of friends: friendship which ever way we turn us will be a present aid; no station excludes it; ’tis never unreasonable or troublesome. ’Tis the chief ornament of prosperity, and exceedingly alleviates our adversities by bearing a share in them.

V. WE may further observe in relation to the kind affections, that tho’ the most extensive good-will toward all can never be too great, nor can our love of God and virtue admit of any excess; yet all the more

contracted affections, arising either from the ties of blood, or acquaintance, however lovely of themselves, may sometimes be excessive, and beyond that proportion which a good man would approve. Love is often divided into that of *benevolence* or good-will, and that of *complacence* or esteem, by which we are pleased with the tempers of others and desire their society. In the former branch there's less danger of exceeding the just bounds, provided we retain a just submission to, and trust in the divine Providence, and preserve the more extensive affections in their proper superiority, so as not to sacrifice the interest of our country, or of the larger societies, or of persons of superiour worth, to that of our friends, or favourites. But the love of complacence which comes nearer to friendship, stands on more slippery ground. We ought to be very cautious that this affection be not employed about unworthy objects; or allure us to any thing vitious; nor so engross the whole man, that if these beloved persons be removed from us, or be involved in any calamities, our souls should sink entirely, and become unfit for all offices of piety and humanity. The best preventive of these evils, is not a restraining and checking all the tender affections of a narrower kind; but rather the cultivating the highest love and veneration toward the Deity, placing our hope and confidence in his Providence; and enlarging our views and concerns with more equitable minds toward the rest of mankind, that we may also discern what real excellencies are among them, perhaps equalling or surpassing those we had with such fond admiration beheld in our peculiar favourites.



## C H A P. VI.

*Concerning our DUTIES toward OURSELVES,  
and the IMPROVEMENT of the MIND.*

**A**S powerful motives of private interest naturally excite us to our several Duties toward ourselves; to give them something venerable and laudable they must be ultimately referred either to the service of God, or some advantages to be procured to others. With this reference they become highly virtuous and honourable.

The culture of our minds principally consists in forming just opinions about our duty; and in procuring a large store of valuable knowledge about the most important subjects: as indeed all branches of knowledge have some use, and contribute in some measure to happiness, either by the immediate pleasure, or by discovering more fully to us the divine perfections, or enabling us better to know and discharge our Duty; since the affections of the will naturally follow the judgments formed by the understanding. All therefore who have abilities and proper opportunities, ought to apply themselves to improve their minds with an extensive knowledge of nature in the sciences; and 'tis the duty of all to acquire by diligent meditation and observation that common prudence which should constantly govern our lives. We ought therefore to make just estimates of all things which naturally raise our desires, consider thoroughly their importance to happiness, and find out wherein consists our supreme good; the discovery of

which must also discover the true plan of life. We should therefore deeply impress this on our minds, that our chief good is placed in devout affections toward God, and good-will and beneficence toward mankind.

The divine nature therefor and its boundless excellencies should be matter of our most careful inquiry; especially those attributes which excite our pious veneration, love, and trust in him. And we are to extirpate all imaginations or suspicions, of any purposes in God which are inconsistent with the perfection of wisdom, goodness, and love to his creatures.

We ought also carefully to study our own nature and constitution; what sort of beings God requires we should be; what character \* either more general, or more peculiar to each one, God requires he should support and act up to in life: that thus we may follow God and nature as the sure guide to happiness.

We ought therefor to enter deeply into human nature; observing both in ourselves and others the true principles of action, the true tempers and designs: lest we rashly form worse notions of our fellows than just reason would suggest. By a thorough view of these things, we should often prevent or suppress many of the harsher and ill-natured passions, anger, hatred, and envy; and cherish humanity, compassion, lenity, forgiveness and clemency.

II. THIS should also continually be in our thoughts, that all things fall out according to the divine counsel,

\* See a full explication of these characters, the *general* including all integrity and probity of manners, and the *particular*, suited to each one's genius, explained in *Cicero de Offic.* B. i. 30, 31, 32, &c.

either directly ordering them, or at least, permitting them with the most perfect purity, for some excellent purposes: and that consequently what appears to us harsh, injurious, or ignominious, may be designed to afford occasion for exercising and strengthening the most divine virtues of the Good; and in them consists their chief felicity.

The soul should be inured to a generous contempt of other things; and this we may acquire by looking thoroughly into them: by observing how mean, fordid, fading, and transitory are all bodily pleasures, all the objects that afford them, and our very bodies themselves! by observing how small these joys are and how little necessary, which arise from the external elegance and grandeur of life; and how uncertain they are; what cares they cost in acquiring and preserving; and how soon they cloy and give disgust! as to speculative knowledge; how uncertain and imperfect are many sciences, leading the embarrassed mind into new obscurities and difficulties and anxious darkness; and discovering nothing more clearly than the blindness and darkness, or the small penetration of our understanding. Again how poor an affair is glory and applause! which is ordinarily conferred by the ignorant, who cannot judge of real excellence; our enjoyment of which is confined within the short space of this life; which can be diffused through but a small part of this earth; and which must soon be swallowed up in eternal oblivion along with all the remembrance either of these who applaud or of the persons applauded. This thought too of the shortness of life, will equally enable the soul to bear or despise adversity; taking this also along, that the soul who bears it well, will obtain new and enlarged strength;

and like a lively fire, which turns every thing cast upon it into its own nature, and breaks forth superiour with stronger heat, so may the good man make adverse events matter of new honour and of nobler virtues. To sum up all briefly, all things related to this mortal state are fleeting, unstable, corruptible; which must speedily perish, and be presently swallowed up in that boundless ocean of eternity. For what can be called lasting in human life? Days, months, and years are continually passing away; all must die, nor is any sure that death shall not surprize him this very day: and when that last hour overtakes him, all that's past is lost for ever; nor can there remain to him any enjoyment, except of what he has acted virtuously; which may yield some joyful hope of an happy immortality. This hope alone can be the foundation of true fortitude; this prospect alone can fully satisfy the mind as to the justice and benignity of the divine administration.

But as in other arts, the mere knowledge of the precepts is of little consequence, nor can any thing laudable be obtained without practice and exercise; so in moral philosophy, which is the art of living well, the importance of the matter requires habit and continual exercise. Let our Reason therefor, and the other divine parts in our constitution, assume to themselves their just right of commanding the inferiour faculties, and enure them to a constant subjection. And this in our present degenerate state must require almost continual attention and internal discipline; to the success of which it will contribute much that we be frequently employed in the offices of Piety and Devotion toward God, in adoration of his perfections, prayers,

confession of sin, and pious desires, and vows of obedience.

III. To apprehend more fully the nature of virtue and vice, and to adorn the soul with every moral excellency, it may be of use to run over the several species of virtue, with their characteristicks, and established names; and observe the several opposite vices, whether in the excess or defect of some natural desire. The explication of the several Passions belongs to another branch of Philosophy. To count them all over, and mark their several degrees whether laudable or censurable, with their several signs or characters, would require a very long discourse, with great variety of matter: but what's of most importance to lead us to virtue, is the forming just estimates of all human affairs, all the objects of the natural desires; and by frequent meditation deeply infixing in our hearts just impressions of their values, and habituating the superior parts of the soul to a constant command over the inferior.

This however must be remembered concerning our natural desires and passions, that none of them can be pronounced absolutely evil in kind: none of them which may not sometimes be of great use in life, either to the person in whom they reside, or to others of mankind: in promoting either their Advantage, pleasure, or even their virtue. Superior orders of intelligence who have the superior powers more vigorous, may perhaps stand in no need of such violent motions or instigations; but to mankind they seem often necessary. And there is a moderate degree of each of them which is often advantageous, and often laudable. Such affections as don't come up to this moderate degree are not sufficient for the purposes either of the individual, or

those of society; and such as are too luxuriant and vehement, whether in pursuit of good or repelling of evil, and pass over the proper bounds, become uneasy and dishonourable to the person in whom they are, and are hurtful or pernicious to Society. The moderate degrees of several passions we justly deem not only innocent, but exceedingly subservient to virtue, as its guards or ministers; nay as the springs of many honourable actions, and as real virtues. By means of these better passions whether in pursuit of good or warding off of evil, we enjoy a more lively sense of life, the force of the soul is enlarged, and its activity invigorated: whence *Plato* calls these passions the *wings* or *chariot-horses* of the soul.

Nature has given us the clearest indications of what she requires in this matter. For while these passions are kept moderate under just government, and directed by reason, the whole deportment is graceful and lovely. But when we are hurried away by any furious unbridled passion, we are utterly incapable of exercising our reason, or finding out what is wise and becoming us; we quite miss the very aim of the passion itself, and our whole deportment is disagreeable and deformed. Observe the very countenances of persons enraged, or of such as are transported with any ardent enflamed desire, or distracted with terror, or fluttering with joy. Their whole air, the whole state and motion of the body becomes deformed and unnatural.

We therefor give the honourable titles of *virtues* to these moderate passions, equally confined from the two extremes; and call the extremes *vices*. But we have not appropriated names for the moderate and just degrees of several passions; and hence some have rash-

ly imagined, that some of our natural passions are wholly and absolutely evil. And yet 'tis plain that there are also certain moderate degrees of these passions both innocent and necessary.

To illustrate all this by examples. A moderate desire of *self-preservation* is both necessary and easy. Where this is wanting, men shew a desperate audacious disposition without any caution. This temper is generally restless, turbulent, and destructive both to the person himself and to the society he lives in. Where this care of self-preservation is excessive, it appears in Timidity and cowardice; dispositions quite useless to the publick, and tormenting to the person, exposing him to all injuries and affronts.

A moderate relish for *sensual pleasures* is useful, nay necessary. An entire insensibility would deprive one of a great deal of innocent pleasure; but seldom meet we with any thing wrong on this side. Where the taste is too high, which we call luxury or intemperance, it generally excludes all the more manly enjoyments, neither consulting reputation nor honour; nor even health or fortune, or the preservation of life. This turn of mind too must frequently expose a man to continual chagrin and uneasiness.

About our *estates* or *worldly goods* two virtues are employed, *frugality*, which consists in a wise management of them for honourable purposes, and *liberality*, which excites us to acts of kindness to others. The former is absolutely necessary to the exercise of the latter: both are pleasant, advantageous, and honourable: the former more peculiarly subservient to our advantage, and the latter to our honour. The excess of frugality and defect of liberality is *avarice*, which is a-

mong the most deformed and most uneasy vices, pursuing stores quite unnecessary, and which it never intends to use; stores that must be obtained with much toil and uneasiness, and need rather more to preserve them. The defect of frugality and excess of liberality is *prodigality*, destructive to our fortunes, little subservient to the pleasure or safety of life, or even to fame, which it seems chiefly to have in view.

The highest pitch of liberality is called *magnificence*, where great expences are wisely employed for some honourable purposes. The defect of this is seen in an affectation or shew of magnificence with an unwilling narrow heart. The excess is sometimes seen in the inelegant boundless profusion of persons who have no just notion of decency and elegance.

The highest pitch of fortitude is in like manner called *magnanimity*; or an elevation and firmness of soul, which no circumstances of fortune can move, aiming solely at moral excellence in all its conduct. The extreme in excess often appears in a desperate audacious ambition, stopping at no dangers. Such a temper must be dangerous and uneasy to the possessor, and inconsistent with his safety, as well as that of others; as also destructive of the liberty and dignity of all around. The other extreme is pusillanimity or cowardice, rendering a man useless and miserable.

The like holds as to the *desire of power* and promotion in the world: a moderate degree is useful and fits easy on a good man: when it grows excessive, 'tis both uneasy and restless, and very vicious, and dangerous to itself and all around. Where it is too faint and weak even when just occasions offer, men abandon the proper station or opportunities of virtue and honour.



So also a moderate *desire of fame* is manifestly of great use, if we have yet higher desires of virtue. The excess of this desire is restless and uneasy, and often defiles and debases the true beauty of virtuous actions. Where men want this desire, or have it very languid, they want a very potent incitement to all virtuous offices.

Nor can all *anger* or *resentment* be condemned, altho' there's little lovely in any degree of it. An entire insensibility of all injuries, of which there are but few instances, would be a very inconvenient disposition; exposing a man to the contumelies and petulance of others; nor well consistent with his own character, or the safety of such as he is bound to protect. Excessive anger on the other hand is a most tormenting passion, and often destructive to the person in whom it is found; nor is there any passion more dangerous to society.

There's a certain just *indignation*, becoming a good man, when the worthless are promoted to power or dignity. One void of such sentiments would be too little solicitous about the interests either of his friends or his country. But where this passion is excessive, or rises without just cause (which we call *envy*, the common spring of inveterate malice) it is the most destructive poison to the soul, tormenting to the breast where it resides, and extremely vitious, leading into the most horrid crimes.

This is to be observed of all the unkind passions which partake of anger, that they should be indulged no further than is plainly necessary for our own preservation or that of our friends and country. If we could without these passions ensure their safety, there would be nothing desireable or laudable in them: nay

on the other hand, nothing is more lovely than lenity, mercy, placability and clemency.

Among the virtues of social conversation, the first and chief is *veracity* and candour, of which we shall treat more fully in \* another place. The opposite vices are all as it were defects: lyes, deceit, fraud, crafty hypocrisy and dissimulation.

In the same class are some other virtues tending to give pleasure to and oblige all we converse with; such as *courtesy*, *good-manners*, *complaisance*, *sweetness*, *pleasantry*, *wit*: all which are laudable and graceful, and promote friendliness and good-will in society. There are opposite vices on both hands: on the one, a *servile fawning*, and flattery, and scurrility; having no other view than insinuating by any sort of pleasure into the favour of those it makes court to, and stooping into the most ungentlemanly or obscene jests: on the other, a troublesome, unmannerly *rufficity* and roughness, shewing no respect or deference to company, but pleasing itself with a shew of liberty and boldness. 'Tis needless to dwell upon the inconveniences arising from these vices, as they are always mean and indecent, and often lead to the greatest mischiefs. The true preservative against both extremes is first to take care to attain a truly virtuous temper; and then, to maintain both a real good-will and a respect for those with whom we live in society.

As to *modesty* and *bashfulness*, 'tis worth our notice that this passion plainly arises from a lively sense and solicitude about what is decent and honourable, and hence gives in our youth hopeful prognosticks of a fine

genius, well formed by nature for every thing virtuous. But where it is excessive in maturer years it often retards or withholds men from acting an honourable part: where this sense is very weak or wholly wanting, men want a powerful guardian to every virtue.

A more copious explication of all this subject may be found in *Aristotle* and his followers: we may however suggest before we quit it, that since such fatal dangers threaten virtue as it were on both hands, we should certainly apply the greatest care and attention and self-discipline, in governing our several passions, in maintaining a lively and vigorous sense of moral excellence, and cultivating our rational powers and the nobler and more extensive calm affections, whether toward our own true interests or those of mankind.

IV. THERE'S also some care to be taken of our bodies. Strength and health is to be acquired or preserved chiefly by temperance and exercise; that so our bodies may be enabled to obey the commands of the soul, in enduring all toils we may incur in discharge of our duty.

And since men can do little service to society who have not in their younger years been trained to some useful art or occupation: every one should timeously choose some one, suited to his genius, lawful in its nature, and of use to mankind. Nor ought such as are born to estates, who therefor need not for their own support any lucrative profession, think themselves exempted from any such obligation. For it seems more peculiarly incumbent on them, as Providence exempts them from other cares, to contribute to the public interest, by acquiring a compleat knowledge of the rights of mankind, of laws, and civil polity; or at least such

acquaintance with all the common business of mankind, that they may be able either by superiour wisdom, or by their interest and influence, to serve their country or their neighbours ; and not be useless loads of the earth, serving only to consume its products.

As to the several professions or occupations, we deem them reputable on these two accounts, as they either require a finer genius and greater wisdom, or as they are of greater use in society. On both accounts the occupation of teaching others the grand principles of piety and virtue, or even the more ingenious arts, is reputed honourable ; so are also the Professions of law, medicine, and war, and some others of the more elegant arts. The more extensive merchandize, and even some mechanick arts, are justly reputable both on account of their great utility, and the considerable abilities of mind requisite in them. Agriculture has been the chief delight of the finest spirits, as no manner of life is more innocent, none affording sweeter amusements, none more becoming a rational creature, or a person of genteel taste in life.

In the choice of our occupation or profession for life, our chief regard should be to our natural genius. But as our success in any occupation depends in the first place upon our genius, and next to it upon favourable circumstances of fortune, regard is to be had to both, but chiefly to our natural genius : for nature is a much surer and steadier principle.

## C H A P. VII.

*Some PRACTICAL CONSIDERATIONS to excite and preserve the STUDY of VIRTUE.*

WE need not now spend many words in shewing the necessity of pursuing virtue. For if we are sufficiently persuaded that in it consists our chief felicity, and that all other things are uncertain, weak, fading, and perishing, nor sufficiently adapted to the dignity of the rational nature, we must deem it necessary to enter upon that course of life which our conscience or inmost sense, as well as right reason recommends, as most suited to our nature, and which leads to the peculiar happiness of rational beings : by which means also we exercise and improve these powers which are supreme and most God-like in our constitution, and discharge the office imposed upon us by God and nature.

With what other view has God given us souls so well fitted for the knowledge and practice of so many virtues? To what purpose so many noble powers, such furniture of soul for most excellent arts and offices ; the powers of reason and speech, the powers of invention, the desires of knowledge, an almost boundless retention and memory of things past, a provident sagacity about futurity resembling divination, a sense of what is honourable and shameful as the controller of our lower appetites ; so many kind affections consulting the good of others, a conscience or sense distinguishing the right from the wrong, the honourable from the vitious and base : along with a strength

and grandeur of mind for enduring dangerous toils ? To what purpose that penetration into nature which reaches even to the heavens, discovers the Deity presiding in the universe, discerns his infinite perfections, and raises us to the hopes of immortality after the dissolution of the body ?

Do we speak only about Philosophers ? what nation or clan is there where there has not always prevailed an universal and firm persuasion, that there is a Deity, that he enjoins certain duties upon mankind, appoints them a certain moral character they must maintain ; and that their future state after death shall be happy or miserable according to their conduct in this world. These therefor are the dictates of nature, sentiments adapted to our frame, and supported by obvious reasons, which continue coeval with mankind, whereas the credit of ill-founded fictions by length of time has always decayed, and at length vanished away.

Metaphysicians suggest many other arguments for the immortality of the soul ; we only suggest here, that as the ingenious and artificial structure of the universe affords the strongest arguments for the existence of a rational intelligence, the Creator and ruler of this material frame, so arguments exactly parallel to them, from the structure of our souls, shew that God has also a regard to the moral qualities, the virtues and vices of rational creatures ; and that he exercises a just moral government over them, under which happiness must be secured at last to the virtuous, and misery allotted to the vicious. And since we see that this does not hold universally in the present state of this world, we may reasonably expect another display or unfolding of the

vine administration in a future state, in every respect worthy of God. This too is confirmed by the very nature of the soul itself. For that wonderful life and activity of our minds, that extensive remembrance, that sagacious foresight, those noble powers and virtues, those ingenious arts and sciences and inventions, make it incredible that substances containing such excellencies can perish along with these despicable bodies. Now such prospects of immortality must suggest the most potent motives to all virtue, and the strongest dissuatives from vice.

II. AND that we may with greater resolution endeavour to cultivate all virtue, let us have always at hand these thoughts; (1.) That where there's an hearty inclination to what is honourable and good, we seldom want strength in execution, and have ground to hope for the divine assistance. We even see in the ordinary course of things, that by vigilance, activity, and wise deliberation, all matters generally succeed prosperously: men daily increase in ability; their superiour powers acquire new strength and command over the lower appetites; and what at first appeared hard and difficult, by custom is made easy and even delightful. The toil and trouble of any honourable offices will soon be past and gone, but the remembrance of them will remain perpetual matter of joy.

(2.) But least the keen desires of the external advantages, and the alluring pleasures of this life should abate our virtuous pursuits; we should frequently consider with the deepest attention what stable and solid joys and hopes accompany virtue: we should consider also the nature of all worldly enjoyments, and obtain that just contempt of them we often mentioned; and ever

keep in view the shortness of this life, and that death must soon overtake us all.

(3.) And yet since there's a certain measure of external pleasures and enjoyments natural and necessary, we must have some regard to them; provided we still remember that there are others much more important. That we may not therefor seem obliged as it were to declare war against all the conveniences or pleasures of this life, let us run over the several virtues, and see how much each of them generally contributes to our present prosperity and pleasure.

*Prudence* which restrains the inconsiderate foolish impulses of the passions, must be alike necessary in every course of life whatsoever, that we may effectually pursue any end we propose, and not blinded by lust run headlong into the objects of our strongest aversions.

The several branches of *Justice* are of the greatest consequence to maintain peace, to avoid offending and provoking others, to obtain safety, favour, reputation, credit, wealth, extensive influence, and friends, which are the surest defences against all dangers in life. These virtues in their own nature preserve the soul easy and calm, and yield a joyful hope that we shall always obtain such things as are naturally necessary and desirable. On the other hand, where designs of violence and injustice possess the heart, as they are turbulent and uneasy in their own nature, so they devour the breast with perpetual suspicions, solitudes, and fears. Need we speak of the highest branch of justice, Piety towards God? this secures to us the favour of the supreme Governor of the world, the sovereign Arbiter of our fortunes, who will always provide for the virtuous, if not



the things at present most pleasurable, yet such as are truly fittest for them, and most advantageous and pleasant at last. And from piety will arise the hope of immortality which can always support the soul in every circumstance of fortune.

The several parts of *Temperance*, as they faithfully cherish all other virtues, so they tend to preserve and improve our health, strength, and even the beauty and grace of our persons; as the tranquillity and inward ease of the soul shews itself in the countenance. And frugality, a sparing simple way of living, diligence, and industry, are plainly subservient to wealth and affluence: which luxury and intemperance tend to destroy; as they also impair our health, strength, and beauty, and expose us to infamy and contempt; stupifying the nobler parts of the soul, and making all the lower appetites outrageous and intractable.

*Fortitude* and all its parts are a safeguard to ourselves and our friends. Whereas by cowardice we not only quit our station of honour and virtue, but often involve ourselves in such dangers as we might easily have escaped by fortitude and presence of mind. The person void of this virtue must be in the power of others to make him what they please, by the threats of evil; even to involve him in the most impious and basest vices; which is a state of miserable servitude. If any good man is threatened with great dangers, or exposed to them even on account of his virtues; as on such occasions he is entering on the most difficult combat, encountering with our most capital adversary, pain; 'tis his business to rouse up all the forces of fortitude and patience and resignation, to recollect the sacred laws of these virtues, which prohibit any effe-

minate weakness, prohibit our sinking or losing spirit, or crouching under this load. Let him think with himself, now he's engaged in the most honourable combat, more glorious than the Olympicks; God presides the witness, judge, and rewarder; 'tis cowardly and foolish when the prize is so glorious, to spare a life that must soon perish however, and perhaps in a more tormenting manner, by the force of some disease; a life too that does not extinguish the soul, but shall return to us again. 'Tis by such representations made to ourselves of the honourable forms of virtue, fortitude, magnanimity, duty to God, and patient resignation, that such pains are abated, and the terrors of death in some measure taken away.

III. IT was formerly observed that 'tis from God we have derived all our virtues. The Philosophers therefor, as well as Divines, teach us to have recourse frequently to God by ardent prayers, that, while we are exerting ourselves vigorously, he would also adorn us with these virtues, and supply us with new strength. They taught that no man ever attained true grandeur of mind without some inspiration from God. Need we add, that the very contemplation of the divine perfections, with that deep veneration which they excite, thanksgivings, praises, confessions of our sins, and prayers, not only increase our devotion and piety, but strengthen all goodness of temper and integrity. We ought therefor to have recourse to the Deity in all difficulties, trusting in his aid, with firm purposes of acting that part which is most honourable; and recall to our thoughts, what virtues this emergence gives opportunity to exercise, what furniture or armour has

God and nature given us for encountering with such dangers? how joyful shall the remembrance be of our conquering such temptations, and discharging our duty well? and how shameful to be conquered by the allurements of some trifling pleasure, or the terrors of a little pain, and thus debase ourselves by a vitious and ignominious behaviour.

'Tis not our present purpose to unfold at length all the precepts and motives to virtue. They may be found in the Greek and Roman Philosophers and modern authors: in perusing whom it may be proper to collect and keep ready for our use all the more lively and affecting sentiments which occur: and let us form and settle in our minds a lively notion of the grandeur and excellence of the several virtues, so that we may not question but that such as are possessed of them must be the truly wise and compleatly happy characters.\* “Such  
“ a man must be satisfied with himself, neither pining  
“ and fretting under troubles, nor broken with any  
“ terrours, nor tormented with any impatient ar-  
“ dent desires, nor dissolved in trifling pleasures and  
“ joys: to him no accidents of this mortal state ap-  
“ pear so intolerable as to sink his spirits, nor so joy-  
“ ful as to give him high transports. And what is  
“ there in the pursuits of this world, and in this short  
“ transitory life, that can appear of great consequence  
“ to a truly wise man, whose soul is so constantly  
“ upon the watch, that nothing happens to him un-  
“ foreseen or surprizing, nothing unexpected, nothing  
“ new.”

IV. Now as 'tis the grand view of the good man,

\* Cicero's Tuscul. Questions, Book iv.

that according to the intention of nature he should always be employed in contributing something to the general interest and happiness, which plainly requires that large numbers of mankind should be joined in an amicable society ; he ought also carefully to enquire into all the rules or dictates of right reason, by which every part of life is to be regulated, and by observing which he may on his part preserve this social union among mankind : and these precepts or conclusions of right reason collected together make what we call the *Law of Nature* ; which is the next branch of Moral Philosophy, of great use in the conduct of life.

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E L E M E N T S O F T H E L A W O F N A T U R E.

C H A P. I.

*Of the LAW of NATURE.*

**T**HAT we may shew how all the several parts of life may be brought into a conformity to nature, and the better discern the several Rights and Duties of Mankind, we shall premise the more general Doctrine in Morals, explaining some pretty complex notions and terms constantly occurring; and this is the subject of this and the two following chapters.

In the preceeding book we shewed, how from the very structure of our nature we derived our first notions of right and wrong, virtuous and vitious, in our affections and actions: and that it was then *right* and *just* that any Person should act, possess, or demand from others, in a certain manner, “when his doing so tend-

“ ed either directly to the common interest of all, or  
“ to the interest of some part or some individual,  
“ without occasioning any detriment to others.” And  
hence we say in such cases that a man *has a right* thus  
to act, possess or demand: and whoever would ob-  
struct or hinder him thus to act or possess, or would not  
comply with such demand, is said to do an *injury* or  
*wrong*.

But resuming this matter a little higher; 'tis plain  
that this structure of our nature exhibits clear eviden-  
ces of the will of God and nature about our conduct,  
requiring certain actions and prohibiting others. The  
notion of a *law* to which our actions may be compa-  
red, is, no doubt, *artificial*, formed upon observation:  
and yet it has in all ages been so obvious and familiar  
to men that it may also be called natural. For the  
notion of a *just power*, or *right of governing* others, is  
obviously intimated, from that power nature has in-  
vested the Parent with, over his children, so manifestly  
tending to their good. And this too is known to all  
by constant experience, that the bulk of mankind don't  
by any nice reasonings or observation of their own dis-  
cover what is advantageous or hurtful in life; nay that  
the greater part of the practical sagacity and wisdom  
of the generality depends upon the discoveries and in-  
structions of a few, who have had greater penetration  
and sagacity: and since 'tis commonly known, and e-  
ven the men of less sagacity acknowledge it, that there  
are great diversities of genius, and that some few have  
superior abilities to the common herd: that moral prin-  
ciple implanted in all must also recommend it as advan-  
tageous to all, that large societies of men united for  
their common interest, should commit the administra-

tion of their common concerns to a council of a few of the wiser sort, and compell any who may thereafter be refractory to submit to their orders, who have thus obtained a just right of governing. Hence the notion of *just power*, or of a *right of governing*, is among the most common and familiar with mankind, when from the very plan and model of power constituted, there's tolerable precaution taken that the Rulers shall have either no inducements to abuse it to the detriment of the whole body, or no hopes of doing so with impunity. Hence the notion of *law* too is obvious to all, to wit, "The will of those vested with just power of governing, declared to their subjects, requiring certain actions and forbidding others with denunciations of rewards or punishments."

II. Now since 'tis generally agreed among men, that the Deity is endued with the highest goodness, as well as with wisdom and power; it must obviously follow that an universal compliance with the will of God must tend both to the general good, and to that of each individual; to which compliance also we are most sacredly bound in gratitude, as we were created by him, and are constantly deriving good from his munificent hand: it must also in like manner follow, that all disobedience to the will of God must be opposite to the common felicity, and shew a base ungrateful mind. Now these considerations plainly shew that it is perfectly just and right in the Deity to assume to himself the government of his rational creatures, and that his *right* is founded upon his own *moral excellencies*.

But since no man can give sufficient evidence to the

satisfaction of all, that he is possessed even of superior wisdom, and much less of his stable inflexible goodness; since ambitious dissimulation would always make the greatest shew of goodness, if this were a sure step to ascend to power; nor can men search into each others hearts to detect such hypocrisy: and since no power generally suspected and dreaded can make a people, who are diffident of their most important interests, easy or happy; no man can justly assume to himself power over others upon any persuasion of his own superior wisdom or goodness, unless the body of the people are also persuaded of it, or consent to be subjected to such power, upon some reasonable security given them, that the power intrusted shall not be abused to their destruction.

III. AND further since it was God our Creator who implanted this sense of right and wrong in our souls, and gave us these powers of reason, which observing our own constitution, and that of persons and other things around us, discovers what conduct tends either to the common prosperity of all, or that of individuals, and what has a contrary tendency; and shews also that all sorts of kind offices generally tend to the happiness of the person who discharges them, and the contrary offices to his detriment: all these precepts or practical dictates of *right reason* are plainly so many *laws* \*, enacted, ratified by penalties, and promulgated by God in the very constitution of nature. [As words or writing are not essential to the nature of a law, but only the most convenient way of notifying it.]

\* On this subject see Cumberland's *Prolegomena*, or introduction, and Ch. 1. Concerning the law of nature.



In every law there are two parts, the *precept* and the *sanction*. The precept shews what is required or forbidden; and the sanctions contain the rewards or punishments abiding the subjects, as they observe or violate the precept. In Civil Laws, beside the peculiar rewards or *premiums* proposed in some of them, there is this general reward understood in them all, that by obedience we obtain the defence and protection of the state, with the other common advantages of a civilized life, and the rights of citizens. The penalties of human laws are generally expressed. The sanctions of the law of nature are known and promulgated in like manner with the preceptive part. The *rewards* are all those internal joys and comfortable hopes which naturally attend a virtuous course; and all these external advantages whether immediately arising from good actions, or generally obtained by the good-will and approbation of others, or of the Deity, whether in this life or in a future state. The *penalties* are all those evils internal or external, which naturally ensue upon vice; such as remorse, solicitude, and distressing fears and dangers: in fine, all these evils which right reason shews may probably be expected to ensue through the just resentment of the Deity or of our fellow-creatures.

IV. THE divine laws according to the different manners of promulgation are either *natural* or *positive*. *Natural* laws are discovered by our reason observing the natures of things. *Positive* laws are revealed only by words or writing. Laws may again be divided according to the matter of them into the *necessary* and the *not-necessary*. Every sort of law indeed should have in view some real benefit to the state: but some laws

point out the sole and necessary means of obtaining some great benefit, or of averting some great evil; so that contrary or even different laws could not answer the necessary purposes of society: while others only fix upon the most convenient means, where many others might have tolerably answered the end; or, where there's a variety of means equally apposite, yet fix upon one set of them, when 'tis necessary that multitudes should agree in using the same means. Such is the case in appointing *set times* and *places*, and other *circumstances*, where matters of common concern are to be transacted jointly by many. These latter sort of laws are also called *positive* as to their matter, and the former *natural*, in the same respect.

V. LAWS generally respect alike a whole people, or at least all of a certain class or order; this holds as to all natural laws. But sometimes civil laws are made in singular cases, respecting only one person; these the Romans called *privilegia*; which were either out of singular favour, or singular resentment. If such *privileges* are granted for extraordinary merits, and have no pernicious tendency toward the body, they are very justifiable. Cases may happen too, tho' seldom, in which it may be just to bring to punishment some very artful dangerous criminal by a special law, which is not to be made a precedent in the ordinary procedure of justice.

*Equity* is sometimes understood as something distinct from *strict law*, being "the reasonable wise correction of any imperfection in the words of the law, by their being either not sufficiently extended, or too extensive in regard to the true reason or design of the law." This equity has place only as to laws

promulgated in words; for the law of nature determines all points, not by words, but by right reason, and what is humane and good.

VI. THE doctrine of *dispensations* was brought in by the Canon-law. A dispensation is “the exempting” one out of special favour from the obligation of a “law.” Dispensations are either from the preceptive part, or from the sanction, in remitting the penalty. Where the penalty is remitted or altered in such a manner as consists with the common safety, and does not weaken the authority and influence of the law, it is not to be blamed. Such a dispensing power for singular important reasons is frequently vested in the supreme Rulers or Magistrates of States. But for previous exemptions from the preceptive part of any wise law they can never be reasonable,

But first, we don’t count it a dispensation when any one, using his own right and the ordinary power vested in him by law, frees another from some legal obligation, or imposes a new one. As when a creditor remits a debt; or the supreme Governor commissions subjects to act in his name what he has a right to execute, tho’ without such commission these subjects had acted illegally in doing so.

Again, sometimes by laws, whether divine or human, an external impunity may be justly and wisely granted to such conduct as is very vitious and culpable; if either through the stupidity or depravity of the people such vices could not be restrained without much greater inconvenience than what arises from the permission of them. But this comes not up to the notion of dispensation.

But in the third place, no grant or permission of

any governor, human or divine, can make evil malevolent affections become morally good or innocent, or benevolent ones become evil: nor can the moral nature of actions flowing from them be any more altered by mere command or permission. The *dispensations* therefor, the *Canonists* intend, are then only justifiable, when the laws themselves are bad or imprudent, of which the Canon-law contains a great multitude.

VII. THE *Law of nature* as it denotes a large collection of precepts is commonly divided into the *primary* and *secondary*; the former they suppose immutable, the latter mutable. This division is of no use as some explain it, \* that the primary consists of self-evident propositions, and the secondary of such as require reasoning. Many of those they count primary require reasoning: nor are just conclusions more mutable than the self-evident premises. The only useful sense of this distinction is, when such precepts as are absolutely necessary to any tolerable social state are called the *primary*; and such as are not of such necessity, but tend to some considerable improvement or ornament of life are called *secondary*. But these latter in the sight of God and our own consciences are not mutable, nor can be transgressed without a crime, more than the primary; altho' there may be many political constitutions where the violation of these secondary precepts passes with impunity.

From the doctrine of the former book it must ap-

\* See *Vinnius's* comment on the *Instit.* lib. i. 2. 11. The same distinction is variously explained by other authors; but scarce any of them so explain it as to make it of importance.

pear, that all our duties, as they are conceived to be enjoined by some divine precept, are included in these two general laws, the one that "God is to be worshipped with all love and veneration:" and in consequence of it, that "he is to be obeyed in all things."

The second is, that "we ought to promote as we have opportunity the common good of all, and that of particular societies or persons, while it no way obstructs the common good, or that of greater societies."

## C H A P. II.

*Of the NATURE of RIGHTS, and their several  
DIVISIONS.*

**S**INCE it is manifestly necessary to the common interest of all that large numbers of men should be joined together in amicable societies, and as this is the sum of all our duties toward men that we promote their happiness as we have opportunity; it must follow that all actions by which any one procures to himself or his friends any advantage, while he obstructs no advantage of others, must be lawful: since he who profits one part without hurting any other plainly profits the whole. Now since there are many enjoyments and advantages naturally desired by all, which one may procure to himself, his family or friends, without hurting others, and which 'tis plainly the interest of society that each one should be allowed to procure, without any obstruction from others, (since otherways no friendly, peaceable society could be maintained:) we therefor deem that each man has a *right* to procure and obtain for himself or his friends such advantages and enjoyments; which Right is plainly established and secured to him by the second general precept above mentioned, enjoining and confirming whatever tends to the general good of all, or to the good of any part without detriment to the rest. In all such cases therefor men are said to act according to their *right*. And then, as the several offices due to others are recommended to us by the sense of our own hearts; so others in a social life have a claim to them, and both

desire, and naturally or justly expect them from us, as some way due to them: in consequence of this it must appear, that the several rules of duty, or special laws of nature, cannot be delivered in a more easy manner than by considering all the several *claims* or *rights* competent either to individuals, to societies, or to mankind in general as a great body or society; all which are the matter of some special laws.

The several rights of mankind are therefor first made known, by the natural feelings of their hearts, and their natural desires, pursuing such things as tend to the good of each individual or those dependent on him: and recommending to all certain virtuous offices. But all such inclinations or desires are to be regulated by right reason, with a view to the general good of all.

Thus we have the notion of *rights* as moral qualities, or *faculties*, granted by the law of nature to certain persons. We have already sufficiently explained how these notions of our *rights* arise from that *moral sense* of right and wrong, natural to us previous to any consideration of law or command. But when we have ascended to the notion of a divine natural law, requiring whatever tends to the general good, and containing all these practical dictates of right reason, our definitions of moral qualities may be abridged by referring them to a law; and yet they will be of the same import; if we still remember that the grand aim of the law of nature is the general good of all, and of every part as far as the general interest allows it.

A Right therefor may be defined “a faculty or claim established by law to act, or possess, or obtain something from others;” tho’ the primary no-

tion of right is prior to that of a law, nor does it always include a reference to the most extensive interest of the whole of mankind. For by our natural sense of right and wrong, and our sympathy with others, we immediately approve any person's procuring to himself or his friends any advantages which are not hurtful to others, without any thought either about a law or the general interest of all. For as the general happiness is the result of the happiness of individuals; and God has for the benefit of each individual, and of families, implanted in each one his private appetites and desires, with some tender natural affections in these narrower systems: actions flowing from them are therefor naturally approved, or at least deemed innocent, and that immediately for themselves, unless they should appear hurtful to others, or opposite to some nobler affection. Hence every one is conceived to have a *right* to act or claim whatever does no hurt to others, and naturally tends to his own advantage, or to that of persons dear to him.

And yet this we must still maintain, that no private right can hold against the general interest of all. For a regard to the most extensive advantage of the whole system ought to controul and limit all the rights of individuals or of particular societies.

II. Now since a friendly society with others, and a mutual intercourse of offices, and the joint aids of many, are absolutely necessary not only to the pleasure and convenience of human life, but even to the preservation of it; which is so obvious\* that we need not reason upon it. Whatever appears necessary for preserving

\* See Cicero's Offices, B. ii. 3, 4, 5, &c.



an amicable society among men must necessarily be enjoined by the Law of Nature. And in whatever circumstances the maintaining of peace in society requires, that certain actions, possessions, or claims should be left free and undisturbed to any one, he is justly deemed to have a *right* so to act, possess, or claim from others. As some law answers to each right, so does an *obligation*. This word has two senses, 1. We are said to be *obliged* to act, or perform to others, “when the inward sense and conscience of each one must approve such action or performance, and must condemn the contrary as vitious and base:” in like manner we conceive an obligation to omit or abstain. This sort of obligation is conceived previous to any thought of the injunction of a law. 2. Obligation is sometimes taken for “a motive of interest superior to all motives on the other side, proposed to induce us to certain actions or performances, or omissions of action.” Such motives indeed must arise from the laws of an omnipotent Being. This latter meaning seems chiefly intended in these metaphorical definitions of great authors, who would have all obligation to arise from the law of a superior, \* “*a bond of right binding us by a necessity of acting or abstaining*” or an “*absolute necessity imposed upon a man, to act in certain manner.*”

III. RIGHTS according as they are more or less necessary to the preservation of a social life are divided into *perfect* and *imperfect*. Perfect rights are of such

\* These are the definitions of *Puffendorf*, and of *Barbeyrac* in his notes on *Grotius*, as also in his animadversions on a *Censure upon Puffendorf*, ascribed commonly to Mr. *Leibnitz*, published with the French Translation of the book *de Officio Hominis et Civis*.

necessity that a general allowing them to be violated must entirely destroy all society : and therefor such rights ought to be maintained to all even by violence : and the severest punishments inflicted upon the violation of them.

Imperfect rights or claims are sometimes indeed of the greatest consequence to the happiness and ornament of society, and our obligation to maintain them, and to perform to others what they thus claim, may be very sacred : yet they are of such a nature that greater evils would ensue in society from making them matters of compulsion, than from leaving them free to each one's honour and conscience to comply with them or not. 'Tis by a conscientious regard to these imperfect rights or claims of others, which are not matters of compulsion, that virtuous men have an occasion of displaying their virtues, and obtaining the esteem and love of others.

Yet the boundaries between perfect and imperfect rights are not always easily seen. There is a sort of scale or gradual ascent, through several almost insensible steps, from the lowest and weakest claims of humanity to those of higher and more sacred obligation, till we arrive at some imperfect rights so strong that they can scarce be distinguished from the perfect, according to the variety of bonds among mankind, and the various degrees of merit, and claims upon each other. Any innocent person may have some claim upon us for certain offices of humanity. But our fellow-citizen or neighbour would have a stronger claim in the like case. A friend, a benefactor, a brother, or a parent would have still a stronger claim, even in these things which we reckon matters of imperfect obligation.

There's also a third kind of Right, or rather an external shew of it, which some call an *external right*: when some more remote considerations of distant utility require that men should not be restrained in certain actions, enjoyments; or demands upon others, which yet are not consistent with a good conscience, or good moral dispositions. These external shews of Right, which will never satisfy a good man as a foundation of conduct, often arise from imprudent contracts rashly entered into by one of the parties, and often even from the wisest Civil Laws.

'Tis plain here, that there can be no opposition either between two perfect rights or two imperfect ones. But imperfect rights may be contrary to these called external. Since however the imperfect rights are not matters of just force or compulsion; wars, which are violent prosecutions or defences of some alleged rights, cannot be just on both sides.

IV. RIGHTS are also divided into the *alienable*, and such as *cannot be alienated* or transferred. These are alienable, where the transfer can actually be made, and where some interest of society may often require that they should be transferred from one to another. Unless both these qualities concur, the Right is to be deemed unalienable. 'Tis plain therefor, for instance, that for defect of both these qualities, our opinions in matters of Religion are unalienable; and so are our internal affections of devotion; and therefor neither of them can be matters of commerce, contract, or human laws. No man can avoid judging according to the evidence which appears to him; nor can any interest of society require one to profess hypocritically contrary to his inward sentiments; or to join in any external

worship which he judges foolish or impious, and without the suitable affections.

From the general account given of the nature of Right, these must be the two fundamental precepts of a social life; first, that “no man hurt another” or occasion any loss or pain to another which is neither necessary nor subservient to any superior interest of society. The second is “that each one on his part, as he “has opportunity, should contribute toward the general interest of society;” at least by contributing toward the interest of his friends or family. And he who innocently profits a Part, contributes also in fact to the good of the whole.

## C H A P. III.

*Concerning the VARIOUS DEGREES of VIRTUE and VICE, and the Circumstances on which they depend.*

**T**HAT inward power called *Conscience*, so much talked of, is either this very moral sense or faculty we have explained, or includes it as its most essential part; since without this sense we could discern no moral qualities. But when this is presupposed, our reason will shew what external actions are laudable or censurable according as they evidence good or evil affections of soul. *Conscience* is commonly defined to be “a man’s judgment concerning the morality of his actions;” or his judgment about his actions as to their conformity or contrariety to the law. And an action is then said to be *imputable*, when by its proceeding from his will it evidences his temper and affections to be virtuous or vitious.

The common divisions of conscience, into *certain*, *probable*, *doubtful*, or *scrupulous*, need no explication. When we deliberate about our future actions ’tis called *antecedent*: when we judge of past actions, ’tis called *subsequent conscience*.

The antecedent conscience of a good man, or his previous deliberations, turn upon the tendencies of actions to the general good of all, or to the innocent enjoyments of individuals, or of parts of this system: and this tendency makes an action *materially good*. For actions are called good *materially*, by their having this tendency, or their being required by the law, whatever were the motives or views of the agent. The *sub-*

*sequent conscience* regards chiefly the motives, design, and intention, on which depends what is called *formal goodness*. For such actions are called formally good as agree with the law in all respects, and flow from good affections.

II. THE circumstances regarded in comparing the morality of actions are of three sorts, as they relate either to the *understanding*, or to the *will*, or to the *importance* of the action itself considered along with the abilities of the agent.

But here 'tis previously certain, that such actions alone are matter of praise or censure, or can be *imputed*, which are done with knowledge and intention, and which had not happened if we had seriously resolved against them. And that in like manner no omission can be imputed where the most hearty inclination would have been without effect. Such actions or omissions are called *free* or voluntary, and such alone carry any evidence of the goodness or depravity of the temper. Necessary events therefor, which would happen even without our knowledge, or against our will, are no matter of imputation; nor is the omission of an impossibility, which no desire of ours could have accomplished, any matter of imputation. But this is not the case with such actions as are only called necessary on this account, that the agent's inclination and turn of temper that way, or his passions, were so strong, that during that temper of his he could not will otherways. Nor is it the case in omissions of such actions as are therefor only called impossible, because such was the person's depravity of temper that he could have no inclination to them. Virtue and vice are primarily seated in the temper and affections themselves; and 'tis generally

in our own power in a considerable degree to form and alter our tempers and inclinations.

There are three classes of actions called involuntary, to wit, such as we are compelled to by superior *external force*; such as we do *ignorantly*; and such as are called *mixed*, when we do what of itself is very disagreeable in order to avoid some greater evil. What men are driven to by external force is imputable only to him who uses the violence. What is done through ignorance is imputed differently according as the ignorance is culpable or not. But the actions called *mixed* are all imputed, as they are truly free, and proceed from the will: but they are imputed as innocent or as criminal, according as the evil avoided was in its whole effect greater or less than the evil done to avoid it. Now moral evils, and such as hurt the common interest, are greater than the natural evils, and such as hurt only the agent.

III. As to the circumstances relating to the understanding: altho' all moral virtue and vice is primarily seated in the will, yet frequently our ignorance or error about the nature of the things we are employed about may affect the morality of actions. And altho' the best of men must intend what is in fact evil, if it appear to them to be good; yet such mistakes are frequently blameable, if the error or ignorance was any way voluntary, and what could have been avoided by such diligence as good men commonly use in such cases. That ignorance indeed which is wholly involuntary and *invincible* excuses from all blame.

Voluntary or vincible ignorance is either *affected*, when men directly design to avoid knowing the truth with some apprehensions of it: or what arises from

gross *negligence* or sloth; when men have little solicitude about their duty, and take little thought about their conduct. The former no way diminishes the guilt of the action. The latter may be some alleviation of guilt, and that more or less, according as the sloth was greater or less, or the discovery of the truth was more or less difficult.

Ignorance truly involuntary is so either *in itself but not in its cause*, or it is involuntary in both respects. The former is the case when at present, and in the midst of action, men cannot discover the truth, tho' they earnestly desire it; but had they formerly used the diligence required of good men they might have known it. The latter is the case when no prior culpable negligence occasioned our ignorance: and this sort excuses altogether from guilt, but not the former. There is indeed no moral turpitude at present shewn by a man's acting what at present appears to him to be good; but ignorance or error, tho' at present invincible, may be a strong evidence of a prior culpable negligence, which may discover a depravity of temper.

Ignorance is either about matter *of law* or matter *of fact*. This division takes place chiefly in positive laws: for in the law of nature if the fact, or natural tendency and consequents of actions, beneficial or pernicious to society, are known, this itself makes the laws known.

IV. FROM these principles we may answer the chief questions about an erroneous conscience. 1. Error or ignorance of the law of nature is generally culpable; but in very various degrees, according to the different degrees of natural sagacity in men, and their



different opportunities of information and inquiry, and as the laws themselves are more or less easy to be discovered.

2. To counteract conscience in doing what we deem vitious, or in omitting what we take to be our duty, must always be evil; as it shews such depravation of the temper that a sense of duty is not the ruling principle. But this guilt too is of very different degrees, according to the sanctity of the several duties omitted, or the turpitude of crimes we commit; and the different sorts of motives, more or less favourable, which excited us to this conduct. For sometimes 'tis only the terroure of the most formidable evils which almost enforce us, sometimes lovely principles of friendship, gratitude, filial duty, parental affection, or even love of a country, which induce us to act against our consciences; now in such cases the guilt is considerably alleviated.

3. In following an erroneous conscience, the guilt consists not in thus following it, or doing what we deem to be our duty; but it lies rather in something culpable in the error itself, or in the causes of it, and this in various degrees. For some errors of themselves shew a base temper, influenced directly by malice, pride, or cruelty: others shew only negligence and inattention, or that the nobler affections of heart are too weak.

4. 'Tis generally true that counteracting even an erroneous conscience is worse than following it. In both cases the guilt of the error is equal; and he who counteracts his conscience shews also a new contempt of the divine law. And yet where some of the more humane and lovely dispositions carry it against the commands of an erroneous conscience, guided rather by authori-

ty, and some confused notions of duty, than any distinct view of moral excellence in what it commands, the disobeying it may be a better sign of the temper than following its dictates. As in the case of one who deems it his duty to persecute for Religion, and yet is restrained from it by humanity and compassion.

V. THE circumstances affecting the morality of actions which relate to the Will must appear from what was said above; that all kind affections of soul are amiable, and the contrary vitious; as is also excessive self-love, and a keen desire of sensual pleasures; that the calm stable affections of a friendly sort are more lovely, than the turbulent passions; and that the more extensive are the more honourable.

1. Such duties therefor as are done deliberately, and from steady purpose of heart, are more lovely than those which proceed from some sudden gusts of kind passions.

2. And in like manner such injuries as are done deliberately and with premeditation, or from inveterate ill-will, are much worse than those which arise from sudden anger, fear, or some passionate bent toward pleasure.

As to all motions of anger and fear, which aim at the repelling some impendent evil, we may observe; that as the first step, and most necessary one, toward happiness and ease, is the warding off of pain, and the first office of virtue is the avoiding vice; the passions of *aversion from evil* are naturally stronger in their kind, than those pursuing positive good; and as 'tis harder to resist their impulses, they are greater alleviations of guilt, in vitious actions, tho' none of them can wholly take it away; since it is always in one's

power, who has an hearty concern about virtue, and sets himself to it, to restrain these passions in a great measure, and prevent their breaking out into external actions.

3. We cannot expect the same degrees of beneficence, or a like extent of it, in all equally good characters, considering the different tempers of men, their different abilities, opportunities, leisure, or hurry of business.

4. There are great differences in point of moral excellence among the several narrower sorts of kind affections, according to their different springs or causes, some of which are far more honourable than others. That good-will which arises from some conjunctions of interest, so that we wish well to others only for our own interest arising from their prosperity, tho' it may be free from any moral turpitude, yet has nothing morally amiable; since such affection may be found in the worst of men, and may have the worst for its object: nor is there much moral beauty in the affections merely founded on the ties of blood, or in the passions of lovers. These motions are generally turbulent and are all of a narrower kind: and such is the constitution of our nature, that they are often found among such as shew scarce any other virtues. And yet the want of such affections in such relations, would shew a great depravity. That heart must be singularly hard and insensible to kind affections which cannot be moved to them by these strong natural causes.

There is an higher moral beauty in that good-will and gratitude which arises from benefits received, where it is truly sincere, without any shew or ostentation designed to obtain further favours. In a like class we may

reckon pity and compassion, with a desire of giving relief to the distressed. And yet these two are of a narrower nature: and such is the frame of the human heart, so strong are these impulses, that none but monsters are void of all degrees of such affections. In the common offices of these kinds there's no eminent virtue; but in neglecting or omitting them, contrary to such strong natural impulses, there must be evidenced great depravation.

That love arising from a conformity of virtuous dispositions, which we call friendship, is far more lovely: as it shews an high relish for moral excellence, and an affection which would extend to many in a considerable degree, if like virtues appeared in them. A strong love for one's country, is yet more excellent. But of all social affections that is most amiable, which, conjoined with wisdom, is stedfastly set on promoting the most extensive happiness of all mankind, and doing good to each one as there is opportunity.

And yet the common interest of the whole, which both the nobler desires of the soul, and our moral sense chiefly recommend to our care, plainly requires that each one should more peculiarly employ his activity for the interest of such whom the stronger ties of nature have peculiarly recommended, or entrusted to his care, as far as their interests consist with the general good, and that his ordinary occupations should be destined for their benefit. The bulk of mankind have no ability or opportunity of promoting the general interest any other more immediate way.

VI. THESE seem to be general rules of estimation in this matter. The stronger that the natural impulse is in any narrower ties of affection, the less there is of

moral beauty in performing any supposed offices ; and the greater is the moral deformity of omitting them. The stronger the moral obligation is to any performance, or the *right* by which others claim it, the less laudable is the performance, and the more censurable and injurious is the omission or refusal of it. And the weaker the *right* or claim of others is, 'tis the less vicious to have omitted or refused any office, and 'tis the more honourable to have readily performed it ; provided we shew a readiness proportionably greater in performing such offices as others have a more sacred claim to.

In comparing vicious actions or designs, other circumstances being equal, the turpitude is the less, the greater or the more specious the motives were which induced us to it. To have violated the laws of universal justice out of zeal for our country, or to have neglected the interest of our country from zeal for our friends, or from gratitude to our benefactors, is not so base and deformed, as if one had neglected or counteracted these more extensive interests for his own gain, or for any sensual gratification ; this last excuse is indeed the meanest of all.

As far as any views of one's own advantage have excited a man to such actions as are in their own nature good, so far the moral beauty is abated : and when there was no other affection moving him, there remains no moral beauty, tho' the action may still be innocent, or void of any vice.

Where any such views of interest as must exceedingly move even the best of men, have excited one to what is culpable, the moral turpitude is diminished on that account. The passions excited by the present ap-

prehenſion of ſome great evil make a much greater impreſſion upon the beſt of men, than ſuch as ariſe from proſpects of any new advantages or pleaſures; and therefor they are much ſtronger alleviations of guilt. Keen ſelfiſhneſs, or love of pleaſures, are of themſelves diſhonourable; and ſhew that the meaner parts of the ſoul have uſurped a baſe tyranny over its nobler faculties.

The honourable offices we undertake, if they are expenſive, toilſome, or dangerous to ourſelves, they are on this account the more honourable. And yet ſince the grand aim of the good man is the promoting the publick good, and not the pleaſing himſelf with an high admiration of his own virtues; he muſt alſo endeavour to fortify his ſoul, as much as he can, to ſurmout all allurements or temptations tending a contrary way: and this is moſt effectually done by a deep perſuaſion that a perfectly juſt and wiſe Providence governs the world, will take care of the intereſts of the virtuous; and that the only path to an happy immortality is by virtue: the good man therefor will be far from excluding out of his counſels theſe glorious hopes, nay he will cheriſh and confirm them; that he may thus become the more inflexible and ſteddy in every virtuous deſign.

VII. As to the *importance* of actions and the *abilities* of the agents, theſe general rules ſeem to hold.  
1. That, other circumſtances being equal, the moral goodneſs of actions is proportioned to their importance to the common intereſt, which the agent had in view.

2. When other circumſtances are equal, the virtue of an action is *inverſely* as the abilities of the agent: that is, when the importance of two actions is equal,

he shews the greater virtue who with smaller abilities, equals the more potent in his beneficence.

3. The like observations hold about the vice of evil actions, that it is *directly* as their importance to the publick detriment foreseen, and *inversely* as the abilities of the agents: or that these are worst which have the worst tendency; or which undertaken by persons of little power, shew that they have maliciously exerted all their force in doing mischief.

4. In estimating the importance of actions, we must take in that whole series of events, which might have been foreseen to ensue upon them, and which without these actions would not have happened; whether these events be the natural direct effects of the actions, or happened by the intervention of other agents, who by these actions have been provoked or incited to take certain measures. For every good man will consider all that may ensue upon any steps he takes; and will avoid doing any thing contrary to the common utility, or which may without necessity give an occasion or temptation to any publick detriment, either more or less extensive.

As to the events or effects of actions, this holds; that any publick advantage ensuing, tho' it had been foreseen, yet if it was not intended and desired, adds nothing to the virtue of the action, nor is it matter of praise; as it shews no goodness of temper. But publick detriment which might have been foreseen, tho' it was not directly desired, nor perhaps actually foreseen, may add to the moral turpitude. Because that even a negligence and unconcernedness about the publick interest is of itself vicious, shewing either an entire want, or a great defect in goodness of temper.

5. But we must not pronounce every action to be evil from which some evil consequences were foreseen to ensue; unless these evils were directly desired for themselves. The consequences of most external actions are of a mixed nature, some good, some bad. There's no course of life which has not its own advantages and disadvantages; all which are indeed to come into computation. These actions therefor alone are good, on account of their importance, whose good consequences foreseen overballance their evil consequences; and when the good could not have been obtained without these or equal evils: and those actions are evil in this respect, where the evil consequences overballance all the good; or where the good might have been obtained without such evils, or with a smaller degree of them.

6. But in the sight of God and Conscience these events are imputed not as they actually happen, but according as there was a probable prospect that they might happen. For the moral good and evil consists not in the external events, but in the affections and purposes of the soul. And hence two persons may be equal in guilt, tho' one of them, restrained by accident or the prudence of others, has done no damage, and the other has done a great deal. And he is equally laudable who has made noble attempts, to the utmost of his power, tho' unsuccessfully, with those to whom all things have succeeded according to their wishes.

VIII. AMONGST the circumstances which affect both the will and the abilities of the agents, may be reckoned *custom* and *habit*: which tho' they rather abate than increase the pleasure of particular enjoy-



ments, yet increase the regret and uneasiness in the want of what we have been enured to, make us more inclined to pursue like enjoyments, and give us greater facility and readiness in any course of action. As the acquiring of such habits was voluntary, so it still remains in our power to abate their force or take them away altogether by cautious abstinence or frequent intermission of such actions and enjoyments. However therefor an habit of virtue, making each office less difficult, may seem to abate a little of the excellence of each particular office, yet it plainly adds to the beauty and excellence of the character: and on the other hand habits of vice, however they may a little abate the deformity of each particular vicious action, yet plainly shew the character to be the more deformed and odious.

Sometimes it may happen that one is justly praised on account of the good actions of other men, nay that even the desirable effects of natural inanimate causes are imputed to him as honourable, when by some honourable actions of his own he has contributed to these events. And in like manner the damages or injuries immediately done by other men or inanimate causes, are imputed as crimes, when one has occasioned them by any action or omission contrary to his duty.

## C H A P. IV.

*Concerning the NATURAL RIGHTS of INDIVIDUALS.*

WE have already shewn that the several duties of life may be naturally explained by explaining the several *rights* belonging to men, and the corresponding obligations, in all the several states and relations they stand in to each other. By a *state* we understand “some permanent condition one is placed in, “as it includes a series of rights and obligations.” Our state is either that of the *freedom in which nature placed us*; or an *adventitious state*, introduced by some human acts or institution.

The state of *natural liberty*, is “that of those who “are subjected to no human power:” which plainly obtained at first in the world, among persons adult and exempt from the parental power. This state too must always subsist among some persons, at least among the sovereign Princes of independent states, or among the states themselves, with respect to each other.

The character of any state is to be taken from the rights and laws which are in force in it, and not from what men may do injuriously contrary to the laws. 'Tis plain therefor from the preceeding account of our nature and its laws, that the state of nature is that of peace and good-will, of innocence and beneficence, and not of violence, war, and rapine: as both the immediate sense of duty in our hearts, and the

rational considerations of interest must suggest to us. \*

For let us observe what's very obvious, that without society with a good many of our fellows, their mutual aids, and an intercourse of friendly offices, mankind could neither be brought to life or preserved in it; much less could they obtain any tolerably convenient or pleasant condition of life. 'Tis plain too that no one has such strength that he could promise to himself to conquer all such as he may desire to wrong or spoil, and all such enemies as he may raise up against himself by an injurious course of life; since an honest indignation at wrongs will make many more enemies to him than those he immediately injures: and there are few who won't find considerable strength to avenge themselves or their neighbours, when they have conceived a just indignation. And then men have it generally in their power much more certainly and effectually to make others uneasy and miserable, than to make others easy and happy. External prosperity requires a perfectly right state of the body, and all its tender and delicate parts, many of which may be disturbed and destroyed by very small forces; it requires also a considerable variety of external things, which may be easily damaged, taken away, or destroyed. A just consideration of this infirm, uncertain condition of mankind, so that their prosperity may so easily be disturbed, must engage every wise man rather to cultivate peace and friendship with all, as far as possible, than to provoke any by unnecessary enmity or injury.

\* This suffices to overturn the fallacious reasonings of *Hobs* upon the state of nature as a state of war of all against all.

II. THE rights of men according as they immediately and principally regard either the benefit of some *individual*, or that of some *society* or body of people, or of *mankind* in general as a great community, are divided into *private*, *publick*, and *common to all*. The *private* rights of individuals are pointed out by their senses and natural appetites, recommending and pursuing such things as tend to their happiness: and our moral faculty or conscience shews us, that each one should be allowed full liberty to procure what may be for his own innocent advantage or pleasure, nay that we should maintain and defend it to him.

To discover therefor these *private rights* we should first attend to the several natural principles or appetites in men, \* and then turn our views toward the general interests of society, and of all around them: that where we find no obstruction to the happiness of others, or to the common good, thence ensuing, we should deem it the *right* of each individual to do, possess, or demand and obtain from others, whatever may tend to his own innocent advantage or pleasure.

Private rights are either *natural* or *adventitious*. The former sort, nature itself has given to each one, without any human grant or institution. The adventitious depend upon some human deed or institution.

III. THE private natural rights are either *perfect* or *imperfect*. Of the perfect kind these are the chief.

I. A right to life, and to retain their bodies unmaim-

\* See *Grotius de Jure Belli, &c.* I. c. 2. 1. See also Sect. 1. of the preceeding chapter.

ed. 2. A right to preserve their chastity. 3. A right to an unblemished character for common honesty, so as not to be deemed unfit for human society. 4. A right of liberty, or of acting according to one's own judgment and inclination within the bounds of the law of nature. 5. A right over life, so far that each one, in any honourable services to society or his friends, may expose himself not only to dangers, but to certain death, when such publick good is in view as overbalances the value of his life. This our conscience, or moral sense, and love of virtue will strongly recommend to us in many cases. 7. There's also a sense deeply infix'd by nature, of each one's *right of private judgment*, or of judging for himself in all matters of duty, especially as to religion; for a base judgment or opinion cannot of itself be injurious to others: and 'tis plain no man can without guilt counteract his own conscience; nor can there be any virtue in dissimulation or hypocrisy, but generally there's great guilt in it. Our sentiments therefor about religion and virtue cannot be matter of commerce or contract, so as to give others a right over them. Such commerce is no way requisite for any good in society; nor is it in one's power to judge or think as another shall command him. All engagements or contracts of this kind are null and void. Suppose one has judg'd amiss and has false opinions: yet while he injures no man, he is using his own *external right*; that is, tho' he acts amiss, yet much greater evils would ensue if any power were vest'd in others to compel him by penalties or threatnings of tortures, either to a change of his sentiments, or to a profession of it.

Each one also has a natural right to the use of such

things as nature intended to remain common to all; that he should have the same access with others, by the like means, to acquire adventitious rights; and that he should find equal treatment with his equals. Men have likewise rights to marriage with such as are willing to inter-marry with them, provided they be under no prior bonds of marriage, or hindered by any other just impediment: nor can any third person or society which has not acquired any just power over the parties, pretend a right to obstruct their designs of inter-marriage; or to hinder any who are not their subjects from entering into any other innocent associations or commerce of any kind for their own behoof.

The sense of every one's heart, and the common natural principles, shew that each one has these perfect rights; nor without maintaining them can there be any social life: so that they are also confirmed by considerations of common utility, and our more extensive affections.

IV. IN this respect all men are originally *equal*, that these natural rights equally belong to all, at least as soon as they come to the mature use of reason; and they are equally confirmed to all by the law of nature, which requires that we should consult the interest of each individual as far as the common utility will allow; and maintain to the feeble and weak their small acquisitions or advantages, as well as their greater acquisitions or advantages to the ingenious and active. For 'tis plainly for the common good, that no mortal endued with reason and forethought should without his own consent, or crime, be subjected to the will of his fellow, without regard to his own interest, except in some rare cases, that the interest of a society may make it ne-

cessary. None of mankind are so stupid and thoughtless about their own interests, as not to count it next to death to have themselves and all that's dear to them, subjected to another's pleasure or caprice, and thus exposed to the greatest contumelies. Nature makes none masters, none slaves: and yet the wiser and better sort of men have many imperfect rights superior to those of others, and superior offices and services of humanity are due to them.

But as nature has set no obvious or acknowledged marks of superior wisdom and goodness upon any of mankind; and often weak men may have high notions of their own wisdom; and the worst of men may make the greatest shews of goodness, which their fellows cannot discover to be hypocritical; 'tis plain that no pretences of superior wisdom or goodness will justify a man in his assuming power over others without their own consent; this would be plainly everfive of the common interest, and the source of perpetual wars.

V. To every imperfect right of individuals there answers a like *obligation* or duty which our conscience plainly enjoins, and in some cases most sacredly. These are the chief imperfect rights: each one may justly claim such offices as are profitable to him, and no burden or expence to the performer. Nay every innocent person has a right to such offices of others, as are of high advantage to him, and of small burden or expence to the performers. This is particularly the case of men under great calamities, needing the charitable aids of others. Men of eminent characters, tho' under no calamity, have a right to some higher offices from others, as particularly to their friendly suffrages for their

advantage or promotion. Each one whose vices have not made him infamous has a right to be admitted on equitable terms into any societies civil or religious, which are instituted in his neighbourhood, for his more convenient subsistence, or his improvement in piety. And lastly each one, who has not forfeited by some crime, has a right to be treated on an equal footing of humanity with his equals, and with others in proportion to their merits.

VI. CONCERNING beneficence and liberality, these general maxims are evident, \* that the importance of any benefit to the receiver, is proportioned jointly to the quantity of the benefit and his indigence: and that benefits are less burdensome to the giver the smaller their value is and the greater his wealth. Hence liberality may be exceedingly advantageous in many cases to him that receives it, and yet of small or no burden to the giver.

Beneficence, which is peculiarly becoming a good man, and eminently displays the goodness of his heart, ought to be practised with these cautions; first, that it don't hurt the persons it is employed about or the community. 2dly, That it be proportioned to our fortunes, so as not to exhaust its own fountain. 3dly, That it be proportioned to the merits or claims of others. Among these claims we regard, first, the moral characters of the objects, and next their kind affections towards us, and thirdly the social intercourses we have had with them, and lastly the good offices we formerly received from them. None of these considerations are to be neglected, and least of all the last

\* This is taken from *Cicero de Officiis* Lib. I. 14, 15, &c.



one ; since there's no obligation more sacred than that of gratitude, none more useful in life ; nor is any vice more odious than ingratitude, or more hurtful in society. When therefor in certain cases we cannot exercise all the beneficence we desire, offices of gratitude should take place of other offices of liberality.

## C H A P. V.

*Of REAL ADVENTITIOUS RIGHTS and  
PROPERTY.*

**T**HE adventitious rights constituted by some human deed or institution are either *real* or *personal*. The real terminate upon some certain definite goods: the personal terminate upon some person, not peculiarly respecting one part of his goods more than any other.

The principal real right is *property*; the spring of which is this, First the external senses and appetites of men naturally lead to the use of external things: and the like senses in brute animals (who have no superior faculties which could controll these senses and appetites) lead to the same: this sufficiently shews that God has graciously created things inanimate for the use of animal-life: now man is plainly the chief animal in this earth. Reflection confirms the same; since all these curious vegetable forms must soon perish of their own accord, and therefor could be intended for no other use, so worthy of the divine goodness, as that of supporting animal life agreeably, and chiefly human life.

II. THERE'S indeed implanted in men a natural kindness and sense of pity, extending even to the Brutes, which should restrain them from any cruelty toward them which is not necessary to prevent some misery of mankind, toward whom we must still have a much higher compassion. But men must soon discern, as they increase in numbers, that their lives must be

exceedingly toilsome and uneasy unless they are assisted by the beasts fitted for labour. They must also see that such beasts of the gentler kinds and easily tameable, whose services men need most, cannot be preserved without the provident care of men; but must perish by hunger, cold, or savage beasts: nor could men unassisted by work-beasts, and over-burthened in supporting themselves, employ any cares or labour in their defence. Reason therefor will shew, that these tractable creatures fitted for labour are committed to the care and government of men, that being preserved by human care, they may make a compensation by their labours. And thus a *community* or society is plainly constituted by nature, for the common interest both of men and these more tractable animals, in which men are to govern, and the brute animals to be subject.

Such tractable animals as are unfit for labours, must make compensation to men for their defence and protection some other way, since their support too requires much human labour; as they must have pastures cleared of wood, and be defended from savage creatures. Men must be compensated by their milk, wool, or hair, otherwise they could not afford them so much of their care and labour.

III. *NAY*, if upon the increase of mankind they were so straitened for food, that many must perish by famine, unless they feed upon the flesh of brute animals; Reason will suggest that these animals, slaughtered speedily by men for food, perish with less pain, than they must feel in what is called their natural death; and were they excluded from human protection they must generally perish earlier and in a worse manner by hunger, or winter-colds, or the fury of savage beasts.

There's nothing therefor of injustice or cruelty, nay 'tis rather prudence and mercy, that men should take to their own use in a gentler way, those animals which otherways would often fall a more miserable prey to lions, wolves, bears, dogs, or vultures.

Don't we see that the weaker tribes of animals are destined by nature for the food of the stronger and more sagacious? Were a like use of inferior animals denied to mankind, far fewer of these animals fit for human use would either come into life or be preserved in it; and the lives of these few would be more exposed to danger and more miserable. And then, the interest of the whole animal system would require that those endued with reason and reflection, and consequently capable of higher happiness or misery, should be preserved and multiplied, even tho' it occasioned a diminution of the numbers of inferior animals. These considerations abundantly evidence that *right* of mankind to take the most copious use of inferior creatures, even those endued with life. And yet all useless cruelty toward the brute animals is highly blameable.

IV. THE grounds of *property* among men are of a different nature. Compleat unlimited *property* is "the right of taking the full use of any goods, and of alienating them as we please." Some degree of ingenuity and strength for occupying certain things, is granted by nature to every one; mankind also naturally are prone to action. Our desire of self-preservation and our tender affections excite us to occupy or acquire things necessary or useful for ourselves and those we love: every man of spirit naturally delights in such exertion of his natural powers, and applauds himself in the acquisition of what may be matter of liberality and friendli-

ness. Our sense of right and wrong also shews, that it must be inhuman and ill-natured, for one who can otherways subsist by his own industry, to take by violence from another what he has acquired or improved by his innocent labours. 'Tis also obvious that the spontaneous fruits of the uncultivated earth are not sufficient to maintain the hundredth part of mankind; and that therefor it is by a general diligence and labour that they must be maintained. Whatever method therefor is necessary to encourage a general industry must also be necessary for the support of mankind; now without a property ensuing upon labour employed in occupying and cultivating things fitted for the support of life, neither our self-love, nor any of the tender affections, would excite men to industry; nay nor even the most extensive benevolence toward all; since the common interest of all requires that all should be obliged by their own necessities to some sort of industry. Now no man would employ his labours unless he were assured of having the fruits of them at his own disposal: otherways, all the more active and diligent would be a perpetual prey, and a set of slaves, to the slothful and worthless.

Without thus ensuring to each one the fruits of his own labours with full power to dispose of what's beyond his own consumption to such as are dearest to him, there can be no agreeable life, no universal diligence and industry: but by such ensurance labours become pleasant and honourable, friendships are cultivated, and an intercourse of kind offices among the good: nay even the lazy and slothful are forced by their own indigence, to bear their share of labour. Nor could we hope, in any plan of polity, to find such a constant

care and fidelity in magistrates, as would compell all impartially to bear their proper shares of labour, and make a distribution of the common acquisition in just proportion to the indigence or merits of the several citizens, without any partial regards to their favourites. And could even this be obtained in fact, yet the citizens could scarce have such confidence in their magistrates wisdom and fidelity, as would make their diligence and labour so agreeable to them, as when they are themselves to make the distribution of their profits, according to their own inclinations, among their friends or families.

## C H A P. VI.

*The METHODS of ACQUIRING PROPERTY.*

**P**ROPERTY is either *original* or *derived*. The original property arises from the first occupation of things formerly common. The derived is that which is transferred from the first Proprietors.

Whosoever either from a desire of preserving himself, or profiting any who are dear to him, first occupies any of the spontaneous fruits of the earth, or things ready for human use on which no culture was employed, either by first discovering them with intention immediately to seize them, or by any act or labour of his catching or enclosing them so that they are more easily attainable and secured for human use, is deemed justly the proprietor for these reasons; that if any other person, capable of subsisting otherways, would wrest from him what he had thus acquired, and defeat and disappoint his labours, he would plainly act inhumanly, break off all friendly society, and occasion perpetual contention. What this person pretends to now, he may attempt anew every hour: and any other person may do the same with equal right: and thus all a man's pains in acquiring any thing may be defeated, and he be excluded from all enjoyment of any thing unless he perpetually defend his acquisitions by violence.

'Tis trifling to imagine that property is any physical quality or bond between a man and certain goods, and thence to dispute that there's no such force or virtue in first espying, touching, striking, or inclosing any thing, as to constitute a sacred right of property; or

to debate which of all these actions has the greatest virtue or force. For in all our inquiries into the grounds or causes of property, this is the point in question, "what causes or circumstances shew, that it  
" is human and equitable toward individuals, and re-  
" quisite also to the maintainance of amicable society,  
" that a certain person should be allowed the full use  
" and disposal of certain goods; and all others ex-  
" cluded from it?" and when these are discovered, our road is cleared to find out the causes and rules about property.

II. THUS therefor we should judge about the different methods of occupation: that 'tis inhuman and unjust, without the most urgent necessity, to obstruct the innocent labours others have begun and persist in, or by any speedier attempt of ours to intercept their natural profits. If therefor any person in search for things requisite for himself, first discovers them with intention immediately to seize or pursue them; one who had employed no labour about them, nor was in search for them, would act unjustly and inhumanly, if by his greater swiftness he first seized them for himself. If severals at once were searching for such things, and at once discover them by sight, they will be common among them, even altho' one swifter than the rest first touched them; unless by civil laws or custom such points be otherways determined. If one first espies them, and another conscious of his design, but also in search for such things for himself, first seizes them, the things will be common to both, or in joint property: for there are no more potent reasons of humanity on one side than on the other. If one by his labour or ingenuity incloses or ensnares any wild ani-



mals, or so wearies them out in the chase that they can now easily be taken; 'tis a plain wrong for another to intercept them, tho' the former had neither seen nor touched them. If it is known to many that certain lands or goods ly common to be occupied by any one; and severals, not conscions of each others designs; at once are preparing to occupy them; and set about it: by the custom which has obtained, he that first arrives at them is the proprietor. But, abstracting from received customs and laws, such things should be common to all who without fraud or imprudent negligence employed their labours in occupying them, whether they came earlier or later; and should either be held in common, or divided among them in proportion to expence and pains prudently employed by each of them for this purpose. Nay tho' each of them were aware of the designs of the rest; 'tis right that each should proceed and acquire a joint title with others. Nor should those who without any fault of their own came too late, or such whose wise and vigorous attempts have been retarded by accidents, be precluded from their share.

In such disputable cases we should first inquire what reasons of humanity give the preference to any one above the rest; and this chiefly, "that the natural fruits of no man's honourable or innocent labours should be intercepted; or any honest industrious attempts defeated." If this plea belongs alike to all, the goods should be deemed in joint property of all. If some accidents or circumstances make the point very doubtful; and some sorts of goods can neither be held in common, nor divided or sold without great loss; we should follow some implicate conventions of

men, appearing by the laws or customs which prevail; and assign the property to him who has on his side such circumstances the regarding of which prevents many inextricable disputes and violent contentions. Hence it is that law and custom so generally favour the first seizer, the publick purchaser, and the person to whom goods have been publickly delivered. And this conduces to the common utility.

If different persons intending to occupy agree that the whole should fall to him who first occupies; they ought also to specify the manner of occupation; otherways different methods may be deemed equally valid, and constitute a joint property. These rules seem the most conducive to peace.

No doubt inextricable questions may arise about what the several parties insisting on their utmost rights may do, without being chargeable with injustice. But such as sincerely aim at acting the virtuous part, will always easily discern what equity and humanity require, unless they are too much influenced by selfishness. Nor have we reason to complain, that, in these and such like cases, nature has not precisely enough fixed the boundaries, to let us see how very near we may approach to fraud or injury, without actually incurring the charge of it; when we are so loudly exhorted to every thing honourable, liberal and beneficent.

III. BUT as man is naturally endued with provident forethought, we may not only justly occupy what's requisite for present use, but may justly store up for the future; unless others be in some extraordinary distress. There are also many things requiring a very long course of labour to cultivate them, which after they are cul-

tivated yield almost a perpetual and copious use to mankind. Now that men may be invited to such a long course of labour, 'tis absolutely requisite that a continual property be allowed them as the natural result and reward of such laborious cultivation. This is the case in clearing woody grounds for tillage or pasture; preparing vineyards, oliveyards, gardens, orchards; in rearing or breaking of beasts for labour.

Property is deemed to begin as soon as one begins the culture of what before was unoccupied; and it is completed when the cultivator has marked out such a portion as he both can and intends to cultivate, by himself or such as he can procure to assist him. As 'tis plainly unjust to obstruct any innocent labours intended, or to intercept their fruits.

But the abilities of the occupier with his assistants must set bounds to his right of occupation. One head of a family, by his first arriving with his domesticks upon a vast island capable of supporting a thousand families, must not pretend to property in the whole. He may acquire as much as there's any probability he can cultivate, but what is beyond this remains common. Nor can any state, on account of its fleets first arriving on a vast continent, capable of holding several empires, and which its colonies can never sufficiently occupy, claim to itself the dominion of the whole continent. This state may justly claim as much as it can reasonably hope to cultivate by its colonies in any reasonable time: and may no doubt extend its bounds beyond what it can cultivate the first ten or twelve years; but not beyond all probable hopes of its ever being able to cultivate. The just reasonable time to be allowed to the first occupiers, must be determined by

prudent arbiters, who must regard, not only the circumstances of this state, but of all others who may be concerned, according as they are more or less populous, and either need new seats for their colonies, or have already sufficient lands for their people. If many neighbouring states are too populous, they may justly occupy the uncultivated parts of such a new discovered continent, leaving sufficient room for the first occupiers; and that without the leave of the first discoverers. Nor can the first discoverers justly demand that these colonies sent by other states should be subjected to their empire. 'Tis enough if they agree to live amicably beside them as confederated states. Nay as in a free democracy, 'tis often just to prevent such immoderate acquisitions of wealth by a few, as may be dangerous to the publick, even tho' these acquisitions are a making without any private injuries: so neighbouring states may justly take early precautions, even by violence if necessary, against such acquisitions of any one, as may be dangerous to the liberty and independency of all around them; when sufficient security cannot be obtained in a gentler way. Nothing can be more opposite to the general good of mankind than that the rights, independency, and liberty of many neighbouring nations should be exposed to be trampled upon by the pride, luxury, ambition, or avarice of any nation.

'Tis plain however, that both individuals and societies should be allowed to acquire stores of certain goods far beyond all their own consumption; since these stores may serve as matter of commerce and barter to obtain goods of other kinds they may need.

IV. FROM these principles about property it ap-

pears, that such things as are inexhaustible by any use, are not matters of occupation or property, so that others could be excluded from them: for this further reason too, that such things can scarce be improved by any human labour. If indeed for the more safe use of any of them labour or expences are requisite; those who wisely employ labour or expence for this purpose, may justly require that all others who use them should in a just proportion contribute to make compensation. The *air*, the *light*, *running water*, and the *ocean* are thus common to all, and cannot be appropriated: the same is the case of *straits* or *gulphs*. And yet if any state is at the expence to build fortified harbours or to clear certain seas from Pyrates for the behoof of all traders, they may justly insist on such taxes upon all traders who share the benefit as may proportionally defray the said expences, as far as they really are for the benefit of all traders, but no further. Now no man should be excluded from any use of things thus destined for perpetual community, unless this use requires also some use of lands which are in property.

These reasonings also shew that all things were left by God to men in that community called *negative*, not *positive*. *Negative community* is "the state of things exposed to be appropriated by occupation." *Positive community* is "the state of things in the joint property of many:" which therefor no person can occupy or acquire without the consent of the joint proprietors. At first any one might justly have occupied what he wanted, without consulting the rest of mankind; nor need we have recourse to any old conventions of all men, to explain the introduction of property.

V. THE goods called by the Civilians *res nullius*, which, as they say, are not in property, and yet not exposed to occupation; \* such as temples, the fortifications of cities, and burial-places, are truly the property either of larger societies, or of families; altho' this property is often so restricted by superstitious laws, that it can be turned to no other use. 'Tis vain to imagine that any such things afford use to the Deity, or that his supreme right over all can be enlarged or diminished by any human deed.

The goods belonging to states† are not in the property or patrimony of any individuals, nor come into their commerce. But they are the property of the community, which may transfer them as it pleases. Such are publick theatres, high-ways, porticos, aqueducts, bagnios.

Things formerly occupied may return into the old state of community if the proprietor throw them away, or abandon his property; and this intention of abandoning may sometimes sufficiently appear by a long neglect of claiming it, when there's nothing to obstruct his recovery. A long possession in this case will give another a just title. Goods unwillingly lost fall also to the fair possessor, when the proprietor cannot be found. There are also other reasons why civil laws have introduced other sorts of *prescription* ‡ for the common utility, and to prevent inextricable controversies.

In the occupying of lands, a property is also constituted in such things as cannot be used without some use of the ground; such as lakes, and rivers as far as

\* Of these there are 3 classes, *sacrae, sanctae, religiosae*. Of which follow three examples in order.

† *Res publicae*, or *res populi*.

‡ *Usucapio*.

they flow within the lands in property ; nay such parts also of things otherwise fit for perpetual community, as cannot be left open to promiscuous use without endangering our property ; such as *bays* of the sea running far into our lands, and parts of the ocean contiguous to the coast, from whence our possessions might be annoyed. But by occupying lands we acquire no property in such wild creatures as can easily withdraw themselves beyond our bounds, and are no way inclosed or secured by our labour. And yet the proprietor may justly hinder others from trespassing upon his ground for fouling, hunting, or fishing.

All natural, accidental, or artificial improvements, or adventitious increase, are called accessions, such as fruits of trees, the young of cattle, growth of timber, and artificial forms. \* About which these general rules hold, 1. " All accessions of our goods which are not  
 " owing to any goods or labours of others, are also  
 " our property ; unless some other person has acquired  
 " some right which limits our property."

2. When without the fraud or fault of any of the parties, the goods or labours of different persons have concurred to make any *compound*, or have improved any goods, " these goods are in joint property of all  
 " those whose goods and labours have thus concurred ;  
 " and that in proportion to what each one has contributed." Such goods therefor are to be used by them in common, or by turns for times in the said proportion, or to be thus divided among them, if they will admit division without loss.

\* *Fructus, incrementa, alluviones, commixtiones, confusiones, specificationes.* The explication of all these may be found in any compend of civil law, or law dictionary.

3. But if they admit no such common or alternate use, or division, they to whom they are least necessary should quit their shares to the person who needs them most, for a reasonable compensation, to be estimated by a person of judgment and integrity.

4. When by the fraud or gross fault of another, his goods or labours are intermixed with my goods, so that they are less fitted for my purpose; the person by whose gross fault this has happened is bound to compensate my loss \* or make good to me the value of my goods, nay † all the profit I could have made had they been left to me entire as they were; and let him keep to himself the goods he has made unfit for my purpose. But if by the intermeddling of others my goods are made more convenient for me, my right remains; and I can be obliged to compensate to them no farther than the value of the improvement to my purposes, or as far as I am enriched.

Full property originally contains these several rights: first, that of retaining possession, 2. and next, that of taking all manner of use. 3. that also of excluding others from any use; 4. and lastly, that of transferring to others as the proprietor pleases, either in whole or in part, absolutely, or under any lawful condition, or upon any event or contingency, and of granting any particular lawful use to others. But property is frequently limited by civil laws, and frequently by the deeds of some former proprietors.

\* This *penfatio-damni*, which is often due when there was no fraud in the case.

† *Penfare quod interest*, which always includes the former, and often extends much further.



## C H A P. VII.

*Of DERIVED PROPERTY.*

**T**HE derived rights are either *real* or *personal*. The materials whence all real rights arise is our property. Personal rights are founded on our natural liberty, or right of acting as we choose, and of managing our own affairs. When any part of these original rights is transferred to another, then a personal right is constituted.

To apprehend this distinction, which has place in the law of nature, as well as in civil law, 'tis to be observed, that the common interest of all constantly requires an intercourse of offices, and the joint labours of many: and that when mankind grow numerous, all necessities and conveniencies will be much better supplied to all, when each one chooses an art to himself, by practice acquires dexterity in it, and thus provides himself great plenty of such goods as that art produces, to be exchanged in commerce for the goods produced in like manner by other artisans; than if each one by turns practised every necessary art, without ever acquiring dexterity in any of them.

'Tis plain too, that when men were multiplied considerably, all lands of easy culture must soon have been occupied, so that there would none remain in common; and that many could find none to occupy for their support, such persons therefor would have no other fund than their own bodily strength or inge-

nulty, that by their common or artificial labours they might procure necessities for themselves: the more opulent too, for their own ease, would more frequently need the labours of the indigent, and could not with any conscience expect them gratuitously. There must therefor be a continual course of contracts among men, both for the transferring of property or real rights; and the constituting claims to certain services, and to certain quantities or values, to be paid in consideration of these services; which are personal rights.

Now it would often happen that a proprietor without entirely transferring his property in lands or other goods, would yet consent so to subject them to certain claims of his creditor, that unless the debt be discharged at the time agreed, the creditor by the possession or sale of such lands or goods might secure himself: by a transaction of this kind a *real right* is constituted. Sometimes the creditor would have such confidence in the wealth and integrity of his debtor, that he would demand no such *real* security as a pledge or mortgage, but accept of a personal obligation, which had no more peculiar respect to any one piece of goods or property of the debtor than another. In like manner; from any damage done there would arise only a *personal right*. But further, when it was found absolutely necessary to maintain the faith of commerce, certain public and notour forms have been received, to make full translation of property: which must have always been deemed so valid and sacred, that no prior latent contracts with others could defeat them. Were not such *forms* thus agreed upon, no man would buy any thing; since he could have no security that it would

not be wrested from him by a third person upon some prior latent contract. A good man no doubt will sacredly regard all his contracts and obligations personal or real; and avoid what may defeat any right of another of any kind. But there's such a necessity of maintaining the faith of publick commerce, \* that all contracts entered into publicly and without fraud, in order to transfer real rights, must take place of latent contracts and personal rights, tho' prior in time.

II. DERIVED real rights are either certain parts of the right of property, subsisting separately from the rest; or compleat property transferred. The parts which often subsist separately are four, the *rights of possessing* what one obtains without force or fraud; the *rights of heirs in entail*; the rights of the *pledge* or *mortgage*; and *servitudes*.

He that possesses the goods of another without fraud or violence, either knows that they are the property of others; or upon probable ground believes them to be his own. And this latter is the *bonae fidei possessor*, or the presumptive proprietor.

Whosoever by fraud or violence possesses the goods he knows belong to others, has no manner of right. The proprietor, or any other honest man for the proprietor's behoof, has a right to demand and take them from him by force, to restore them to the proprietor. But when we get possession of any goods with-

\* Whatever may be determined by human laws or courts, there is no natural foundation in justice for preferring the pledge or mortgage as to any loans made after he knew the debts due to others, and suspected that they were in danger of losing them.

out fraud or violence, which we know belong to others, (as when one finds goods lost at land, or wrecks at sea), these we may detain till they are claimed by the proprietor, or some person commissioned by him; and if no such person ever appears, the goods fall to the possessor. But in such cases the possessor is bound to give publick notice that he has found such goods, and is ready to restore them to the owner: to conceal them would be equal to theft. But he may justly insist to have all his prudent charges in the keeping or advertising them refunded to him.

The obligations on the presumptive proprietor are, first to restore to the owner the goods, with all their unconsumed fruits, profits and increase.

2. If the goods or their increase be consumed, to refund to the value of what he is enriched by the use of them, in sparing so much of his own property; or as much as it can be deemed valuable to him to have so long lived with more elegance or pleasure, considering his circumstances. For 'tis a just maxim, that "no person should derive to himself any pleasure or advantage at the expence of another without his consent."

3. If both the goods and their increase have perished by accident, the presumptive proprietor who holds no profit by them is not obliged to make good the value: nor is he accountable for such profits as he neglected to take: for he used these goods believing them to be his own, even as he would have used his own. But one ceases to be deemed presumptive proprietor as soon as he has any probable intimation that the goods are not his own, by any plausible claim put in by another: and whatever is culpably lost, squan-

dered or grossly neglected thereafter he is bound to make good.

4. When the presumptive proprietor restores to the true owner any goods he bought or obtained for valuable consideration; he may justly insist to have the price or consideration restored to him by his *author*, or the person from whom he obtained them.

5. Where this person is bankrupt, or can't be found, the cause of the presumptive proprietor is as favourable as that of the true one. Nor does the true proprietor hold by any title more sacred than by purchase, succession, testament, or donation, which are the ordinary foundations of the true property, as well as of the presumptive. And since a certain loss must fall upon one or both parties, nor is there any reason of publick interest pleading for one more than the other; the loss should be equally divided between them, unless some reasons of humanity recommend a different decision; especially since it often happens, that the presumptive proprietor has done a most valuable service to the proprietor, in purchasing his goods, which otherways might have been lost to him for ever. If one pleads the general advantage of making purchasers look well to their titles, that they may not purchase goods injuriously obtained: 'tis on the other hand an equal publick advantage that the proprietors be made more vigilant about their goods, lest when they are lost or stolen through their negligence, fair purchasers may be involved in losses by their means.

6. Where the presumptive property has been obtained gratuitously, and the goods are claimed by the true owner, they must be restored. Nor has the per-

son who got them gratuitously in this case any recourse for their value.

III. CONCERNING the right of heirs in entail, these points seem clear; that one who has full property may transfer his goods to any person upon any contingency, or under any lawful conditions. The right therefore of persons in remainder is as sacred as any right founded in donation: nor is it less inhuman to hinder the proprietor to convey his property to a person dear to him, upon any contingency, than to hinder a friendly immediate donation, or conveyance to his first heir upon the event of his death. It is no less inhuman to defeat the hopes of the second or third in remainder, without any demerit of theirs, than to intercept other donations to friends. And yet there may be prudent reasons why civil laws should prevent making such perpetual entails as may be very inconvenient to the several successors in their turns, or pernicious to the community; even as courts of equity often make void prodigal and inconsiderate donations.

IV. For further security to creditors pledges and mortgages were introduced, or goods so subjected to the power of the creditor \* that, if the debt is not discharged at the time prefixed, the goods should become the property of the creditor. In this there would be no iniquity, if the creditor in such cases were also obliged to restore to the debtor whatever surplus of value there was, upon a just estimation of the goods, beyond the sum of the debt.

\* This clause is called *lex commissoria*, or the clause of entire forfeiture.

\* Where such real security is given, it takes place of all prior debts, which have not been publicly intimated before the mortgage. Nor can prior creditors justly complain: let them blame themselves that they insisted not on higher security, and thus are postponed to creditors who using more caution insisted on higher, and who had no notice of their prior claims.

V. THE last class of real rights are *servitudes*, that is "rights to some small use of the property of others;" which generally arise from contracts; or from this that in the transferring of property they have been reserved by the granter; or sometimes from civil laws. All *servitudes* are real rights, terminating upon some definite tenement. And yet with regard to the *subject* they belong to, and not the *object* they terminate upon, they are divided into *real* and *personal*. The *personal* are constituted in favour of some person, and expire along with him: the real are constituted for the advantage of some tenement, and belong to whatever person possesses it. † An instance of the former is tenantry for life impeachable for waste. The real *servitudes* are either upon *town-tenements*, or *farms* in the country. Instances of the

\* Here no mention is made of the difference between the *pignus*, and *hypotheca* as in the original. Our words *pledge* and *mortgage* don't fully express it. *Pignus* is like a mortgage with possession, and *hypotheca*, one without possession, whether of lands or moveables.

† The several *servitudes* mentioned in the original could not have been explained to an English reader without a very tedious and useless discussion, as the Roman *servitudes* differed much from ours. They are found in every compend of the civil law.

former are the rights of putting beams or rafters into a neighbouring gable or wall; a right that our windows shall not be obstructed by any building in the adjacent tenement; and such like. The rural servitudes, are chiefly that of roads for passage or carriages, or of little channels for rivulets, brought through a neighbouring farm.



## C H A P. VIII.

*The METHODS of TRANSFERRING PROPERTY,  
CONTRACTS, SUCCESSION, TESTAMENTS.*

**P**ROPERTY may be transferred, either by the *voluntary deed* of the former proprietor, or without any deed of his, by *appointment of law* either natural or civil: and in each of these ways it is transferred either *among the living*, or upon *the event of death*.

By the deed of the proprietor among the living, property is transferred either *gratuitously* in donations; or for *valuable consideration* in commerce, wherein a price, or goods of equal value, or rights, are transferred in consideration of it. This power of alienating, we formerly shewed, is included in the right of property. We treat of contracts and commerce hereafter.

II. By the deed of the proprietor upon the event of death property is transferred in *testaments* or *last-wills*. According to the law of nature “any declaration of a man’s will how his goods should be disposed of upon the event of his death,” is a valid testament; provided there be sufficient documents or proof made of this will. For that of which no proof can be made must be deemed as if it were not.

The nature of property itself, and the known intention of mankind in their acquiring goods beyond

their own use, that they may contribute to the happiness of such as are dearest to them, shew that the wills of the deceased which contain nothing iniquitous should be observed. 'Tis cruel and inhuman, and destructive to industry to hinder men to transfer as they incline what they have acquired by their innocent labours, and that upon any contingency. It would be disagreeable and often highly inconvenient to oblige men while they are living, and perhaps in good health, to make irrevocable conveyances of their property to their kinsmen: It would also be cruel to deprive the dying of this satisfaction that their acquisitions should be of advantage to their friends: it would be inhuman toward the surviving friends, the heirs or legatees, to frustrate or intercept the kindnesses intended them by the deceased. Without regard therefor to the metaphysical subtilities of such as object, that *'tis absurd men should then be deemed to will and act when they become incapable of will or action*, we conclude that the law of nature grants this power of disposing by will.

But as many obligations both of a perfect kind, and such as are pretty near of equal sanctity, must be discharged out of our goods, all just debts must be paid, our children, or indigent parents maintained: wills are therefor justly made void as far as they interfere with these obligations. Nay tho' there were no surviving parents or children, 'tis reasonable that other near indigent kinsmen, who have given no just cause for their being thus neglected, should be admitted to certain shares of the fortune of the deceased, even contrary to an inhuman capricious will. The law of nature too as well as civil laws invalidate

any thing in wills which may be detrimental to the community ; and enjoin that wills be made with such solemn forms and circumstances as may be necessary to prevent forgeries : and, where these forms are omitted without necessity, deems the will to be void.

III. PROPERTY is transferred *among the living*, even against the will of the proprietor, by appointment of law, for the performance of whatever the proprietor was strictly bound to perform, and yet declined. This branch will be more fully explained when we treat of contracts, and the rights arising from damage done either injuriously or without a crime, and the manner of prosecuting our just rights\*.

Upon *the event of death*, without any deed of the proprietor, property is transferred *by the law* in the *successions to the intestate*. The natural grounds of which are these : 'tis well known that the intention of almost all mens acquisitions beyond their own use, is to profit those whom they love. This universally known intention of mankind is a continual declaration of their will : now according to the general temper of mankind, our children and near kinsmen are dearest to us, and 'tis for them we universally endeavour to obtain not only the necessary supports, but even the pleasures and ornaments of life. Nay God and nature, by making these ties of blood bonds also of love and good-will, seems to have given our children and kinsmen if not a perfect claim or right, yet at least one very near to perfect, to obtain not only

\* Chap. xv. of this book.

to the necessary supports, but even the conveniencies of life from their wealthy parents or kinsmen, unless they have forfeited it by their vicious behaviour. 'Tis therefor cruel to deprive men of this general consolation upon the event of sudden death, against which no man can take certain precautions, that the fruits of their industry shall fall to their children or kinsmen. And 'tis plainly cruel and unjust to defeat these rights of children and kinsmen which God and nature have given them.

Nay where the custom has prevailed of admitting children and kinsmen to succeed; 'tis justly presumed that this was the very intention of the deceased. And this right of succession has the same foundation in justice with testaments.

Where there are no children or very near relations, like arguments of humanity would plead for friends, if it were known that any such had been singularly dear to the deceased. But where by custom or law the remotest kinsmen are preferred to friends; 'tis presumable that this was the intention of the person deceased, unless proof can be made of his hatred to his kinsmen. The causes of this law or custom prevailing every where, are these; that nature almost universally endears our kinsmen to us; that 'tis easy to compute the degrees of kindred, but impossible those of friendship; and that we so frequently see that men who seemed most to delight in the company of friends and not of kinsmen, yet when they declare their own will about their goods, they leave them almost always to kinsmen.

Kinsmen should succeed according to their proximity, those of equal degrees equally. First our chil-

dren, among whom grandchildren by a child deceased should be admitted, at least to the share their parents would have had: nay sometimes humanity would appoint them a greater share, where many such orphans are in straits. Along with children some share is due to indigent parents, at least as to the necessaries of life; nay brothers in distress should have some share. When there are no children or parents surviving, brothers and sisters, with the children of any such deceased, at least for their parents share, should be admitted: and when none such survive, cousin-germans by brothers or sisters, and their posterity.

IV. THE constitution and civil laws and customs of some states may require that a far larger share of the goods of persons deceased should go to sons or other heirs male, than what goes to daughters, or to females in the same degrees with the males, and to the eldest of males beyond what goes to the younger. And yet there can scarce be any reason for that vast difference made on these accounts in many nations. The law of nature scarce makes any difference among persons in equal degrees on account of sex or seniority: nor does it establish the lineal succession, where some one must always as it were sustain the person of the deceased and succeed to his real estate. This succession is wholly a \* human contrivance, and often absurd and iniquitous. In the first degree all other differences yield to that of the sex. But in the second and remoter degrees, both the preeminence of sex in the successors themselves and seniority, give place to the preeminence of sex and the seniority.

\* This lineal succession to private fortunes has manifestly been introduced by the Feudal laws of the *Lombards*.

rity of the deceased parent, so that an infant-grand-daughter or great grand-daughter by an eldest son deceased takes place of a grandson of mature years and wisdom by a second son, nay of the second son himself. And the like happens among nephews and nieces and their children, in succeeding to the fortunes of their uncles: and in the successions of cousins-germain or more remote.

## C H A P. IX.

*Of CONTRACTS in GENERAL.*

**S**INCE a perpetual commerce and mutual aids are absolutely necessary for the subsistence of mankind, not to speak of the conveniencies of life, God has indued men not only with reason but the powers of speech; by which we can make known to others our sentiments, desires, affections, designs, and purposes. For the right use of this faculty we have also a sublime sense implanted, naturally strengthened by our keen desires of knowledge, by which we naturally approve veracity, sincerity, and fidelity; and hate falshood, dissimulation, and deceit. Veracity and faith in our engagements, beside their own immediate beauty thus approved, recommend themselves to the approbation and choice of every wise and honest man by their manifest necessity for the common interest and safety; as lies and falshood are also manifestly destructive in society.

In an intercourse of services, in commerce, and in joint labour, our sentiments, inclinations and designs must be mutually made known: and “when we affirm  
 “to others that we will pay or perform any thing,  
 “with that professed view, that another shall pay or  
 “perform something on his part,” then we are said to promise or contract. A covenant or contract is the  
 “consent of two or more to certain terms, with a view  
 “to constitute or abolish some obligation.” Nor does

the law of nature distinguish between \* *contracts* and *pactions*.

Contracts are of absolute necessity in life, and so is the maintaining of faith in them. The most wealthy must need the goods and labours of the poor, nor ought they to expect them gratuitously. There must be conferences and bargains about them, that the parties may agree about their mutual performances. Suppose all men as just and good as one could desire, nay ready for all kind offices: yet without contracts no man can depend upon the assistance of others. For when I need the aid of a neighbour, he may be engaged in some more important services to a third person, or in some services to those who can give him a recompense more requisite in his affairs.

The sacred obligation of faith in contracts appears, not only from our immediate sense of its beauty, and of the deformity of the contrary, but from the mischiefs which must ensue upon violating it. 'Tis plainly more contrary to the social nature, and frequently a baser injury, to break our faith, than in other equal circumstances to have omitted or declined a duty we owe another way. By violating our faith we may quite defeat the designs of such as trusted to our integrity, and might have otherwise obtained the aid they wanted: and, from the necessity of commerce, it must appear, that the rights founded on contracts are of the *perfect* sort, to be pursued even by force. The perfidious for his part breaks off all social commerce among men,

\* The difference between *contractus* and *pañum* is found in any Civil-law-dictionary.



II. AND further ; tho' a good man would not take any advantage of another's weakness or ignorance in his dealings, nay would frequently free another from a bargain which proved highly inconvenient to him, and not very necessary to himself, provided any loss he sustained were made good ; yet there's such a manifest necessity of maintaining faith in commerce, and of excluding the cavils which might be made from some smaller inconveniences to one or other of the parties, that in the proper matters of commerce, the administration of which the law of nature commits to human prudence, our covenants tho' rashly made must be valid, and constitute at least such external rights to others, as must for the common utility be maintained, tho' perhaps a good man would not insist on them. But if the person who claims them persists in his claim to the utmost, we can have no right to oppose him violently ; but ought to observe our covenants ; according to an old rule, that " what ought not to have " been done, yet in many cases when done is obligat-  
" tory."

The proper *matters of commerce* are our labours and goods, or in general, all such things as must be frequently interchanged among men for the interest of society ; and by a commerce in which we neither directly violate that pious reverence due to God, nor the perfect right of another ; and about which no special law of God deprives us of the right of transacting.

III. WE must distinguish from contracts *the bare declarations of our future intentions* ; which neither transfer any right to others nor bind us to continue in the same purpose. What come nearer to contracts are these *imperfect promises*, in which from custom 'tis un-

derstood, that we convey no right to others to oblige us to performance, but only bind ourselves in honour and veracity; and that too only upon condition, that the person to whom we make such promises so behave as to be worthy of the favour designed him, and don't by his bad conduct give us just cause of altering our intentions: and in this point the promiser reserves to himself the right of judging; nor does he bring himself under an higher perfect obligation, than that of compensating any loss the other may sustain, even tho' he should without cause alter his purpose.

IV. THE circumstances to be considered in explaining the nature of contracts and the just exceptions against their obligation, relate either to the *understanding*, or the *will*, the two internal principles of action, or the *matter* about which they are made.

As to the *understanding*; the common interest, as well as humanity, requires, that no person should sustain any damage on account of any ignorance in his own affairs which is no way faulty. And hence the contracts of minors unacquainted with the nature of the business, are not obligatory; nor of those seized with madness or dotage, nor of ideots, nor even of men quite disordered by drunkenness so as to have lost the use of their reason. And altho' there may be a great crime in drunkenness which may justly be punished; yet this is no reason why the fraudulent and covetous should be allowed to make a prey of them. The case is very different as to crimes or injuries done by men intoxicated. For tho' we are not bound with respect to others to preserve ourselves always in a condition fit for transacting of business, yet we are bound to preserve ourselves innocent continually, and to avoid doing injuries. 11

one of the parties was not aware that the other was intoxicated; this later will be bound to make good any loss the other sustained by his nonperformance of the contract. But there are many degrees of intoxication, some of which tho' they may abate our caution and prudence, yet don't deprive us of the necessary use of reason. If all these degrees also made contracts void, there could be no sure transactions among men. Questions concerning these degrees, must be decided in the several cases by the judgment of prudent arbitrators.

The same might be said concerning the imprudence of youth, previous to civil laws: since the degree of prudence requisite for commerce appears in different persons at very different ages. That therefor commerce may be ascertained, and such endless evasions prevented, 'tis absolutely necessary that in every society some certain age be agreed upon, to which whosoever attains must be deemed his own master, and capable of managing his own business. This age must be determined with this view, that as few as possible of ripe judgment be excluded from the administration of their own affairs, and yet as few as possible admitted before the maturity of judgment. The medium fixed by the Roman law is as good as any; that minors before fourteen years of age in males, and twelve in females, should have no management of their affairs, but be under the natural guardianship of their parents; or, if they are dead, under that of the guardians their parents or the law has appointed: and after these years, till twenty-one, or as it was in their earlier times, till twenty-five, they should be so subjected to curators, that no deed of theirs intended to bind themselves or

their fortunes, should be deemed valid without the consent of their curators.

'Tis on one hand unjust that minors should sustain losses in contracts ; but 'tis on the other hand unjust that they should be enriched at the expence of others. If therefor any contract has been made with them, and something paid or performed by the other party, if it is not detrimental to them to confirm the contract, they ought to do it when they come to maturity : if it be found detrimental, they should restore or compensate what was received on that account, or as far as they were profited. Minors before the legal years often have sufficient judgment in certain matters ; and when it is so, nor was there any thing fraudulent or faulty on the other side, they are bound before God and their own consciences by their contracts, even as the adult.

When parents or curators are at hand, one can scarce without a gross fault enter into any important contracts with a minor without their consent. As generally the passions of the young are impetuous and incautious ; they are rash in promising, keen in their desires, improvident, liberal, full of hopes and void of all suspicion.

V. He who was engaged into a contract by any mistake or error about the very nature of the object or goods, or these qualities which are chiefly regarded in them, is not bound : and whatever he has paid on that account should be restored. But no man has this plea who was engaged only by a secret expectation of such qualities as he did not openly insist on, or of such as are not commonly expected in such goods. If the mistake was about some different matter or event, which moved him to the bargain ; when the mistake is

discovered, humanity may require it of the other party to set him free, especially if he is ready to compensate any damage occasioned by his mistake. But this is not a matter of perfect obligation, unless the person in the mistake made it an express condition of the bargain.

The nature of the goods, and the qualities upon which their value depends, and the defects of such qualities, are, as they speak, *essential points* in contracts. Where one of the parties has been in a mistake about them he is not bound. Where the mistake has been only about the current price; the person deceived and sustaining the loss has a perfect right to have the price reduced to equality; which if the other party refuses the bargain may be made void.

Whoever by any fault or rashness of his caused the mistake of the other party, or fell into a mistake himself, is bound to compensate any loss the other thereby sustains: but he that dealt fraudulently, is bound further to make good any profit the other could have made, had the bargain been executed with integrity\*. Any promises or contracts obtained from us by the fraud of the person with whom we contracted, are plainly void; because through his fraud we wanted the due knowledge requisite in contracting, and he is bound to compensate our damage occasioned by his fraud, which is easiest done by making the bargain void.

\* The Civilians thus distinguish between *pensare damnum*, and *præstare quod interest*: obliging those who wrong others through negligence or inadvertence to the former only, but in case of fraud or more gross negligence obliging always to the latter.

Where the fraud of a third person has moved us to a contract without any collusion with the other party; the bargain is valid. But we have a right of demanding compensation of any loss from that third person who deceived us.

VI. WE always deem that all such voluntarily consent who voluntarily use such signs of consenting as by custom import it. Nor could there be any faith maintained, if we allowed exceptions from a secret dissent contrary to our expressions.

Words and writing are the fittest methods of declaring consent: but any other sign agreed upon by the parties, or received by common custom is sufficient. Nay some actions in certain circumstances are justly deemed to declare consent, when they are such as no man of common sense or equity would do, unless he also consented to certain terms. From such actions therefor we justly conclude a person's consent, unless he timously premonish all concerned of the contrary. Covenants or contracts founded on consent thus declared are called *tacit*: which are distinguished from another set of obligations, to be presently explained, said to arise \* *after the manner of contracts*, by this, that in tacit contracts the obligation is prevented by an express declaration to the contrary; but not in the others.

Beside the principal expressed articles in contracts there are frequently others plainly understood as adjuncted from the very nature of the transaction, or from the prevailing custom among all who are engaged in such business.

The consent of both parties, of the receiver as well as the giver, is necessary in all translation either of property or any other rights, whether gratuitous or not. For from one's intention of bestowing any thing on a friend, we cannot conclude any design of throwing it away in case he don't accept, or of forcing it upon him. But a lower sort of evidence will serve to prove a consent to accept any thing valuable; and we may always presume upon it, if the thing was previously requested; provided the offer answer the request.

But as in full property there's included a right of disposing under any lawful conditions, or upon any contingency; and of giving in trust to a friend, till some future event happens: inheritances and legacies may thus be left with trustees, till it be found whether the heirs designed, or the legatees are willing to accept. Nay goods may thus be kept in favours of persons not yet existing; as it is unjust to hinder the proprietor to appoint his goods thus to be reserved for the offspring of his friends if they shall happen to have any: and 'tis injurious toward such offspring to have defeated or intercepted any benefits destined for them by their deceased parents, kinsmen, or friends. And yet no heir or legatee can be forced to be proprietor of any thing thus left to him without his own consent. Mankind however, and each one as he has opportunity, when no special trustee is appointed, ought to take this care of infants, or persons unborn, to preserve such inheritances or legacies for their behoof, till they can accept them.

VII. As the obligation of contracts plainly depends on the consent of the parties, and without it is void;

so when it was only given under certain conditions, if they don't exist, there's no obligation. But such conditions must be known as such on both sides, otherways there could be no faith in our transactions. These conditions therefor alone are of such force as that their non-existence makes the transaction void, which were either expressly made conditions by one or other of the parties, or which the person who insists on them did in conscience believe the other party understood as adjected from the nature of the affair; and not every one which one of the parties might secretly expect would exist, tho' the like is not ordinarily expected in such transactions. Whatever indeed one party has undertaken for to the other, or positively affirmed to him to engage him to the bargain, *that* the other party may justly be deemed to have made a condition of his consenting.

In the known division of contracts into *absolute* and *conditional*, by a condition is understood "some event  
" yet uncertain to one or both the parties, distinct  
" from the prestations covenanted, upon the existence  
" of which the validity of the contract depends." A condition known to be naturally impossible, shews that there's no engagement. We shall presently speak of another sort of impossibility from the prohibition of law, or moral turpitude. But a vitious action of any third person, to be done without any aid of the parties contracting, may be a just condition; provided nothing in the contract give any invitation to such actions.

Conditions in the power of either party are called *voluntary*; others are *involuntary*; and some are of a mixed nature. But neither side is understood to be ob-



liged to make these conditions called voluntary or mixed to exist, \* for then they would be absolute covenants of the bargain.

VIII. THE due freedom of consent may be taken away by fear. But of this there are two sorts, one denoting a suspicion that when one party has fulfilled his part of the bargain, the other party won't fulfil his : the other denotes a terror occasioned by some great evil threatened. As to the former sort these observations seem just : 1. He that voluntarily contracts with openly unjust and impious men, whose characters he previously knew, is plainly obliged by his contract, as he must have tacitly renounced any exception from their character, which was previously known. But 2dly. If he only comes to the knowledge of their characters after the contract, 'tis not indeed void ; but he may justly delay performing on his part, till they give such security for the performance of theirs as a wise arbiter judges sufficient. To maintain that all contracts entered into with the unjust, or heretical or impious, are void, would destroy all faith among men ; since there are no such obvious characteristicks to distinguish the good from the bad as all will agree in : and considering the weakneses of mankind, they have always had the most opposite opinions about the moral and religious characters of men around them ; as in all ages there have been the greatest diversities and contrarieties of opinions.

\* A voluntary condition is of this sort : " If I shall retire to live in the country, I agree to set my city-house at such a rent." By this I don't bind myself to live in the country. " I promise, if I incline to sell certain lands, that such a man shall have them at a certain price."

As to the second sort of fear; when I have been forced into a contract by fear of evil threatened; there are two cases, according as the evil is unjustly threatened either by him I contract with, or by a third person without any collusion with the person I contract with. In the later case when by contract I obtain the aid of an innocent man against dangers threatened by another, no doubt I am bound; unless there be something very exorbitant in the terms. For the giving aid in such perils is no doubt a most useful service well deserving compensation.

If indeed I am threatened unjustly with some great evil by any man unless I enter into a certain bargain, or make a promise, to a third person, who is in no collusion with him who threatens me, while yet I am forced to conceal from him the terror I am under; the bargain or promise is void, because by this terror I am deprived of that liberty which is necessary in commerce. But any damage this innocent person sustains by the disappointment, I am bound to make it good, as it was occasioned by me for my own safety. The same holds, when through my cowardice I have been excessively afraid without cause.

Any contracts entered into from fear of a just magistrate, or the sentence of a judge, are plainly valid, since we are deemed subjected to such civil power.

IX. BUT when I am forced to contract through fear of evils unjustly threatened by the very party I contract with, we must distinguish whether these evils are threatened under some such plausible shew of right as might possibly impose upon an honest man, or on the other hand, by openly avowed injustice, without any such shadow of right. In the former case, tho' the au-

thor of such violence acquires no right by it, which he can use with a good conscience; yet on account of some more distant interests of mankind, he may have a sort of *external right*, with which the other party may be bound to comply. Nothing is more incident to mankind than to mistake about their rights; and hence arise wars too frequently, while yet neither side is sensible of the injustice of their cause. These wars must either be composed by treaties and contracts, or must end with the ruin of one side. Now 'tis highly eligible that they should be ended rather by some treaty: and treaties could be of no use if they still lay open to this exception of unjust force, which either side might plead whensoever they inclined to renew the old controversy. This exception therefore must not be allowed against treaties of peace, when there were any plausible pretences on both sides for the preceeding war. If indeed the terms of peace are manifestly iniquitous and oppressive, contrary to all humanity, making life quite miserable and slavish to the less fortunate side; such treaties have no plausible shews of justice, and ly open to the exception\*.

But where violence is used or threatened, without any pretence of right, to extort promises or contracts, they cannot be obligatory. By such violence the author of it plainly abdicates or forfeits all the rights of men; all the benefits to be claimed from the law of nature, or the humanity of his fellows; as he openly professes himself a common enemy to all, free from any social tye. The common safety therefor requires that such monsters should be cut off by any means. Sup-

\* See Book II, Ch. xv. 8. and Book III, Ch. vii. 8. 9.

pose that such extorted promises were valid, yet whatever upon such a promise is due to the author of the violence, he is always indebted at least as much to the person thus compelled, upon account of damage done him unjustly: these two claims therefor extinguish each other by *compensation*. Nor can one here allege that by the act of promising under this terror the promiser tacitly renounces this exception of unjust force previously known; for this forced renunciation alleged is one part of the damage: and what pretence is there of alleging an obligation by tacit compact, to one who in such a cause is incapable of acquiring a right by the most express contract, and who in this very affair abdicates or forfeits all human rights?

But, however that no regard is to be had to such persons in thus trampling upon all the rights of mankind, yet when they sufficiently appear to be returning to a soberer mind, asking pardon of what's past, offering to quit their fastnesses, to deliver their arms, and to give security for their future conduct; and when such confederacies cannot be otherways destroyed without shedding much innocent blood of our citizens; the common interest may sometimes require to enter into such treaties with them, and to observe them faithfully: and as to any of our citizens who by this means are excluded from prosecuting them for reparation of damages, they ought to obtain it from the community.

X. CONTRACTS or promises cannot be of force unless the matter of them be *possible* to the parties: and therefore no man can be obliged to \* what he cannot

\* Book II. Ch. iii. 2.

accomplish tho' he seriously desired it. If one has promised any thing, which by some subsequent accident without his fault becomes impossible, he is only obliged to restore or compensate the value of any thing he received in consideration of it. Where the fraud or other gross fault of one party either made the matter impossible, or concealed the impossibility, he is obliged to make good \* the profit which would otherways have arisen to the other.

The matter of contracts must also be lawful: that is, our contracts or promises should be only about the natural matters of commerce, which can be alienated, the administration of which is committed to human prudence, and not prohibited by any special law. No obligation therefor can arise from any promise, to violate directly the reverence due to God, or the perfect rights of others, or to do what any special law prohibits, or what is not committed to our power.

1. If therefor both parties know the unlawfulness of the terms of any contract, or ought to have known it; the contract is void. The one who employed another to commit a crime, may redemand what he gave to the person hired, before he has committed the crime. And if the crime be previously committed, the executor ought not to have the hire; nor if he previously received it, can the person who hired him redemand it. Both equally deserve the highest punishments; nor should either hold any advantage by such engagements.

If after the contract the iniquity of it appears to either side, which they had not formerly considered; be-

\* *Praestare quod interest.*

fore execution either of them may free himself from it : and any reward given should be restored. Nor after execution can the person employed claim his reward, unless the moral turpitude affect only the hirer and not himself ; or unless his ignorance was no way culpable. But where the turpitude only affects the person who employed him, then he may justly claim his hire. 'Tis the general interest of mankind that there should be no allurements to such crimes, nor dependence upon such contracts.

But if the vice in any performance of covenant only consist in this, that a man has managed imprudently and contrary to the duty of a discreet cautious man, in these matters which naturally fall under commerce ; 'tis of such importance to maintain the faith of commerce, that in this case, too “ our transactions and “ covenants are obligatory, tho' we were faulty in entering into them.”

Covenants about the goods or actions of others which are not subjected to our power, are in the same case with those about impossibilities. Whoever has acted fraudulently in such covenants is liable to make good all the profit which would have accrued from the faithful performance of them : and he who has deceived others by any culpable negligence is obliged to compensate the damages.

XI. EVERY sort of contracts about one's goods or labours does not immediately divest him of all moral power of transacting about them in a different manner with others. This is the case only in such as convey the intire property at once, or a real right ; or such as give another the whole right to one's labours for a certain time, or during life, so as to preclude his con-

tracting with others about the same. But when one has only made a contract constituting a *personal right* against himself, he may thereafter convey a valid *real right*, to such as knew nothing about the former contract, which will take place of the personal right tho' prior. Where indeed this new grantee has acted fraudulently, being apprized of the former contract; the subsequent one should be void. For the law of nature can never confirm frauds, or any \* contracts plainly contrived and designed to elude any obligations of humanity, when this design must be known to both parties in the contract. But in other cases, "of two covenants entered into with the same person, the later derogates from the former." But of contracts entered into about the same thing with different persons, "such as convey a real right take place of those which only convey a personal;" provided there has been no fraud on his part to whom the real right is transferred. And lastly in contracts of the same nature entered into with different persons, "the prior takes place of the posterior."

XII. WE may contract by *factors* or *agents*, or persons commissioned for that purpose, as well as in our own persons. Where full powers are given, and no special instructions to be shewn to all he deals with, expressing the extent of our agent's commission, and how far we subject our rights to his transactions; we are deemed to be obliged to ratify what he does in our name, unless we can make proof that he acted fraudulently, or was bribed by the other party; or the manifest iniquity of his deeds satisfy a prudent arbiter that

\* Matth. xv. 5. Mark vii. 11.

he must have been corrupted. As to any smaller injuries we sustain, we must impute them to our agent, while we ratify what he has done with others.

But when the powers of the agent are specially declared to all concerned, what he transacts beyond these bounds does not oblige his constituent.



## C H A P. X.

## OUR OBLIGATIONS IN SPEECH.

OUR duties in the use of speech have a near affinity to those in contracts. Mankind enjoy this preeminence above other animals, that they have the powers of reason and speech, by which chiefly a social life, commerce, and an intercourse of kind offices are maintained. 'Tis in general plain that we are bound to use these excellent gifts of God in such manner as is most conducive to the general good, and suitable to our several obligations in life.

In this important matter we have very manifest indications of what God requires of us, in the very structure of our nature: an immediate sense seems to recommend that use of speech which the common interest requires. In our tender years we are naturally prone to discover candidly all we know. We have a natural aversion to all falshood and dissimulation, until we experience some inconveniency from this openness of heart, which we at first approve. Reflection, a regard to the common good, and a prudent care of our own safety, will often persuade us to conceal or be silent about certain things; and to restrain the first impulse of our mind. But when we resolve to speak to others, then both the immediate sense of our hearts, and a rational regard to the common interest, will recommend and enjoin upon us the steady rule or purpose, of speaking nothing contrary to the sentiments

of our heart, or which will deceive others. These are our natural sentiments whether we are judging of our own conduct or that of others.

For as a great share of the most useful knowledge in the affairs of life, as well as that of a more speculative kind, is acquired from the conversation of others who are under no special obligations of communicating to us their sentiments; this advantage of a social life, not to mention the pleasures of conversation with mutual confidence, must be entirely lost, unless men maintain truth and fidelity in all their discourse with each other.

What we say of speech holds also concerning other signs used for the same purpose of communicating our sentiments, viz. common writing, or hieroglyphicks.

II. WE must also observe here that there's a twofold use of signs, whether natural, or artificial and instituted: \* one in which the person who causes the appearance is never imagined to make any profession, or to have any intention of communicating his sentiments to others. The spectator according to his own sagacity concludes from the appearances some fact or other, without imagining that the person who occasioned these appearances did it with a view to give him any information. The other use of signs is of such a nature that it plainly contains this profession, or gives the observer just ground to conclude that such signs were made designedly to intimate something to him.

In the former way of making signs, there's no pe-

\* See *Grotius de Jure belli, &c.* L. III. 1. 2.

culiar obligation: we are only under that obligation common to all parts of life, to do no hurt to our neighbour without a just cause. But when there is just cause, as in the case of a just war, we may without blame use such arts of deceiving, which are called *stratagems*. Nay provided we do no hurt to any innocent person, there's no crime in deceiving \* by such sort of signs our very best friends.

But we are under very different obligations as to the other use of signs. For without presupposing any old covenant or formal express agreement, the very use of signs in certain circumstances may plainly contain the nature of a *tacit convention*, and he who exhibits them is justly understood to covenant with the other to communicate his sentiments, according to that interpretation of these signs which is either natural or customary, unless there be some special reason † in the case, known on both sides, why we should depart from the ordinary interpretation. For did we not universally understand such an agreement as to speech, it would be a ridiculous action either to address speech to another or to listen to it. And the same holds as to ‡ other signs natural or instituted, used in this manner.

\* Thus an army intending to decamp in the night, yet keep all their fires burning in the old places, to conceal their motions. A studious man to avoid interruption, keeps his doors shut, and his street-windows darkened, whence we conclude that he is abroad.

† A cypher agreed upon, for instance.

‡ Thus sending wings or spurs to a friend at court, intimates to him that we imagine he is in danger, and contains this profession.

These therefor are the laws of speech and writing.

I. "Where others have a right to know the whole sentiments of the speaker, he is obliged not only to speak truth but to reveal the whole truth." This holds as to witnesses in courts of justice, and such as have engaged to communicate the whole mysteries of any art.

The second law is. "Tho' others may have no peculiar right to know our sentiments, yet when we speak to them, we should say nothing but what agrees with our sentiments according to the common interpretation which obtains among men of understanding." One is therefor guilty of falshood or lying who speaks what is thus contrary to his sentiments, altho' by some unusual way of interpreting the words, or by some mental reservation, it might agree with them. If such arts were allowed, a gate would be opened to all deceit and fraud.

III. THAT our duty in this point may the better appear, we must observe, 1. that all signs, especially words should be used in the customary manner, without regard to antient obsolete meanings or etymologies. Expressions of civility and courtesy, or titles of honour, deceive no body. They are known not to signify what the same words do on other occasions.

2. If 'tis known to all concerned that in some affairs certain persons are allowed to deceive; nor does the person deceived, when he comes to discover it, complain of it as an injury; what artifice or false-speaking is used in these affairs is not deemed criminal. This is the case in many diversions; and sometimes in serious business, when we commit ourselves

entirely to the conduct of others, in whose wisdom and fidelity we confide ; as patients do to physicians, and soldiers to their commanders in chief.

3. Nay if the custom has prevailed in war, that enemies deceive each other by false narrations when they can, nor do the deceived complain of it as a violation of the laws of civilized nations : one may judge that by a new tacit convention enemies have remitted to each other that right otherways founded in the general convention contained in the addressing of speech to others. But a candid mind would not without the most urgent causes use such methods, since they have a strong appearance of moral turpitude.

4. But the deceiving of enemies by any pretence of a treaty or covenant, never was nor can be allowed. As it is by treaties alone that we can maintain the more humane methods of carrying on war, and prevent the most savage cruelties ; or restore peace again without the destruction of one side, or reducing them to miserable slavery.

5. But this obligation about speech, as all others founded in tacit conventions may be prevented or taken away, by a \* timely premonition of all concerned.

6. Beside the above-mentioned exception of unjust force in matters of contracts, some plead for another exception from some grievous and extraordinary necessities ; when without false-speaking we cannot preserve the innocent, or the most worthy perhaps of mankind, or even a whole nation, from ruin. Whatever

\* See the preceeding Chap. § 6.

force there is in this exception, 'tis plain it is not peculiar to this subject; since it seems, as we shall \* hereafter shew, that this exception takes place in most of the other special laws of nature.

7. Where men with malicious intentions, and without having any right to demand it, are endeavouring to discover a person's sentiments by captious and insidious questions; when even his silence would discover all they want to his ruin: if there occur to him such answers as to good unprejudiced men would bear a true signification according to his sentiments, while yet they will appear to these insidious enemies to signify something very different; † he may use such evasive answers, tho' he foresees that his unjust enemies will be deceived by them.

8. Since maintaining veracity in all our conversation is of such importance in society, 'tis plainly unlawful to use false-speaking from any of those smaller motives which frequently occur in life; such as, to pacify men in a passion of anger, or to comfort the sorrowful; or in general to obtain any advantages or avert any evils which are not of the very highest kinds. For we may by other means consistent with all candour and sincerity generally obtain these ends more effectually, and either prevent these evils, or assist men to bear them with fortitude. And however such false-speaking may at first have some effect, before it becomes known that we make no conscience of speaking truth

\* Ch. xvi. of this Book.

† Of this there are instances in very great characters; as also of many expressions which the speaker abundantly knew that the hearers would understand in a very false sense.

in such cases; yet, when this is once known, and when men generally take this liberty, they lose all credit in such cases with others, and mutual confidence is destroyed. So much concerning veracity.

IV. BUT there are other sacred duties in the use of speech; and this in the first place, that we study to make our speech profitable to others, in recommending and cherishing sincere virtue, in correcting the vain imaginations of men about the true happiness of life; in teaching, admonishing, exhorting, comforting, and sometimes reproving sharply, and all these shewing an hearty intention of doing good. These too are among the most honourable offices, to reconcile friends who have been at variance, to prevent animosities, or to compose them. Nor is there any thing a good man will more conscientiously avoid than hurting the characters of others. Nay he will not only avoid the spreading of false calumnies, but will conceal the secret faults of others, unless he be forced to divulge them to prevent the seducing the innocent, or to avert some publick evil. For men who have lost their characters and are publicly infamous, are on this account far harder to be reclaimed to virtue; and the more that vice appears to abound in the world, the vicious grow the more impudent.

Criticks have observed that many words, beside their primary meaning, have also an additional signification of the dispositions of the speaker: and hence there are often three sorts of names for the same things, or actions. One of a middle nature, barely denoting its object; another denoting the speaker's delight in it, or his keen passion for it; the third denoting his aversion and hatred of it. And from this

we see how to answer the reasonings of the old Cynicks, against supposing any crime in obscenity of language; that tho' it be true, there's no work of God, or natural action, which may not be a proper subject of inquiry and speech to a good man, on some occasions, yet we may evidence great depravation and turpitude of mind in speaking about the dissolute actions of others: to wit, by using such words as betray a like dissolute temper in ourselves, and a delight in such vices, and kindle like vitious passions in the minds of the hearers. And in this consists obscenity, which is hateful and detestable in conversation.



## C H A P. XI.

*Of OATHS and VOWS.*

**O**ATHS are deemed a natural confirmation of promises or testimonies, in the more important affairs: an *oath* is “a religious act in which for confirmation of something doubtful, we invoke God as witness and avenger, if we swerve from truth.” A truly good man indeed will so strictly regard veracity, that such as know him well need not require his oath. But when the interests of those are at stake who know not his character, they may justly demand his oath, in confirmation either of his testimony or his promise. Since the using of oaths in such cases contains no impiety toward God; but is rather an expression of pious reverence; as we acknowledge in swearing his universal knowledge, and government, and justice.

And since this persuasion has obtained, in all nations and ages, that God exercises a just government over the world, inflicting punishments on the wicked; this invocation of God as witness and avenger must raise in mens minds an higher sense of their obligations, and deter them from falshood. But we must not imagine that our invocations make God more attentive in observing, or more keen in punishing of perfidy; or that by our voluntary consent, we give him any new right of punishing he had not before. Our own guilt indeed is made much greater when, after the confirmation of an oath, we either violate our promises, or falsify in our testimony.

To swear about trifling matters, or without any cause, is very impious; as it plainly tends to abate that awful reverence which all good men should constantly maintain toward God; and is a plain indication of contempt. Where perjuries in serious matters grow frequent in any state, the magistrates or legislators are generally chargeable with much of the guilt, if they either frequently exact oaths without necessity in smaller matters, or when the oaths give no security in the point in view\*; when the engagement designed may either be impracticable, or appear to the persons concerned to be unlawful; or if oaths are required† where there are great temptations to perjury, with hopes of impunity from men. They also do bad service to religion who don't appoint an awful solemn form of words, fit to strike the minds of men with reverence in such an action.

II. 'Tis no doubt vain to exact from others, or to swear by any being whom the swearer judges not invested with divine power, so as to invoke that being as witness and avenger. And yet there are some forms of oaths truly valid and not unlawful, tho' not the most convenient, where without expressing the name of God, the swearer either names something very dear or necessary to himself ‡ upon which he is understood

\* Thus engagements by oath to adhere to certain schemes of religion, which may afterwards appear false; or to a government which may appear an unjust usurpation.

† Thus *purgatory oaths* as to capital crimes, or very secret matters of scandal, or injustice, or about a man's secret opinions, generally have no good effect.

‡ So we understand swearing by one's *head, his life, his soul, his children, his prince or patron, the earth, the light, the sun.*

to imprecate the divine vengeance, or that he may be deprived of it if he should act perfidiously ; or truly invokes God under some \* metonymical expression.

Tho' it be idle to exact an oath from any one by any being whom he conceives not as endued with divine power, nor exercising any providence ; yet there are certain general descriptions of the Deity in which men of the most opposite religions agree : such therefor ought to be used, when persons of different religious sentiments are required to swear.

As in covenants, so in oaths, he is justly deemed to have sworn, and to be liable to the penalties of perjury should he falsify, who professing an intention of swearing makes such signs as ordinarily signify to others that one swears.

Altho' an oath and a promise, or an assertion, may often be expressed by one and the same grammatical sentence ; yet the act of swearing is plainly a distinct one from that of promising or asserting ; as it consists in the invocation of God to avenge if we violate our faith. This shews therefor that mens duties are not altered as to their matter by an oath ; nor any new matter of obligation produced ; nor any covenant or promise otherways void confirmed ; nor just exceptions excluded ; nor conditional contracts made absolute ; nor any obligation imposed to act contrary to the perfect rights of others, or about matters not subjected to our power, or what would be a direct piece of irreverence and impiety toward God, or a violation

\* 'Tis thus men swear by their *faith*, viz. the object of it ; or by the *heavens*, the *temples*, or *altars* ; for the Divinity residing in them, or to whom they are dedicated,

of any special prohibition, by which we are precluded from transacting in certain affairs. But in matters naturally subjected to our power and committed to human prudence, as we may bind ourselves by a common contract, so much more by one confirmed by oath, even when we have entered into it imprudently and rashly, contrary to the rules of discretion ; unless when there has been a plain obvious fraudulent design of defeating some obligations of humanity.\*

III. A promise tho' confirmed by oath can produce no obligation, unless it has been accepted by the other party, who also after his acceptance may remit to us his right, and free us from the promise. A promise in like manner is void, upon the declared dissent of a person whose consent was necessary before the promiser could oblige himself, or the other party accept of it.

Where one requires of us an oath by his just authority, and prescribes to us the form of words ; if we understand his sense of the words, and can sincerely swear in that sense, 'tis well ; if not, we should not take the oath. No inferior magistrate deputed to take an oath in the name of the state has a right to give explanations of the *formula* prescribed by the supreme powers.

Oaths according to their different purposes are divided into *promissory* and *assertory*. Oaths of this latter sort when required by a judge are called *necessary* : and when one party in judgment refers the cause to the oath of the other, 'tis called *judicial*. If this be done, not in judgment, but by the private deed of the parties, 'tis called *voluntary*. When an oath is de-

\* Mark vii. 11, 12, 13.

manded from the person accused in a criminal action, to refute imperfect proof; 'tis called a *purgatory oath*, or *oath of purgation*.

But in such cases where a person's life or character is concerned, as there are very high temptations to perjury; this way of exacting purgatory oaths in tryals is highly improper and unjust. By this means the impious and wicked will always be absolved; and those only convicted who retain such a sense of piety that they won't even for preservation of life or character perjure themselves. A good man surely would rather choose that such persons should escape punishment for a doubtful crime, (of which, if they have really been guilty, they will probably soon repent sincerely), than that they should be brought to suffer by their very sense of religion.

IV. A vow is a religious promise made to God about something to be done or performed. In vows we don't conceive a right transferred to men, unless they have been also attended with a contract. The main use of vows is this, that by a serious consideration of a just and holy Deity beholding all our actions, we may further confirm all our pious and virtuous resolutions; and be the more cautious of neglecting our duty, lest we should also involve ourselves in the horrid guilt of perjury.

But as no promise not accepted by the party to whom 'tis made can be obligatory; and as we are sure God will not accept any promises made to him rashly, out of any sudden fear, or other passion, which is contrary to the man's duty; and 'tis most unworthy of the Deity to imagine him as it were insidiously watching to catch advantages of the incautious, timorous,

wrathful, or superstitious; or that, contrary to the common interest of all, he has some favourite orders of men for whose advantage he is acting the part of a sharpening agent, snatching at all opportunities of gain to them; hence it must appear, that vows can produce no obligation to such actions or performances as would not antecedently have been pious, humane, and prudent. Much less are vows of any avail which men take on themselves from hatred, envy, groundless or excessive anger, or contrary to either the perfect rights of others, or even any obligations of humanity\*. Vows therefor produce no new matter of obligation.

\* Mark vii. 11, 12.

## C H A P. XII.

*Concerning the VALUES or PRICES of GOODS.*

**T**O maintain any commerce among men in inter-changing of goods or services, the values of them must be some way estimated: for no man would give away things of important and lasting use or pleasure in exchange for such as yielded little of either; nor goods which cost much labour in acquiring, for such as can easily be obtained.

The ground of all price must be some *fitness* in the things to yield some use or pleasure in life; without this, they can be of no value. But this being presupposed, the prices of things will be in a compound proportion of the *demand* for them, and the *difficulty* in acquiring them. The *demand* will be in proportion to the numbers who are wanting them, or their necessity to life. The *difficulty* may be occasioned many ways; if the quantities of them in the world be small; if any accidents make the quantity less than ordinary; if much toil is required in producing them, or much ingenuity, or a more elegant genius in the artists; if the persons employed about them according to the custom of the country are men in high account, and live in a more splendid manner; for the expence of this must be defrayed by the higher profits of their labours, and few can be thus maintained.

Some goods of the highest use, yet have either no price or but a small one. If there's such plenty in na-

ture that they are acquired almost without any labour, they have no price; if they may be acquired by easy common labour, they are of small price. Such is the goodness of God to us, that the most useful and necessary things are generally very plentiful and easily acquired.

Other things of great use have no price, either because they are naturally destined for community, or cannot come into commerce but as appendages of something else, the price of which may be increased by them, tho' they cannot be separately estimated\*; or because some law natural or positive prohibits all buying or selling of them. Of this last sort are all religious offices, actions, or privileges; and even the salaries of religious offices, which are either deemed only what is necessary for the support of persons in such offices, or are committed to their trust as funds of liberality and charity toward the indigent. Buying and selling of such things from a well known piece of history is called *simony*.

II. BUT as it may often happen that I want some goods of which my neighbour has plenty, while I have plenty of other goods beyond my own use, and yet he may have no need of any of my superfluous stores; or that the goods I am stored with beyond my occasions, may be quite superior in value to all I want from my neighbour, but my goods cannot be divided into parcels without great loss: for managing of commerce there must some sort of standard goods be agreed upon; something settled as the measure of value to

\* Examples of these sorts are the air, the light of the sun, wholesome air in certain situations, fine prospects.



all others; which must be so generally demanded, that every one will be willing to take it in exchange for other goods, since by it he may obtain whatever he desires. And indeed as soon as any thing is thus made the standard of all values, the demand for it will become universal, as it will serve every purpose.

The goods which are made the standard, should have these properties; first, they should be of high value, that so a small portable quantity of them may be equal in value to a great quantity of other things; again, they should not be perishable, or such as wear much in use; and lastly they should admit of all manner of divisions without loss. Now these three properties are found only in the two more rare mettals, silver and gold; which therefor have been made the standards of commerce in all civilized nations.

III. AT first they have dealt in them by \* weight; but to prevent the trouble of making accurate divisions of the several bars or pieces of metal, and to prevent frauds by mixing them with baser mettals, *coinage* has been introduced. For when the coining of money is committed under proper regulations to trusty hands, there's security given to all for the quantities of pure mettall in each piece, and any broken sums agreed upon can be exactly paid without any trouble.

But the real value of these mettals and of money too, like that of all other goods, is lessened as they are more plentiful; and increase when they grow scarcer, tho' the pieces keep the same names. The com-

\* This appears both by history, and the Roman word *impendere, expendere, &c.*

mon necessities of life have a more stable natural price, tho' there are some little changes of their values according to the fruitfulness of the several seasons. Were one to settle perpetual salaries to certain offices, which should support men perpetually in the same station in respect to their neighbours, these salaries should be constituted in certain quantities of such necessary goods as depend upon the plain inartificial labours of men, such as grain, or other necessities in a plain simple way of living.

IV. No state which holds any commerce with its neighbours can at pleasure alter the values of their coin in proportion to that of goods. Foreigners pay regard, not to the names we give, but to the real quantities of pure mettall in our coin, and therefore the rates of goods must be proportioned to these quantities. But after a legal settlement of the denominations of coins, and many contracts and obligations settled in these legal sums or denominations, a decree of state raising the nominal values of the pieces will be a fraud upon all the creditors, and do much gain to the debtors; and the lowering their nominal values will have just the contrary effects.

The values too of these two mettals may alter their proportions to each other; if an extraordinary quantity of either of them be brought from the mines; or a great consumption made only of one of them in the ornaments of life, or great quantities of it exported. And unless the legal denominations or values of the pieces be changed in like manner, such coin as is valued with us too low in proportion to the natural value of the mettall, will be exported; and what is va-

lued with us too high will remain, or be imported, to the great detriment of the country.

Wheresoever a coinage is made in baser mettals, the quantities in each piece must be made so much the greater; otherways the trade with foreigners must be lost. When notes or tickets pass for money, their value depends on this, that they give good security for the payment of certain sums of gold or silver.

## C H A P. XIII.

*Of the SEVERAL SORTS of CONTRACTS.*

**C**ONTRACTS are divided into the *beneficent* and *onerous*: in the former some advantage is gratuitously designed for one of the parties; in the latter the interest of both is equally regarded, and the parties profess to transfer mutually things of equal value.

There are three species of beneficent contracts, \* *commission* undertaken gratuitously, gratuitous *loan for use*, and gratuitous *custody* of the goods of others.

In undertaking gratuitously to manage the business of others by their commission, if they have prescribed a particular manner of executing it, we are obliged to follow their orders; or if we depart from them we are liable to compensate what damage thence arises. Where the matter is left to our prudence; we are deemed bound to use such care as a wise man uses in like matters of his own, nor are we liable for every accident which might possibly have been prevented by the utmost care; unless we have expressly undertaken for the utmost diligence, or the high nature of the business plainly required it; or we have obtruded ourselves officiously, when others more capable might have been obtained.

We must observe this about all beneficent contracts, that he who intends a favour to others, is not deemed

\* There are no precise technical words in English to answer the three Latin words *mandatum*, *commodatum* and *depositum*. And therefor the formal definitions are omitted,

to undertake an higher obligation than he expressly consents to, or than the nature of the business commonly requires : but the person on whom the favour is conferred, out of gratitude should deem himself more strictly bound, and make good all losses occasioned by any the lightest fault of his ; that none may have occasion to repent of their intended favours to him.

II. THE gratuitous loan for use where the very same goods are to be restored, binds the borrower to the highest care and to make good all losses occasioned by any negligence of his : (2) nay also to make good such accidents as the goods had escaped had they remained with the lender, except he generously remit his claim : nor (3) can the borrower take any other use than the lender granted : and (4) he ought to restore them in good order at the time agreed, no further impaired than they must be by the use allowed. Nay humanity would oblige to restore them sooner if the owner needs them ; or if we need them more and keep them, to make good the loss he sustains by wanting them.

The gratuitous lender is to refund any expences made upon the goods lent, except such as are ordinarily requisite in the use of them ; or at least to refund the value of any improvements made upon them as far as they are bettered for his purposes, and so he is enriched. The civilians distinguish between this contract and a *loan for consumption*, in which the same individual goods are not to be restored, but equal quantities, weights or measures.

III. DEPOSITING of goods for gratuitous custody, obliges the keeper to such diligence as a wise man uses in keeping like goods of his own, and to make good

any losses by any gross negligence of his. He ought to make no use of them without the owner's consent, and restore them when demanded; except it be for such purposes wherein he might have a right by force to resist the owner. And he justly insists to be indemnified as to all expences wisely employed for preservation of the goods.\*

IV. In the *onerous contracts*, or these for valuable consideration, the parties profess or undertake to transfer mutually goods or rights of equal value. And therefor honest men should conceal nothing, or give no false representations about the qualities estimable in such goods, or their defects: and when they inadvertently have departed from equality, according to the judgment of a wise arbiter, he who had less value than he gave, should have something further paid him till the contract be brought to equality; and this he has a perfect right to demand; tho' no courts of justice could have time to give redress to every little iniquity in such matters.

Mutual donation is not to be reckoned among onerous contracts, as in it there is no regard had to equality between the things mutually given.

From what we said about the grounds of price, 'tis plain that in estimating the values of goods in any place, we are not only to compute the disbursement made in buying, importing, and keeping them safe, with the interest of money thus employed; but also the pains and care of the merchant; the value of which is to be estimated according to the reputable

\* The Translator omits the next paragraph in the original, explaining the *actiones directae et contrariae* of the civilians.

condition in which such men live, and to be added to the other charges upon the goods. This price of the merchant's labour is the foundation of the ordinary profit of merchants. But as goods exported or imported are subject to many accidents, by which they may even perish altogether; this is a natural reason for advancing the price of such goods as are safe. And as merchants are liable to losses when the prices of such goods, as they are well stored with, by any unexpected plenty happen to fall; to make good such casual losses they have a right to take a larger profit, when the goods they are well stocked with happen by any accidental scarcity of them to rise in their prices.

V. THESE are the principal onerous contracts.

1. *Barter* or exchanging goods for goods. 2. *Buying and selling*; the simplest form of which is at once paying the money and receiving the goods. If 'tis agreed that the goods are to be delivered on some future day, the price being previously paid, or such security given for it as the seller accepts; before the day fixed the seller must run the hazard of what accidents befall the goods; but after the day, if the seller was ready then to deliver them, he is only in the case of one with whom they were deposited; as he would have been from the first if he was then ready to deliver them.\*

Sometimes men purchase no certain goods but an hazard, or some advantage upon a contingency. In such contracts equality may be preserved if the price is abated below the real value of the advantage in a

\* The Translator here omits a paragraph explaining some terms of the Roman law not necessary to an English reader. Such as *addictio in diem*, *lex commissoria*, *lex retractus*, *protinefios*, &c.

just proportion to the hazard of our gaining no advantage at all.

VI. IN *location*, or setting to hire, for a certain price we allow one the use of our goods, or our labour. The fether should make the goods fit for use, and uphold them so; and the hirer is bound to use them as discreet men use like goods of their own, and to make good any losses occasioned by any gross negligence of his. If the goods perish without any fault of his, he is no longer liable for the price of the hire than he had the use of them: or if without his fault they become less fit for use, he may insist on an abatement of the price or rent. But as in lands all the profits of a plentiful year fall to the tenant, so he must bear the casual losses of a less fortunate one. Indeed the rarer cases of extraordinary calamities, such as of wars, inundations, pestilence, seem to be just exceptions; as the tenant cannot be presumed to have subjected himself to rents in such cases. \* And in most of contracts the agreements of parties alter the obligations.

One who is hired for a certain piece of work, if he is hindered from it by any accident, has no claim for the hire. But when one hires a person by the year, or for a longer time, the hirer seems bound to bear the loss occasioned by any such short fits of sickness as the most firm constitutions are subject to, nor can he on that account make any deduction from the price agreed upon.

VII. IN *loans for consumption*†, we don't expect the same individual goods, but equal quantities by

\* A part also of the following section is omitted for the same reason, about the *locatio operis* and *locatio operae*.

† *Mutuum*.



weight or measure. If the loan is not designed as a favour, there's a right to demand *interest*. Nor is it necessary to make interest lawful that the goods lent be naturally fruitful: for tho' money for instance yields no natural increase; yet as by it one may purchase such goods as yield increase; nay by employing it in trade or manufactures may make a much higher gain; 'tis but natural that for such valuable advantages accruing to us by the loan, we should give the owner of the money some price or recompence proportioned to them. The prohibition of all loans for interest would be destructive to any trading nation, tho' in a democracy of farmers, such as that of the Hebrews was, it might have been a very proper prohibition.

The just interest of money is to be determined according to the quantity of wealth employed in trade. Where there's a small quantity of money in a nation, and consequently all goods very cheap, a great profit is made by any small sums employed in trade with foreigners. And therefor a great interest may well be paid. But where much money is employed in trade, a smaller profit is made on each sum thus employed, as the prime cost of goods is high; and therefor a smaller interest can be afforded for it. If civil laws settling interest don't regard these natural causes, they will not have their effect.

The obligations in the contracts of *partnership* are abundantly known by the rules of arithmeticians.

VIII. WE said above that contracts about hazards may maintain the just equality: and some of them are of great use in society, these particularly which ensure against shipwreck, robbery, or fire: as by their means many active industrious hands have their stocks pre-

served to them, which otherways had perished. These contracts seem of the same effect with a humane and salutary partnership among multitudes to share among them any losses which may happen; since 'tis by the premiums paid by those whose goods are safe that the enforcers are enabled to make good the losses of the unfortunate.

Nor is there any thing blameable in this that a large number for diversion contribute to purchase any piece of goods, and then cast lots who shall have it: provided none of them expose to such hazards so large a portion of their goods that the loss of it would occasion any distress to themselves or families.

The same may be said of wagering, and of various games in which there's hazard; which are not always blameable on the account of the hazard, or of any inequality. But then there is nothing more unworthy of a good man than, without necessity, to expose to uncertain hazard such a share of his goods, as the loss of it would distress his family; or to be catching at gain from the foolish rashness of others, so as to distress them. All such contracts therefor are to be condemned, unless they are about such trifles as men of wealth can afford to throw away upon their amusements. And besides, 'tis highly unbecoming a good man to give himself up entirely to diversions, or waste much time upon them; or so to enure himself to amusements, as to contract habits of indolence and trifling, making him less fit or inclined for serious business.

As to these more publick projects of lottery in which great multitudes may be concerned; as they bring in no new wealth to a state, and only enrich some few of the citizens by the losses of others; and as men thro'

some vain opinions of their own good luck are generally very prone to them ; they should be every where under the restraint of laws ; lest that wealth, which were it employed in manufactures or commerce would be adding new strength to the state, should be turned into this uselefs and dishonourable channel, exposed too to innumerable frauds, and an insociable, foolish, and slothful avarice be encouraged among the citizens.

IX. IN confirmation of contracts men often give bail or sureties, and pledges. The bail or surety is bound to make good what is due, in case the principal fails. And as the creditor frequently trusts more to the surety than to the principal, his obligation is equally sacred : nor may he use any evasive arts more than if the debt were wholly his own : nor can he justly even delay the payment ; unless he finds a fraudulent collusion between the creditor and the principal to distress him.

The obligation of the surety may be stricter than that of the principal, if he has given either a pledge or an oath for performance ; but as he is surety he cannot be bound in a different sum or different goods, or payable at a different time or place, or upon a different foundation. He may justly insist that a suit be first commenced and judgment given against the principal ; and where more than one are sureties, each one may insist that the loss be divided either equally among them, or in the proportion in which they bound themselves.

Sureties were sometimes given in criminal actions. They may be justly liable to pay the fines. But it would be inhumane to allow them to be subjected to any corporal punishments for the crimes of others.

We formerly touched at the subject of pledges and mortgages. If the things pledged yield increase, this is to be deducted annually from the interest or principal of the debt. The *clause of forfeiture* at the day fixed has no iniquity in it, provided any surplus of value in the pledge be restored to the debtor after the debt is thus discharged. The pledgee is bound to keep the pledge with such diligence as a discreet man keeps like goods of his own, and not answerable for any thing further; as this contract equally regards the utility of both parties. Pledges and mortgages constitute real rights not to be defeated by any prior personal rights.

## C H A P. XIV.

\* OBLIGATIONS *resembling those from* CONTRACTS.

BESIDE these obligations and rights already mentioned, there are others which arise from some lawful action of the person bound: of such as arise from unlawful actions we treat in the next chapter. These rights arising from lawful actions, arise either from the nature of property, or from some manifest interest of society, and common social laws. The obligations answering to them the civilians feigned to arise from contracts, that the forms of the actions might be the same. They are quite different from those of *tacit conventions*, as in tacit conventions we truly conclude consent from some action; but in those 'tis plainly feigned, tho' we know there was no consent, as the matter itself is equitable. The obligation by a tacit convention is quite prevented by a previous contrary declaration of the party: but not so in these we now speak of; as they have another just foundation, independent of the consent of the person obliged.

Of these there are two classes, one arising from this, that a person intermeddles without any contract with the goods of others, or such upon which others have a just claim: the other, from a person's taking to himself and holding some valuable advantage at the expence and loss of others, who consented not to sustain

\* *Obligaciones quasi ex contractu.*

such loss gratuitously. In the former class is included the obligation of such as possess the goods they know belong to others, to restore the goods with their profits; as also his obligation \* who without commission manages any business for an absent person, or for a minor. All these are bound to account, and to restore the goods with their increase and profits.

The like is the obligation of the heir or executor, toward the creditors or legatees of the deceased; and it arises from his entering heir, or undertaking the execution of the will. For 'tis plain, all the effects of the deceased are naturally chargeable with his debts, and with whatever others have a perfect claim to. He therefor who takes possession of the effects, the only fund whence these debts are to be paid, is bound to pay them, as far as the effects go, deducting for himself the necessary expences of management. The heirs or executors however may always claim the benefit of an *inventory*, that they may not be bound further than they find effects of the deceased. Nor need we feign any contracts to explain the just grounds of these obligations, nor that the heir or executor is the same person with the deceased.

II. As to the second class; where a man is bound by deriving to himself some advantage at the expence of others, who did not consent that it should be gratuitous: under this is included the obligation of those on the other hand whose business was managed by others without commission, and that of minors toward their guardians, to indemnify them, and compensate their labours in all useful services, and to ra-

\* *Negotii utilis gestor.*

tify any contracts prudently made for their behoof; and refund any prudent expences in their education.

What parents expend in educating their own children, we conclude from the tender parental affection, that 'tis intended as a donation, when the parent has not declared the contrary. Nay parents are naturally bound to support and educate their children suitably to their condition, and to convey to them at death what remains of their goods. But if a parent is in great straits, or if any child has some other way obtained a plentiful fortune, a parent in these cases may justly charge a child with the whole expence of its support and education, and exact it for his own maintenance in old age, or to support his other children.

III. BUT if one maintains and educates the child of another; there's no presumption here that it was done as a donation; 'tis more presumable that a debt is hereby constituted, to be discharged by the goods or future labours of this child, as far as the expence was truly made for the behoof of the child; but not what was intended for the splendor of his family who maintained it. Nay further, as generally all this expence upon an indigent orphan would be lost entirely if it died before it were capable of labour; the maintainer might perhaps, in the rigour of justice, be allowed to charge something more on account of this hazard; and by this allowance men will be more encouraged to such necessary care of indigent orphans. But then this hazard continually decreases as the child advances in years, and cannot increase considerably the charge, except for a few of the first years.

An indigent orphan thus maintained is therefor in no worse case than that of any indigent person who without any fault of his is involved in a great debt, from whom the creditor may justly demand payment by his labours, while the debtor retains all the other natural rights of mankind, and whensoever either by his labours, (of which, he may justly choose to turn himself to such as may be most beneficial to him, and soonest discharge the debt), or by the liberality of any friend, he can discharge it, he can no longer be justly detained in service. Now were an account of all the necessary charge of maintenance, and of the value of labour, justly stated, it would appear, that such an orphan found in body and mind could always fully discharge such debt by his labours before he were thirty years of age: and consequently that this can never be a foundation for perpetual hereditary slavery; even allowing an extraordinary interest were charged upon the expences because of the hazard, as is done upon contracts of bottomry in trade. And yet this charge must appear pretty inhuman upon persons in any grievous distress: nor can any distress be conceived greater than that of an indigent child destitute of all aid from its parents.

Under this branch too is included the obligation of him who using the plea of *necessity*, (of which hereafter) has done damage to others; and of one who received what appeared due, but afterward 'tis found was not due; or what was paid upon a contract against which there lay a just exception making it void; or received any price, in consideration of something which is not paid or performed by him: who are all obliged to indemnify and restore.



When one partner in a company has preserved or improved at his own expence any of the common goods of the company ; the obligation of the other partners toward him is of the later class ; and his to them of the former.

The obligations contracted for us by others, if they are done by our commission, are manifest contracts ; if not, they come under the case of *business managed without commission* already mentioned.

## C H A P. XV.

*Of RIGHTS arising from DAMAGE done, and the  
RIGHTS of WAR.*

**F**ROM the former principles 'tis plain, that each one is obliged to repair any damages he may have done to others, if they desire it. But cases often happen when a good man justly may, and ought to do, what may occasion some damages to others ; if, for instance, some goods of his of incomparably greater value cannot be preserved, or some of the greatest evils threatening him or his friends be prevented, otherways than by doing what may occasion some small loss to others. He has a perfect right to act thus ; and yet he always in such cases becomes liable to make good their losses sustained for his safety or that of persons dear to him. Since this is a sacred social principle of equity, that “ no man for his own advantage should impair “ the advantages of others ; or if any necessity force “ him to it, that he make good their loss as soon as “ possible.”

The same is more manifest in damages done injuriously. Human society cannot be maintained unless men are obliged to compensate all such damages. Laws prohibiting injuries would have no effect, if after they were done, the injurious could enjoy their gain with impunity.

Nay the safety of society further requires that the unjust should be restrained from injuries by the terror

of severe punishment; lest the good should be continually exposed as a prey to them. And therefor altho' God and nature require of us good-will, clemency and lenity, even toward the evil, yet surely they require a superior degree of these affections toward the good. And the unjust may be restrained by violence and punishments, and obliged to compensate the injuries done and give security for their innocent behaviour for the future, without any malice or ill-will toward them; nay 'tis doing them rather a good office, to restrain them thus from further crimes.

II. By damage is understood not only "the depriving men of their goods, and spoiling or detaining them injuriously; but any intercepting or preventing their natural or artificial profits; with all those inconveniences which ensue upon the first wrongs; all gain prevented, as well as losses occasioned."

Whoever by himself or by others, whether by acting or omitting contrary to his duty, has occasioned any damage, which otherways would not have happened, may be deemed an author of the injury. Such as only rejoice in the injuries done and praise them, may indeed shew such perverseness of temper as deserves punishment; but as it cannot be discerned whether the same injuries might not have been done without such congratulations or applauses, men are not made liable to compensation on these accounts alone. Where an injury has been done by many in concert, they are bound to compensation jointly and severally. But if one has compensated the whole, the sufferer can demand nothing further on this account from the rest; but he who repaired the whole damage may oblige his partners to bear their shares with him. The case of pu-

nishments is quite different; for punishment may be justly inflicted on all for the common safety.

Among the authors of damage, he is deemed the principal, who having authority over others, commanded them to do it. He therefor is first to be called to account, if it can be done; if not, we may demand reparation from the rest; since he could not by any orders of his give them any immunity from this obligation. And tho' the executors may be free from any guilt, having had the plea of necessity, in avoiding the far greater evils threatened them if they had not obeyed orders; yet they are notwithstanding bound to make compensation: since their innocent neighbours must not suffer, to free them from the evils they were threatened with.

III. IF one without any fault, by mere accident does damage to another; he is not strictly bound to repair it. Nay if one engaged in any important services to the community, in any dangerous emergence, where 'tis scarce to be expected that men can use the greatest caution, happens by some negligence to do damage to his neighbour, it should be rather repaired by the community.

Damage done by hired servants without their master's orders, should be repaired by themselves. What is done by a slave binds the master to divide the price of the slave in the same manner as the effects of a bankrupt are divided among the creditors; computing on one hand the value of the slave, which is the claim of the master, and on the other that of the damage done, which is the claim of the sufferer; and in proportion to these two the price of the slave is to be divided. In the same manner the owner is bound to compen-

sate damage done by his cattle, without any fault or negligence of his. If civil laws \* have been more rigid upon the owners, it has been with this view, that the owners may be made more careful in guarding well their slaves and cattle, which are kept for their own behoof.

If one without any malicious design has done damage, he ought to shew himself ready at first to do or perform whatever any wise arbiter shall judge reasonable, and to declare the innocence of his designs. If one has had an evil intention, and truly repents afterwards of it; he ought also to offer compensation, to beg pardon, and give whatever security against future injuries a prudent arbiter shall think sufficient. No man truly repents of any injury he has done, nay he persists in it, while he declines to do these things, and detains the gain of his injustice. But when the injurious offer all these things voluntarily, we are bound to be reconciled and to pardon them: which all of us should do the more readily and heartily, that each one so often needs to be pardoned, if not by his fellow-creatures, yet by our merciful Creator.

IV. WHEN one obstinately persists in his injuries and won't desist from his designs upon admonition, nor repair damages done; or refuses to perform what we have a perfect right to demand; not only our private interests, but the common interests, and safety of all requires, that the injuries intended should be repelled by violence, and reparation of damage and whatever else is due to us by a perfect claim should be obtained; and even some further evil inflicted on him, by

\* Exod. xxi. 28, 30. Institutes. iv. title 8, 9.

the terror of which both he and others be restrained from the like practices.

This violent defence or prosecution of our rights is war. But as one grand view of constituting civil power was this, as 'tis known to all, that the controversies of citizens should be decided by impartial judges, and thus the mischiefs prevented which might arise from mens redressing themselves under fresh impressions of injuries; very different rules of violent defence or prosecution must obtain according as men are either in natural liberty or under civil government.

*Wars* are divided into *publick* and *private*. The former are such as are undertaken by a *state*, or in the name of a body of people: *private* wars are those among private persons. The publick wars are divided into the *solemn*, or these authorized on both sides by the supreme powers of states, upon some specious shews of right; and those so authorized only on one side: such as the wars made upon bands of pyrates or robbers, or citizens making insurrections; or what are called *civil wars*, between different parties in the same state contending about some rights of the people, or of the government.

We first treat of the *private wars* of men in natural liberty. And the same reasonings hold in *publick wars*; since sovereign states and princes are with respect to each other in the same condition of natural liberty.

V. We have already shewn that wars both publick and private are sometimes lawful, nay necessary for the common safety. Nor do the scriptures prohibit them in all cases: as they plainly authorize civil power, give

to magistrates the \* *power of the sword*, and praise some eminent heroes in war.

In both kinds of war three points are to be settled: the *just causes*, the *term of commencing*, and the *term of ending them*, or the sum of our demands in war. When we speak of these three in the wars of particular persons, they are to be differently determined according as the parties live in natural liberty or under civil government.

But we must always remember, that tho' we have received the very greatest injuries from any person, yet we ought to maintain good-will toward him, and even desire his happiness, as far as it is consistent with that of better men and of the community. All clemency consistent with these ends, toward even the most injurious, is what every man's heart must approve. When therefor any injury is designed or done to us, we should try first all gentler methods, either to prevent it, or obtain reparation of damage and security for the future. Nor should we judge that an unjust enemy has forfeited all his rights, or that every outrage against him is justifiable. That violence alone is just which is necessary, or naturally conducive, to repel the injury, repair the damage, or obtain security for the future. Any cruelty not requisite for these ends is plainly criminal and detestable; as it occasions grievous sufferings to some of our fellows, without any necessity for the interests of others; and is a

\* The *jus gladii* is well known to include both the power of capital punishment, and of defending a country by arms, among the Romans to whom the apostle writes, Ch. xiii. 4. See also Hebr. xi. 32, 33, 34. 1 Pet. ii. 13, 14.

precedent to like cruelties on other occasions, even toward those who have a just cause in war.

VI. THE *just causes* of beginning war in natural liberty are any violation of a perfect right. There could be no security in life, none of our rights could be safe, were we prohibited all violent efforts against the injurious, and they allowed to pass with impunity. By a frequent repetition of even smaller injuries the greatest wealth must soon be exhausted : and life must become intolerable to innocent men if they are thus exposed to the perpetual insults of their petulant or insolent neighbours. Humanity may often persuade a good man to overlook lighter injuries, which can easily be repaired ; if especially, they proceeded from some sudden gust of passion in men who in the main parts of their character are good, and will soon repent of it. Yet no man can justly claim such patience toward himself from others. There are some more rare cases in which perhaps it may be just to make war before any injury is done or attempted : but of these hereafter.\*

When therefor any of our perfect rights are violated, either by destroying or damaging our goods, or refusing what we have a perfect right to claim ; or when a like injury is done to any innocent neighbour ; 'tis lawful, nay often honourable by force to compell those who oppose us or our neighbour in obtaining our rights, to desist from these injuries, and to perform whatever is due to us. We may seize the particular goods we have a claim upon ; or if we cannot find them, seize any goods of the enemy sufficient to compensate all that's due to us. And in computing this

\* Book III. ix. 2.



we should include all our labours, and losses or expenses occasioned by the injury. Nay we may proceed further by way of punishment, or obtaining security for the future, as far as a wise arbiter will judge necessary: [but of this presently].

In civil society indeed, these injuries alone justify the violence of private persons against any fellow subject who is amenable to laws, which may occasion an irreparable damage. The warding off, or the repairing of others should be obtained in a more prudent way by the aid of the magistrate. But such as can neither be prevented nor remedied this way, we justly may repell with violence. But if any one, who is as to right a citizen or subject, renounces this bond; or makes his attempts so secretly that there's small hope of bringing him to justice; we have the same rights against him as if we were in natural liberty. \* Such are all robbers and thieves in the night. Against other citizens our remedy must be obtained from judges or magistrates.

VII. THE term of commencing violence in liberty, is when one either by express declaration or any hostile action has discovered a fixed purpose of hurting us or any innocent neighbour; and won't desist upon admonition. We are not obliged to receive the first assault; as it may perhaps prove fatal to us: nor need we wait till the injury is executed; which may perhaps prove irreparable: and 'tis generally easier to prevent than to remedy. We may therefor justly prevent and surprize such as have formed and declared sufficiently their injurious designs of hostility.

\* Exod. xxii. 2, 3. and some fragments of the 12 tables.

The proper term of commencing in civil life any violence that may be dangerous to others, is when the aggressor has brought us into such straits that we can neither retire without danger, nor obtain any aids from magistrates or our fellow-citizens.

VIII. THE term or bounds beyond which we ought not to continue violence in natural liberty, are when the aggressor or the author of the injury either voluntarily repenting, or compelled by force, desists from injuring, and offers compensation of all damages done, and such security for the future as any prudent arbiter shall judge necessary. If he obstinately refuses these things, we may justly obtain them by force. Nay the common interest of mankind requires that such as without any plausible shew of right, have done gross injuries, and given such dangerous example to others, should be punished in such a severe manner as may probably deter not only themselves, but all others from like crimes.

The same reasons which justify the inflicting of punishments in civil life, justify it also in natural liberty; tho' in this state we cannot expect that punishments shall be so effectually executed, or so prudently regulated. Neither the grounds of punishments, nor the reasons of inflicting them, presuppose civil power in the inflicter, nor civil subjection in the sufferer.

Under civil government subjects ought not to continue violence after they are secured from present danger. The reparation of injuries and precautions for the future are to be obtained by the sentence of a judge, and not by the violence of the enraged parties. All just violence should be with a view either to the defence of our rights, or to some publick advantage.

What has not such intention ; and is accompanied with hatred of the person, and joy in his misery, is that criminal *revenges*, which is condemned both by the natural and christian laws.

And further as rights respect not only our holding or possessing, but also our obtaining sometimes from others some goods or services : in natural liberty we may use violence in pursuit of what is due to us from others, when they refuse to perform voluntarily what we justly demand. But in civil life all such prosecution of our rights should be made by actions in law, either for debts, reparation of damages, or precautions against damages apprehended ; and these matters decided by the wisdom of magistrates and judges : as must appear from what was said about the causes of war in natural liberty, and the ends of civil government.

IX. FROM these principles it must follow that such duels as are often practised among us, where the challenger and the person challenged meet in a place appointed, intending the death of each other, or what may occasion death, cannot be justified either in natural liberty or civil society. Reason would always teach a far better method of defending and prosecuting our rights ; first, by committing any disputed point to arbiters in natural liberty ; and if either side declined to submit to them, the other should obtain the assistance of such neighbours as the equity of his cause or regard to the common safety can engage to his side, and make open war in prosecution of his right. As to any reproaches or contumelies ; the duel is often a foolish, and often too cruel a method of refuting them. The fortune of the combat is often as blind and capricious as any : and death is too grievous a punishment for op-

probrious words. If one has hurt the character of others, either by false reports, or even by divulging inhumanly, without any necessity, their secret vices; in natural liberty we may justly, with the assistance of friendly neighbours, inflict such publick punishment as any wise arbitrators shall deem proper for the crime. And if in this state any one has given full evidence of an hostile intention to destroy us; we should rather take the safest way to prevent by surprize, or to restrain him, in such manner as our own and the common safety requires. Nay under civil government, we are not bound to avoid publick places, or neglect any business which requires our appearing abroad, because we know that one designs to assault us; unless either humanity or a regard to our safety move us to it. And if we are unjustly attacked while we are employed in our own lawful business, we may justly defend ourselves even by killing the aggressor: and doing so is often a very useful service to mankind. All this may be done without any concerted duels.

But if the legislator has been so negligent of a most important matter, as to appoint no suitable legal redress for the citizens when injured in their characters by calumnies or reproaches; and if that custom prevails, which took its rise in the most barbarous and superstitious ages, that a man is deemed infamous, and always exposed to new insults, and these generally approved too, if upon certain reproaches or contumelies uttered against him, he does not challenge the author of them; which will be the case too with one who declines to accept a challenge from any who imagine they are injured by him. The larger share of this guilt is chargeable on the civil governors themselves;

tho' the parties are not excusable, especially the challenger. For a good man may generally find a better way of vindicating his character, and even of shewing his fortitude, if either there arise any publick wars, or if he is first attacked by violence.

There is indeed one case in which concerted duels may be lawful on one side: \* if a publick enemy of our country, of superior power, trusting to the valour of some champion on his side, offers to grant us reasonable terms of peace only upon the event of this champion's being defeated by one of our side; or will have the controversy decided according to the fate of such a combat. 'Tis no doubt foolish and inhuman to decide controversies this way, when it might be done by arbitration. But if a more potent enemy will not consent to any other way; 'tis a glorious action on our side, if one to prevent much blood-shed exposes himself for his country to this hazard, in which his country has better hopes of success than any other way.

\* Grotius D. Jure B. &c. iii. 20. 43.

## C H A P. XVI.

EXTRAORDINARY RIGHTS IN CASES OF NECESSITY, *and the* COMMON RIGHTS OF MANKIND.

**I**T has been already frequently shewn that an immediate sense generally points out and recommends our several duties; and that there are different degrees of them, in a certain subordination, some more, some less honourable; that the later should give place to the former, when they are inconsistent; and that the supreme beauty appeared in these affections of soul which are most extensive, which should therefor controul the narrower: and that in consequence of this, all the rights of individuals, and all the special rules of life should be postponed to the universal interest of all. Altho' therefor these practical conclusions called the *special laws* of nature, which we are sacredly bound in all ordinary cases to observe, point out what is almost continually the virtuous part; yet by an extraordinary change of circumstances, it may become our duty to act in a different manner; and such singular cases are to be deemed excepted in these special laws. We never should speak thus, that in cases of singular necessity, we may justly violate the law of nature, or act unjustly or vitiously: such expressions are contradictions. But it is truly obeying the law to take the benefit of any exceptions appointed in it; or to follow the more sacred law when it derogates any thing from one of less importance. Now of all the social laws

that is the most sacred, which prefers the general interest and safety to that of individuals or small parties.

II. BUT as the sense of every good man must shew it to be of high importance to preserve the authority of all the special laws, and that they should be religiously regarded; we cannot be justified in departing from their appointment upon any light causes: the necessity must be great and manifest which will justify it. We must not only consider cautiously what present advantages may ensue in this case from such a singular step; or what present inconveniences from following the ordinary law; but much more what greater and heavier and more general evils may follow from such a liberty allowed to all. Let us take an example or two, which may illustrate other cases. As the maintaining of veracity and faith in our conversation and dealings is of the highest importance to society; as is also the maintaining the rights of property, and leaving to each one the free administration of his own, for the mutual confidence and security of men in society: the causes must be of the highest nature, some terrible evils to be avoided or exceeding great advantages to be obtained which can be allowed to make exceptions from these important rules. Nor ought this plea of necessity to be extended to lighter matters: for we should consider all the consequences, even of a remoter kind which must ensue upon diminishing the deep reverence men should have for these laws. No cases therefor but those of the highest nature are to be deemed excepted; when evils superior to all these evil consequences are to be averted: and none will reckon among these, any ordinary ones of a lighter nature, unless he is plain-

ly wicked and impious; void of any conscience of duty.

'Tis to no purpose to argue here, that we are to do nothing vitious for any prospects of advantage. In this all agree. But the question is, whether such extraordinary conduct be vitious in these circumstances, or not? It should not be matter of hesitation, whether we may abandon the conscientious part for the advantageous: but whether some great utility to ensue don't make some extraordinary steps lawful or honourable? Nor is it more to the purpose to allege, that we should always adhere to the divine laws, and that we are no judges of future events, but should commit them to providence. Such things are pleaded by some very good men, tho' not very acutely in this point. For the very question is, are not these cases to be deemed exceptions in the divine laws? and made known to us by the same use of reason by which the law itself is made known? If we are no competent judges of future tendencies, we are no judges about the ordinary natural laws; which are no otherways discovered than by our reasoning upon the tendencies of certain methods of action, as they appear conducive to the publick interest or detrimental: for no man can allege that our sole rule of life are the impulses of each particular passion which we may generally approve in ordinary cases.

No doubt wicked selfish men devoted wholly to their own interests or pleasures will abuse this plea; but not without such impiety and unfairness of mind as would break through any bonds of laws. The passionate and revengeful often abuse the doctrine of self-defence, and that about prosecuting the injurious: but we don't



therefor quit this doctrine, and prohibit all violence in defence or prosecution of our rights. Nor should we any more condemn all departure in singular cases from what the special laws of nature require in ordinary ones. Men seem agreed that the common rules of property yield to some singular exigences. One may use or destroy the goods of another without his consent, when 'tis necessary for the preservation of multitudes, as in the lightening of ships in a storm, or blowing up of a house to stop a raging fire. Nay some higher laws give way to singular necessities. The bravest and best citizens are exposed to certain death for their country, in services where there can be no hopes of their escaping. By drawing a bridge or shutting the gates, by which all the citizens have a right to be protected, the bravest men are sometimes exposed to the most cruel enemies. *Tullus Hostilius* is renowned to all ages for presence of mind in delivering a false account, by which the Roman people were preserved. But this doctrine so liable to misapplication needs always the following cautions.

III. FIRST of all: the two general laws about loving God and our neighbour, or of promoting the general good of all, admit of no exceptions: nay in this later are founded all the exceptions which lye against any of the more special laws. But the external acts of worship are not necessarily annexed to any one time, and therefor yield to urgent exigencies.

2. The more honourable any person's temper is, the less apt will he be to allow to himself exceptions for any smaller interest of his own, or to claim any privileges of necessity:

3. We must bring into account all the effects pro-

bably to ensue from any extraordinary steps, whether by natural consequence, or from the unfairness or rashness of others. Not that men are to be excluded from every right which unjust persons may make a pretence of in improper cases: but even these bad consequences are to come into the general account, to prevent our allowing exceptions in any but the most weighty cases. So that no man can plead exceptions in lighter ones, without that depravity of mind which would break any acknowledged law, without any such pretence.

4. The more sacred and important any law is, the greater must the causes be which can found any exception.

5. Causes of a publick nature are far more honourable than those of a man's own advantage. A good man often may quit part of his own right; and 'tis often honourable not to take the advantages he might. But he is not thus master of the publick interests, and must act according to what the exigence of the times require.

6. No plea of necessity will justify a man in freeing himself from any threatening evil, by casting the like or greater upon any innocent person. This is plainly not subservient to any publick utility.

7. Whatever smaller damages we cast on others who do not consent to suffer them gratuitously, in order to free ourselves from any great danger, we are sacredly bound to repair. To this right in natural liberty, of warding off some great danger by actions detrimental to others, there corresponds in civil society an *eminent right in the supreme powers*, of which hereafter.\*

IV. FROM the common bond of all with all, by which all mankind are constituted by nature one great society, with some common laws binding them, there arise certain common rights, not specially regarding the utility of any one, or a few, but that of all in general; which therefor every one as he has opportunity should maintain and prosecute. These rights as they obtain also in natural liberty, should be considered previously to those of civil societies. We shall give a few instances, which will also lead us to others.

1. Mankind as a body, and each one as he has occasion, have a right to hinder any one to quit life without a just cause, or thus desert the duties incumbent on him. Suicide should therefor be prevented, or such self-maiming as may make one unfit for the duties of life.

2. There's also a common right of all, to prevent certain vitious practices of most pernicious example, which yet cannot be said to injure any one person more than another: such as monstrous lusts, procuring abortion, or any other practices which are hurtful to mankind in general.

3. We are likewise to hinder any man to destroy such goods of his own as may be very useful in life, out of any caprice or ill-nature: nay they should not be allowed to perish of themselves without being used.

4. There's also a like common right of one and all, to prevent injuries, and to punish such as are done; so that by the terror of the punishment, others also may be restrained from like attempts.

5. Mankind have a right also to compell any person, who has discovered any secret of great use in life, to divulge it upon reasonable compensations, and not

suffer it to perish with himself; that such as need it may also enjoy the benefit.

6. Mankind in general, and every society, may justly require it of all such as enjoy ordinary health and strength, unless they otherways have a fund for their support, that they should maintain themselves by their own labour, and not intercept the liberality or charity of good men; which is due only to the weak who cannot support themselves. Such slothful wretches are to be compelled to labour.

The instances we have given are rights of the perfect kind belonging to mankind as a body. Imperfect rights of this class answer to the general duties of humanity and beneficence (above explained in treating of the nature of virtue) which must be left free to the honour and conscience of men.

## C H A P. XVII.

*How RIGHTS and OBLIGATIONS cease: how  
CONTROVERSIES are to be decided in NATURAL  
LIBERTY: and the RULES of INTERPRETATION.*

**O**BLIGATIONS cease by three several ways: by the *paying or performing* what was due; by *remission* in favour of the debtor; and by the *failing of the condition*.

Payment may be made either by the debtor himself, or any commissioned by him, or acting in his name and for his behoof; but it must be at the time and place agreed on. Where payment is offered not by appointment of the debtor, nor for his behoof; the creditor is not bound to transfer his right against the debtor to the person thus offering payment, who may have some malicious intention against the debtor. What is here said relates only to the delivery of common goods or money, or performing common labours or services, in which 'tis no matter to the creditor who pays him. The case is otherways in homages of honour, or such labours as are valued on account of singular ingenuity. In these no substitution can be made without the consent of the person to whom they are due.

In money, or goods only regarded by weights, measures, or quantities; if two persons be mutually indebted to each other in equal sums, and the days of pay-

ment on both sides come, the debts mutually destroy each other: and this is peculiarly called *compensation*. Nay tho' the sums are not equal, yet the debts should be deemed abolished as far as the sums concur, and the surplus only to remain due.

To the second way, to wit, of some remission; are reducible all these *transactions* or bargains agreed to for extinguishing disputed claims: as also *delegations*, by which the debtor with consent of the creditor transfers to him an equivalent debt due to himself: as also the forgiving of debts and accepting any thing in lieu of them; and lastly mutual dissent of the parties, by which the mutual obligations of a bargain are taken away.

3. Under the head of the failure of the condition, is included the *perfidy* of one party in a bargain; which sets the other free, if he chooses it, rather than to compel the perfidious to performance: as also a *change of state*; by which all obligations are made void which were plainly founded upon it: as also the *expiration of the time*; which takes away obligations which were to endure no longer: and lastly *death* takes away such as only respected the persons, and were not designed to subsist to the heirs of the creditor, or affect the heirs of the debtor: and these points are generally known from the nature of the business, or the terms of the contract.

II. IN natural liberty controversies are best decided by friendly conferences of the parties, or the interposal of common friends; or by an absolute *compromise* or submission to arbiters of approved characters; and this either as to the strict point of right, or as to the

equitable and humane part on both sides. Every good man would always choose to make submissions of this later sort, and not insist upon the strictest point of right.

The proper arbiters are persons of wisdom, under no special attachment to either side, and who can gain nothing by the decision of the cause in favour of either party. Such men influenced by no interest or passion, tho' they be neither wiser nor better men than the parties contending, yet will more easily discern what is just and equitable. The parties are bound to stand to their decision, unless they find evidence of corruption, such as some secret contract with one party; or unless there be such manifest iniquity in the decision as must plainly evidence some fraud or unfairness. But if it is only some smaller inequality or mistake in the decision, upon some shew of right, by which one party thinks he is wronged, he is notwithstanding bound to submit to the award.

The arbiters should proceed as judges do, to find out the truth by the acknowledgements of the parties, or by signed deeds, or other such documents: and next to cite witnesses, and interrogate them upon oath; regarding always this, whether the witnesses be not engaged by interest on one side; and they should demand two at least to proceed upon. For tho' the credibility does not at all increase in proportion to the numbers of witnesses, and sometimes the testimony of one wise honest man gives full satisfaction; yet it would be dangerous to proceed upon the testimony of one: as a person of great hypocrisy and art and presence of mind may contrive such a

consistent story, that no interrogatories put to him can detect the falshood of it; or make him contradict himself. But when two or more witnesses, are separately examined, without hearing each others testimonies, about all such circumstances as might have been observed by persons really present, (of which a vast multitude may occur to a sagacious judge); if they either frequently contradict each other; or both always remember the same circumstances, and both always pretend to have forgot or overlooked the same circumstances, they give plain evidence of a concerted fraud. [A compleat consistency therefor of two thus examined, gives abundant evidence.]

III. FOR discovering the true intent and meaning of promises, contracts, testaments, and written laws, the proper rules of interpretation are often useful. But they belong rather to the art of criticism than to morals; as they are not peculiar to these matters.

1. We must still remember that such as profess to contract with others, and use such signs as commonly express contracting, are to be deemed bound, whatever way their mind was then employed: nor otherways could there be any faith in commerce.

2. The sense of common *popular words* is to be determined by custom, without regard to original meanings or etymologies; unless there appears evidence that they were taken in an unusual sense.

3. *Terms of art* are to be understood according to the definitions of the artists.



4. Where the different parts of any deed relate to the same thing; the ambiguous or obscure are to be cleared up by the more plain and distinct.

5. If words taken in their simple and unfigured sense import something contradictory and absurd, but not when interpreted as figurative; they are to be deemed figurative.

6. In deeds which convey no right in their prior parts to such as don't also consent to the subsequent; the subsequent limit the preceeding. This holds in the different parts of testaments, and in different deeds made between the same parties.

7. There are also just conjectures of interpretation to be derived from the *subject-matter*, the *circumstances*, *effects*, or *consequents*. For that is probably the true interpretation which suits the subject-matter and circumstances, or which involves no absurd consequences.

8. Contracts are best explained from knowing the views of the parties; and laws in like manner from the reason or design of them.

9. We are also to regard whether the matter be of a *desirable* or favourable nature, or on the contrary undesirable or odious; for accordingly we give a larger or more confined sense to the words.

IV. But where all or any of the contending parties in natural liberty, trusting to their own strength, and each dreading the interest or art of his adversaries in influencing any arbiters they might choose, declines to compromise; there remains no other remedy than that each defender prosecute his right by violence, with what aid he can get from his neigh-

bours : and by this means multitudes must often be involved in great inconveniences and dangers. Now 'tis probable, that in order to avoid these mischiefs, and to get large societies regulated by the authority of a few of the wiser sort, in the decision of their debates, and the exerting their united force for the common safety of all, men have had recourse to a political union and a civil power.

T H E  
E L E M E N T S  
O F  
M O R A L P H I L O S O P H Y.  
B O O K I I I.  
T H E P R I N C I P L E S O F O E C O N O M I C K S  
A N D P O L I T I C K S.

C H A P. I.  
C O N C E R N I N G M A R R I A G E.

**W**E have in the former book treated of the rights and obligations of that *state of liberty constituted by nature*. We proceed to the *adventitious states*, founded upon some human deed or institution.

These states are either *domestick*, regarding the utility of a few, so many only as can subsist in one family; or *publick*, respecting the utility of a whole nation or state, or even of many states.

Oeconomicks treat of the rights and obligations in a family; the chief points of which are delivered in

these first three chapters. There are many other adventitious states of persons united in some narrower communities or corporations included within some political body, and subject to it; of which there are innumerable multitudes, which are not under the cognisance of philosophy.

II. ALL kinds of terrestrial animals must have subsisted only for one age, if nature had not consulted their preservation by a difference of sex, a desire of offspring, and a tender care of it till it can subsist by itself. In the brute animals nature has done little more; as their young can be sufficiently preserved and reared by the care of their dams, since they need scarce any instruction for their simple ways of life. Nature finds all the clothing and armour they need; and the earth of itself sends up their food in abundance. But for the improvement and even preservation of human life a multitude of arts and inventions are necessary; as their bodies are more delicate, needing nicer food, and clothing, and other care; and their minds capable of many delightful arts. Their offspring therefor, by the wise order of nature, continues far longer tender and infirm, needing the constant care of the adult; that thus they may be more easily governed and instructed in the various arts of life, before they acquire untracable strength.

Now as the mothers are quite insufficient alone for this necessary and laborious task, which nature also has plainly enjoined on both the parents by implanting in both that strong parental affection; both parents are bound to concur in it, with joint labour, and united cares for a great share of their lives: and this can never be tolerable to them unless they are previously uni-

ted in love and stable friendship : as new children also must be coming into life, prolonging this joint charge. To engage mankind more chearfully in this laborious service nature has implanted vehement affections between the sexes ; excited not so much by views of brutal pleasure, as by some appearances of virtues, displayed in their behaviour, and even by their very form and countenances. These strong impulses plainly shew it to be the intention of nature that human offspring should be propagated only by parents first united in stable friendship, and in a firm covenant about perpetual cohabitation and joint care of their common children. For all true friendship aims at perpetuity : there's no friendship in a bond only for a fixed term of years, or in one depending upon certain events which the utmost fidelity of the parties cannot ensure.

III. THIS natural love of the sexes, and equally natural love of offspring, shew that *Plato* and some other excellent writers are justly censurable, for departing too audaciously from nature, in appointing their states to be supplied in new subjects by children unknown to both the parents ; and this in order to prevent some evils \* which may be prevented in a much more easy and gentle manner. For never could any laws or institutions have such influence, that persons quite uncertain about their offspring, and hence not influenced by

\* See *Plato's* scheme in his books *de Republica*. The evils avoided by his scheme, are avarice, and injustice ; vast estates, and the attendant power and influence, descending to worthless heirs ; the employing mens affections upon the contracted system of a family or two, which otherways might be extended to the whole state : and thence many dissensions and factions.

the natural affection, would take a proper care of the young. Or if they were compelled effectually, the labour would be most disagreeable to them, which to parents assured of their own offspring is light and delightful. And further while their offspring is unknown, men want one of the strongest incitements to all diligence and industry. Nay further Plato's scheme, without any sufficient reason or criterion that one can understand, is only calculated for the happiness of the few finer spirits; while the plurality are subjected to a miserable slavery.

Nay further; these inconveniences he dreads so much from each one's knowing his own children, might be prevented another way, by proper laws and publick institutions about education, testaments, and successions. Nor can we ascribe the factions which often tear states to pieces to our knowing the ties of blood; as one may easily see in all nations. He should also have prevented all particular friendships; or shewn that men have much superior sagacity in the choice of friends or of state-parties, than he allows them about the education of children, or the love of kinsmen, or in making their testaments.

As to the apprehension of danger from this, that many very weak men by means of the tender parental affections come into great wealth, 'tis without ground. The offspring of the weak is frequently very vigorous; and that of the vigorous weak, both in mind and body. Nor is it necessary for any state that all its members should be either robust or ingenious. And sometimes the finest genius is lodged in an infirm body.

IV. We must not therefor through fear of a few inconveniences counteract what nature has so strongly

recommended: but rather look upon all such deductions of reason, as shew how a faithful friendship may be maintained in wedlock, for the proper education of offspring, as so many sacred laws of nature. Men ought to restrain not only all monstrous lusts, as outrages against God and nature, but also all dissolute procreation without any proper covenant about a friendly society for life. For if such indulgence were allowed to all, it must destroy both the bodies and minds of the youth, produce a race destitute of all paternal assistance, and expose the incautious mothers to infamy, poverty and a perpetual course of debauchery, without any hopes of ever attaining any reputable state in life. It were to be wished that an equal infamy attended the other sex, the common authors of or solicitors to such vices.

Such adult persons as have a sufficient stock both of wealth to support a family in their condition of life, and of prudence to govern it, seem obliged to marry, unless they are hindered by some important offices inconsistent with the cares of a family. It would be dishonourable for one without a weighty cause to decline his share of the cares and services requisite for the preservation of the human race.

V. THE chief articles in this covenant are these.

1. "That the woman be faithful to the man in cohabiting with no other;" as it must be the greatest injury to impose upon him an adulterous offspring, for heirs to his fortune, and objects of that affection which is naturally due only to his own.

2. The second is, "that the husband should be equally faithful to the wife." For it is a natural iniquity that the wife's conjugal affection, and all her

cares and fortune, should be devoted to one man and his offspring; while the affections of the husband are allowed to be intercepted by, or dispersed among several women and their children, and along with it his fortune.

Simultaneous polygamy is not to be allowed to men, not only on account of the inequality or iniquity now mentioned, but because it also destroys all friendship in marriage; must be the cause of perpetual contentions; must tempt women so injuriously treated into adulteries; must corrupt the minds of men with wandering lust, destroying their natural affection to their children; and must occasion to some an offspring too numerous, which therefore will be neglected, and be void of all sense of duty to such dissolute parents. And further since Providence preserves the numbers of males at least equal to that of females, if 'tis allowed to men to have more wives at once, many must be excluded altogether from marriage or having offspring; and thus be free from these tender bonds which chiefly civilize and unite men in society: nor does polygamy contribute to make nations more populous, but has rather the contrary effect.

3. The third article is that persons married should by a perpetual union of interests and pursuits, consult the prosperity of their family, and chiefly the right education of their common children, and the improving their condition as they have opportunity.

That we may be the better fitted for observing these articles, from our infancy we should be enured to modesty and chastity; an high sense of which is deeply fixed by nature in the finest spirits. All obscenity and lasciviousness in discourse or behaviour is detestable;



as it relaxes these bonds of modesty by which the young, and women especially, are restrained from exposing themselves to all infamy and misery.

4. The fourth article is, “that the bond be perpetual, to end only by death.” This is necessary to make marriage a state of friendship; as also generally for the right education of children, who are successively born to us for a considerable part of life; and this lasting duty or charge is imposed by nature equally on both parents. It would also be most inhuman to divorce or separate from a faithful and affectionate consort for any causes which include no moral turpitude; such as barrenness, or infirmity of body; or any mournful accident which no mortal could prevent, and which must be equally afflicting to the person abandoned, the death of all the common children.

As to any proper power, or right of commanding, vested in either of the parties, it seems opposite to that tender affection the spring of marriage; which rather points out an equal friendly society. Nor seems there any other reason for giving any superiority to the husbands, except this, that men are generally more fit for managing the more important business of the family, to which the less important within doors should give place.

The four articles above-mentioned seem so necessary, that no covenants of the parties in opposition to them can be valid\*. Marriage therefor may be de-

\* If any one in this matter insists that simultaneous polygamy was allowed in some civilized nations; let him remember that so were also human sacrifices, and a certain sort of slavery manifestly iniquitous and inhuman, in far more civilized nations. And tho’ a plurality of wives was

fin'd "a covenant between a man and woman about  
 "perpetual faithful cohabitation and joint care of their  
 "common offspring."

VI. THE *impediments* of marriage are either such  
 as are deemed to make the contract from the first void;  
 or, afterwards make void a valid contract. Of the former  
 class some are natural and some moral.

Among the natural impediments, beside a manifest  
 bodily weakness rendering one unfit for marriage, may  
 be reckoned also some grievous disorders and miserable  
 incurable diseases, inconsistent with a friendly society,  
 or excluding all hopes of offspring that can live. Such  
 as idiotism, and perpetual madness, leprosy, and some  
 other diseases. Very advanced years of either side  
 may justly be deemed to make void a marriage with  
 one in the bloom of life. But if a couple both well ad-  
 vanced in years, covenant about a constant cohabitation,  
 on, there's nothing blameable in it. A third impediment  
 is, when either party is so young that they cannot  
 have attained that use of reason which is necessary  
 to their binding themselves by any contract. For it  
 would be most absurd that persons who because of  
 their immature years are deemed incapable of binding  
 themselves in any other matter, yet should be deemed  
 capable of it in this, which is far more important than  
 any other, and requires greater judgment.

allowed by the Jewish law; yet a far purer institution in-  
 forms us, that it was permitted for *the hardness of their hearts*,  
 or only allowed to pass with impunity, but not approved.  
 The *concubinage* both in Heathen Rome and under the Chri-  
 stian emperors was allowed only to such as had no wives  
 and was a marriage naturally lawful. See *Heineccius' antiqui-  
 ties*, in the appendix to lib. i. c. 3 8. and the following ones.

The moral impediments which make void the contract from the first are *prior contracts* with others, and *too near consanguinity* or *affinity*.

As to the former: if two persons both apprized of the prior contract with another join in marriage, the marriage should be deemed entirely void; and both parties should be severely punished. Where one of the parties was not apprized of the contract; the case of this person is so favourable, that the marriage confirmed by cohabitation should not be made void unless at the desire of this person: even as in other contracts, subsequent real rights take place against prior personal ones: but the guilty party deserves severe punishment. And that there may be no room for such frauds even after complete marriages, every state should take care that all marriages intended should be previously advertised and such as are celebrated also be divulged in the most publick manner.

As to *consanguinity* invalidating marriages, there are higher debates. Among parents and children in the *direct line*, the law of nature seems to prohibit all marriages; not only on account of a considerable difference of years, but because the conjugal affection and intimacy seems quite inconsistent with that reverence implanted by nature toward parents and confirmed by education. As to the inter-marriages of kindred in the *transverse line*, or collaterals, the natural reasons offered by ingenious men don't seem conclusive to prove such marriages pernicious or impious. But as we find that many nations who derived nothing from the \* Jewish laws, held the same marriages of col-

\* See Levit. xviii. and Tacitus's Annals. 12. 5. Digest. 33. 2. 1. 17. and last. and Lib. 39. 1. 53. and Grotius, ii. 5. 12.

laterals incestuous and impure; 'tis not improbable that they have been prohibited by some positive divine law in the earlier ages of the world; and that some vestiges of this law was preserved in many nations. The intention of this law has probably been to diffuse further among many families that good-will and endearment which frequently arises from consanguinity and affinity. The Deity may also have had in view some other advantages to human offspring to arise from such intermixtures of different families.

By the Roman law, and the customs of all Christians, marriage is prohibited to all within the *fourth degree*. And the degrees are thus computed. Persons a-kin have had some common parent: and as many generations as have intervened on both sides from this stock, so many are the degrees. In like manner a man is prohibited to marry any such kinswoman or his former wife, as of his own; to wit, within the fourth degree. The canon law retaining the same words, has yet extended the prohibitions much further; as it computes the degrees according to the generations in one of the lines only; and by the longer of the two, if they are unequal: and this prohibits all marriages within the seventh degree of the civil law.

VII. THE causes which break off a valid marriage are, any violation of the essential articles: such as adultery, obstinate desertion, capital enmity or hatred and such gross outrages as take away all hopes of any friendly society for the future. When a marriage is dissolved for such causes, the guilty party and the associate in the crime deserve the highest punishments; as these injuries in marriage do greater mischief, and cause

deeper distress than stealing or robbery, for which capital punishments are inflicted. The innocent party should be allowed to marry again: for it would be strangely inhuman because one has suffered injury, that the law should inflict another hardship, by depriving them of a new marriage and offspring. Nay if the guilty parties are allowed to live, they should not be hindered from marrying, except it be with the partners of their guilt. They should rather be obliged to marry persons equally infamous with themselves.

The prohibitions in the gospel of all divorces except in the case of adultery \* seem *elliptical*, as those which prohibit all use of oaths. They only condemn all the causes assigned by the Jewish doctors, except that one. The apostle Paul † expressly allows another, and that for manifest reason, to wit, obstinate desertion.

The duties of persons married consist chiefly in a faithful and constant affection, sweetness of manners, and prudent care of their families; and to this purpose 'tis necessary they improve their minds in all virtue; especially in meekness and calmness of temper; that they may restrain such passions as their family-affairs will be apt to excite. Without these virtues a continual society and community of all things can never be tolerable. As to the ways of improving their fortunes, this they must learn from other arts, and not from philosophy.

\* Matth. v. 32. Luke xvi. 18. † 1 Corinth. vii. 15.

## C H A P. II.

*The DUTIES of PARENTS and CHILDREN.*

**A**S human offspring remains for a long time infirm, incapable of preserving itself, needing the constant care of others, both for preservation and instruction in these arts and manners which are necessary for life; nature has plainly imposed this charge upon the parents by that singular affection implanted in them. Nature therefor must have designed that parents should assume all the power which is requisite for the discharge of this trust, and subjected children to it; while at the same time by this tender affection sufficient precaution is taken for the childrens obtaining their liberty as soon as they can safely enjoy it; since without it they cannot be happy, which is the point that parents are most solicitous about.

The want of judgment in our immature years, and the tender parental affection, the two only foundations of parental power, shew that it cannot be perpetual or during life; but must expire as soon as children grow up to mature strength of body and mind. And yet the parental affection will always remain, exciting parents to all kind offices, when their children need their assistance or counsel.

The same considerations shew that this power cannot be extended to any of the more grievous punish-

ments, such as cannot be requisite for education in such tender years: much less can it extend to life or liberty. A parent has no right to sell his child to perpetual slavery, or to lay any burden upon it beyond the value of the necessary and prudent expences of its education.

II. THIS parental power belongs alike to both parents, only that in domestick affairs the power of the father is a little superior. But if he is dead or absent, it is wholly vested in the mother.

'Tis trifling to found this power merely in generation \*, or to follow some law-maxims about the goods formed by our labour out of our own materials, or other accessions of things animate or inanimate, which have no use of reason or no capacity of holding any rights. Both the bodies and souls of children are formed by the divine power, that they may, as they grow up, arrive at the same condition of life, and an equality of right with ourselves, tho' for some time they must be governed by the wisdom of others. For children may have property, and other rights, quite independent of their parents; who seem to have no other power over any goods conveyed to their children by others than that of tutors or curators. Whatever parents abandon this guardianship of their children committed to them by nature, either by exposing or intirely neglecting them, forfeit also the parental power connected with it: and any one acquires the whole parental power who takes care of such children.

\* This is designed against *Hobbes* and *Filmer*.

Parents are most sacredly obliged to provide for their children all the necessaries of life, and even to improve their condition as much as they can; and above all to form their manners to all virtue by instruction and example: for without this their lives must be miserable and infamous, tho' in the greatest affluence.

What parents expend on children who have no stock of their own, is justly presumed to be donation: and it would be inhuman in parents, who are not in great distress, to charge food, clothing, and necessary education, as a debt upon their own children. But if the parents are in great distress, or if any one of their children have a stock derived from some other friend, parents may justly state such an account with their children, and exact payment from them of all the prudent expences made upon their education; and children in this case are bound to make such payment either by their labours or otherways. Altho' therefor from the common affections of parents we justly conclude, that their private fortunes are acquired for their children as well as themselves; whence appears the right of children to succeed to the inheritances of their parents; yet children are not to look upon themselves as less bound to gratitude on this account: nay they are rather the more bound. For the more firm and disinterested any affection is, and the more deeply it is rooted in the person's nature, the more it is to be valued, and the stronger is our obligation to gratitude.

III. PARENTS may acquire by civil law a further power over their children, as the law commits power



power over their children, as the law commits power to any magistrates. For civil power having different foundations and greater ends, extends beyond the parental. And children, as they have from their birth enjoyed protection and the other advantages of a civilized life in a society constituted for the good of all, are plainly bound to perform to the community on their part \* all that's due from good citizens; and particularly to preserve that constitution, and transmit the same to future ages. Minors therefor may justly be delivered as hostages, or be obliged to military services of the greatest danger in great exigences.

IV. CHILDREN even when adult owe all reverence and gratitude to their parents, not only in return for benefits received, which scarce any duty of theirs can sufficiently compensate; but also out of regard to God, by whose providence it was ordered, that we descended from such parents, united with them in ties of blood and natural affection, and an habitual reverence from our cradles. They ought therefor to bear with patience any weaknesses or froward humours of aged parents, as the parents long bore their childish follies. Particularly 'tis the duty of children to consult the satisfaction of their parents in entering into marriage; since the parent is also deeply concerned in this important step; by which their children enter into a strict society for life with others, from whence must proceed grandchildren to their parents, to succeed sometimes to their names and fortunes, and always to their tenderest affections.

\* See Book II. ch. xiv. 2. of obligations resembling those from contracts: and the following ch. v. 2.

After the proper parental power expires, there often succeeds that of the *head of a family*; which is of such extent as the domesticks make it by their own consent exprefs or tacit, by voluntarily continuing in, or entering into, a family, where they knew such a degree of power was assumed.

## C H A P. III.

*The RIGHTS of MASTERS and SERVANTS.*

**W**HEN mankind were considerably multiplied, there would be many who had no other fund of support than their labours; and others of greater opulence, who for their ease would need much of the labours and services of others. And hence the relation of master and servant would arise, founded on some contract. Nor is it of consequence whether such contracts at first were for life, or only for a certain term: since excepting the point of duration, the rights and obligations were the very same. The points following are of more consequence.

1. The labours of any person sound in body and mind, are of much more value than the bare simple food and clothing of a servant; as we plainly see that such can purchase all this by their labours, and something further for the support of a family, and even for some pleasure and ornament. If any one therefor has incautiously insisted for no more in his contract; yet as the contract is plainly onerous, he has a right to have this inequality redressed.\*

2. Where the labours were not specified, the servant is deemed to have engaged only for such as men of humanity in such stations commonly exact from their servants; and to have submitted only to such coerci-

\* Book II. xii. 4.

on of his master as is necessary for the good order of a family, if he should neglect his work or misbehave. But he retains all other natural or acquired rights.

3. If indeed the custom is known to have obtained, that heads of families assume a sort of civil power over their domesticks; the servant is justly deemed to have consented to this also, as far as it is managed consistently with humanity. The servant is bound to perform his work; but retains all the rights of subjects under civil government; particularly all such as are naturally unalienable: and may justly defend them, even by violence, against any invasions of them by his master.

4. Where the services have been specified in the contract, the servant is bound to no other. Nay tho' they were not, and the contract was perpetual or for life, yet the master cannot transfer him to another without his own consent; since 'tis of high importance to the servant what master he is subjected to, and in what family. And for the children of such servants they are all born free.

II. HITHERTO we have treated of service founded on contract. But there is a far worse kind, to wit, of those who for some great damage done, which they can no other way repair; or on account of some great crime, are adjudged by way of punishment unto perpetual labours to others.

And yet even in these cases, they don't lose all the rights of mankind, but only such as are naturally fit to compensate the damage, or are necessary to give security to the publick against like injuries for the future. If the lives even of the worst criminals are spared; after they have endured all such publick punishments

as the safety of society may require, 'tis unjust to treat them with any further cruelty; provided they are willing to perform the labours they are condemned to. And they have a right to defend themselves even by violence, against new injuries, or violations of any rights still remaining to them. But as slavery of this kind is constituted solely for the behoof of others; the master may transfer to another such a slave without his own consent. But no cause whatsoever can degrade a rational creature from the class of men into that of brutes or inanimate things, so as to become wholly the property of another, without any rights of his own.

Nations in other respects not barbarous, condemned all captives in war into this most miserable condition; establishing an inhuman law even against themselves, and strangely conspiring to subject themselves and their posterity, upon many very possible contingencies, to the most miserable and ignominious treatment. Upon which subject the following maxims seem just.

1. Whoever makes war without a just cause acquires no right by such violence, over either persons or goods taken, which he can use with a good conscience, tho' he may detain them with external impunity, as we shall shew hereafter.\*

2. One who has a just cause, yet should set just bounds to his demands: nor can he demand any thing from the conquered except either under the name of *punishment*, *reparation of damage* done, or *precaution* against future injuries†.

\* See the following ch. ix. 4.    † See Book II. xv. 5, 8.  
On this subject of slavery many just reasonings are to be

3. None are punishable but such as either by some action or omission, contrary to their duty, have occasioned and contributed toward these injuries done to us by the war. And 'tis plain, this is seldom ever the case of the far greater part of the adult subjects of any state, who are capable of a share in publick affairs; not to speak of women and children, who make three fourths of every people, and ought to be deemed joint proprietors with the heads of families in their private properties. And tho' all heads of families payed tributes toward maintaining the war; this can't be deemed a crime in them, as they were under the immediate distress of their governors, who would otherwise have levied these taxes by force, and punished the refractory. Grant they had consented to the war, following some specious reasons published by their governors; their ignorance generally was invincible: nor was their consent of such importance as to cause the war, nor would their dissent have prevented it. Nor can we ever suppose that any political union can transfer the guilt of one person upon another who did not concur with him.

4. Nay the very soldiers, all such at least as had no share of or influence in the publick councils, as they enlisted upon presumption of being employed only in just causes, or persuaded by such reasons as their governors publish; they are excusable entirely, both on account of ignorance and necessity. To men once enlisted 'tis a capital crime to disobey orders. It must therefor be exceedingly inhuman to inflict any thing severe upon them by way of punishment, provided we found in Mr. *Locke's* 2d. book on government; and Mr. *Carmichael's* notes on *Puffendorf*, Book II. ch. iv.

can be secured against further dangers from them: and this we always may be from captives, by keeping them in our own country, and mixing them with our citizens or our colonies, without depriving them any way of their liberty. All this not only humanity will recommend, but a consideration of the uncertain accidents of war, and the inconstancy of fortune.

5. Under pretence of repairing damages, the conqueror can demand nothing from the innocent citizens, except upon the same grounds that one demands it for damage done by another's slaves or cattle, to wit this, "that, whoever contrives or procures any thing for his own utility, by which others without their fault receive hurt, is bound either to repair the damage, or deliver up the goods, or contrivance whatever it was, to the person injured." The conqueror may therefor justly demand from the conquered citizens, that they abandon their unjust governors the causes of the war; or that they oblige these governors to repair the damages; or that they repair them themselves: and these three should be left to their choice. This holds most evidently as to these first citizens who at first constituted the government; or those who have great power in the state, by whose council the war was undertaken; or who have it in their power to restrain their princes in their unjust designs. As to others who are of no weight in publick affairs, their plea against even compensating of damages is more favourable.

6. But as soon as the defeated have repaired all damages, or the conqueror has obtained reparation to himself by force and military execution; and has also obtained security against future injuries, such as a wise arbiter judges sufficient, he has no further demand up-

on the innocent citizens. Now he may obtain all this in a much easier, and more merciful way, without depriving the innocent citizens of their liberty. The governors are in the first place bound to repair all damages, and the citizens only in the second place when their governors cannot do it, or decline it.

7. The children of slaves of any sort are all born free\*, as we shewed above.

8. Whoever purchases a person for a slave, or detains him as such, is always bound to shew that this person was deprived of his liberty upon some just ground. The original proprietor of the matter in question is always at hand: since nature made every man master of himself, or of his own liberty. 'Tis plainly therefore incumbent upon the violent possessor to prove his title; and not upon the person deforced, and claiming his liberty, to prove a negative, that he did not lose, or forfeit his liberty. [Without a previous inquiry of this kind no man can in this case be a fair purchaser.]

9. Nor is it justly pleaded here, that captives would be put to death if they could not be made slaves and sold as such: and that therefor they owe their lives and all to the purchasers. But sure no higher sort of title arises to the purchasers in this case, than to such as have done any other useful service of equal importance; such as, rescuing a fellow-citizen from robbers or murderers, ransoming them from pyrates, curing diseases or wounds which without the aid of art would have been deadly. All such persons should have all expences refunded to them, and a generous compensati-

\* Book II. xiv. 3. See Mr. Locke on govern. Book II. as also *Hooker's Eccles. Polity*, and *Sidney on Government*.



on for their labours and art. But who ever alleged that they could claim the persons they thus served as their slaves?

III. As it is the duty of servants who are justly subjected to others, to perform their work with diligence and fidelity; regarding God the common master of all, who is ever present with us: so 'tis the duty of masters to exact no more from servants than what they have a right to, and to abstain from all cruelty and insolence; as it becomes those who remember that all are of one blood, and naturally allied to each other, and that fortune is inconstant, that the souls and bodies of servants are of the same stuff with our own, and of a like constitution; and that all of us must give an account of our conduct to God the common Parent and Lord of all.

## C H A P. IV.

*The ORIGINAL of CIVIL GOVERNMENT.*

**H**AVING finished the account of domestick society, we proceed to shew the origin and rights of civil society, [in which 'tis universally understood, there is included a right vested in some person or council to decide all controversies arising amongst large numerous bodies, to direct the actions of all for the common interest, and to compell all by force to obey their orders.] By the associations already explained, if all men were faithful in discharging their duties, human life must have sufficient affluence and pleasure. It must therefor have been some fear of mischiefs to arise either from the weakness or vices of men, which has moved them to subject themselves to civil power. But we must not therefor, call civil society *unnatural* or contrary to nature. For whatever that reason, nature has endued us with, shews to be necessary or very conducive to obtain those advantages we naturally desire, or avert the contrary evils, must plainly be deemed natural to a creature endued naturally with reason and forethought. Men therefor are justly called "creatures fitted by nature for civil polity."

Let us suppose all men so just that none would do to others any thing he judged injurious, but that they are pretty liable to mistakes about their own and others rights, through their strong selfish desires, and the byass of impetuous passions: this would frequently oc-

casion controversies among them. Let us further suppose that many honest men are yet too suspicious, so that they won't submit their disputes to the arbitration of others, each fearing perhaps the interest of his adversary with the arbiters, or his art in seducing them: if there be added to this, too much confidence on both sides in their own force, and obstinacy in opinion; their controversies in natural liberty can be decided no other way than by violence and all the mischiefs of war.

But there's something in our nature which more immediately recommends civil power to us. Some of our species are manifestly superior in wisdom to the vulgar, as the vulgar are often sensible. These of superior sagacity, as all must own, are capable of contriving and inventing many things of consequence to the common utility of multitudes, and of pointing out more effectual methods for each one to promote his own interest, if their directions are complied with. If to these abilities be added also eminent moral virtues, goodness, justice, fortitude; the appearance of such excellencies obtains the trust and confidence of all, and kindles their zeal to promote such persons to honour and power; as they conclude that under their direction all may obtain every sort of prosperity. 'Tis highly probable therefor that not only the dread of injuries, but eminent virtues, and our natural high approbation of them have engaged men at first to form civil societies.

II. BUT if we consider how much injustice, depravation of manners, avarice, ambition, and luxury prevail among men: it will be manifest, that without civil power, men cannot be preserved in safety, not to speak of any high advantages or pleasures to be enjoyed in society: and that it is by civil power alone an ef-

fectual remedy, and such a one as must strike the senses of the most inconsiderate, can be found for the evils to be dreaded from these vices of men. For tho' all the members of a large assembly were so unjust, that upon a fit opportunity each one for his own interest would do injuries to others; yet each one would abhor like injustice done by his fellow, when he had no share in the gain of it. An assembly therefor of such men, of whom each condemned that injustice in his neighbour which he would indulge in himself, will never make unjust decrees for their whole body. Each one will be ashamed to own his dishonesty, and will live in dread of receiving injuries from others, unless they are all restrained by equal laws enforced by proper punishments.

Nor is there any other way of preserving society in safety. For altho' men were not generally so depraved and that even humanity and conscience restrained the generality from injuries, and inclined them to give aid to any who happened to be wronged: yet multitudes would omit this duty through fear and cowardice, if it exposed themselves to danger. Nay further; a sufficient number of honest brave men, if they were not directed by some head, and that united in their efforts, would run into the most different measures, according to their different sentiments; and when thus disjoined would become a prey even to a smaller number of less bravery, who were united in their counsels.

'Tis therefor very probable that some of the wiser and more sagacious, observing these inconveniences of a state of anarchy, fell upon this as the only remedy, that a large number of men should covenant with each other about entering into a firm society, to be re-

regulated by the counsel of the wiser few, in all matters relating to the safety and advantage either of individuals or the whole body. And discerning the many conveniencies to ensue upon such a project, have explained it to others, and persuaded them to put it in execution.

III. THEY who ascribe the first origin of all civil power to the violence of ambitious men, plainly presuppose that already existing, whose original they are searching for: as no one man could have force enough, without a large number of others already subjected to his direction and government, to compell a multitude sufficient to form a state, to submit themselves to his power. A civil power therefor was constituted previously to that conquest they suppose to have produced the first civil power.

Should one alledge that a potent head of a family, with his numerous domesticks, might have conquered and thus compelled his neighbours around to submit to him as their prince. This may have happened no doubt. But we are not to regard names, but things themselves. Heads of families no doubt sometimes had a proper regal power over their domesticks. And further, we are not inquiring into the possible injurious methods of usurpation, but into the probable just causes of just power.

IV. THAT it must conduce much to the interest of a multitude to be governed by a council of the wise, no man can deny. And altho' under some foolish plans of government, power may often be intrusted to bad hands, and thence great mischiefs arise, as the corruptions of the best things may be most pernicious; yet this is no dishonour to civil government, as if it were

in general of little use or pernicious. For God has given men sufficient powers of reason to choose some of the more prudent convenient forms out of the innumerable multitudes conceivable.

A state or civil society is, “a society of free men united under one government for their common interest.” That the common interest of the whole body is the end of all civil polity, is owned by all. This all subjects insist upon; and all governors glory in it as their dignity; except some vain monsters, who forgetting their mortal state, arrogate to themselves the rights of almighty God, or even powers more extensive. The very notion of civil life, or polity, is opposite to despotism, or the power of masters over slaves. That civil power therefor alone is just which is naturally adapted to this end: other power tho’ granted by the rash deed of an ignorant people, has no foundation of right. There was an essential defect in the deed granting it, as it was founded in an error about what is owned by all to be most essential in such contracts.

One can scarce avoid wondering how some \* ingenious authors seem to pique themselves upon aggravating and exaggerating all the burdens of civil subjection, as if they designed to deter men from entering into it; but then least they should do so, they paint a state of liberty and anarchy as the most frightful monster of all. Whereas ’tis plain both states have both their advantages and disadvantages. There are no

\* The author has here in view *Hobbes*; and *Puffendorf*, both in his greater and lesser book, who has too blindly followed *Hobbes*, nay even transcribed his very words,

doubt many dangers in a state of liberty, but these not continual: generally they are greater and more frequent than in civil life; unless a people have been exceedingly incautious in the plan of power they constituted: as in civil life we have a much surer prospect of protection from injuries by the united force of all. Nor are there any evils peculiar to a civil life under regular government; the like or worse, men were also\* exposed to in liberty: [as it will appear by considering the several parts of civil power in the following chapter.]

\* Thus subjects are bound to pay taxes, for the common interest, for fortifying or defending the state. But each one in liberty must on his part be at greater charges, either for his own conveniency, for fortifying his house and arming his domesticks, or for hiring assistance. Each subject may be obliged to hazard his life for the state. But so each one in anarchy may more frequently for his own defence. Subjects submit to a power of life and death over themselves in criminal jurisdictions. But so each one in anarchy is subjected to a worse power of any intruded person who alledges he is injured by him, and intituled to use force for redress. If by a power of life and death one means an arbitrary power in a governor, upon any caprice, without a crime alledged, to take mens lives away; no such power is in any wise polity; nor can any human deed constitute it.

## C H A P. V.

*The INTERNAL STRUCTURE of STATES: and the  
SEVERAL PARTS of SUPREME POWER.*

AS no governors are the natural parents or progenitors of their people, nor if they were, could they transmit to any one heir the parental power over his adult brethren: as this power is founded solely upon the parental affection, and the weakness of immature years: the parental power can never be the foundation of the civil, tho' it be a natural sketch or emblem of it. Nor can any person have such power over a whole people as masters have over slaves; as appears from what was already said. Nor has God by any revelation nominated magistrates, shewed the nature or extent of their powers, or given a plan of civil polity for mankind. Nor lastly can mere force without some foundation of right constitute any just power. It must therefor remain that some *deed* or *contract* of a people must be the sole natural origin of all just power.

In some extraordinary circumstances the case may be otherways. For since the good of the whole body, as all allow, is the sole end of all civil power; if any person of eminent wisdom and great power consults this end sufficiently, in prescribing a legal plan, which all upon trial shall soon heartily embrace, he may perhaps without any iniquity impose this plan upon a rude and unexperienced people, which upon experience they



shall soon approve, tho' he could not obtain their previous consent to it. But as no people can be happy while they live in perpetual doubts and fears, as to the security of their highest interests from the invasions of men in power; we may pronounce in general that there can be no right to power except what is either founded upon, or speedily obtains, the hearty consent of the body of the people.

II. To constitute a state or civil polity in a regular manner these three deeds are necessary; first a *contract* of each one with all, that they shall unite into one society to be governed by one counsel. And next a *decree* or *ordinance* of the people, concerning the plan of government, and the nomination of the governors; and lastly another *covenant* or *contract* between these governors and the people, binding the rulers to a faithful administration of their trust, and the people to obedience. 'Tis true that in the first constitutions of power, 'tis scarce credible that a rude and incautious multitude, full of admiration of the shining virtues of some more eminent characters, took these three formal steps. But then in every just constitution of power, \* something was originally done which plainly included the whole force of these three transactions; since the end known and professed by all sides in this constitution of power was the common good of the whole body.

As to the transmitting of these civil obligations to posterity, the following observations will explain it.

1. Each citizen in subjecting himself to civil power stipulated protection from the whole body, with all the

\* See Mr. Carmichaell's notes on Puffendorf, Lib. II. vi. 9.

other advantages of a civilized life, not only for himself but for his posterity : and in this, tho' uncommisioned, did them a most important service. They are bound therefor,\* whether they consent or not, to perform to the body of the state, as far as their power goes, all that which could reasonably be demanded from persons adult for such important benefits received. Now 'tis highly reasonable that all such should on their parts contribute to the defence and support of that state, by which they have been so long protected in a civilized life, and not desert it unseasonably ; but transmit that association with its beneficent influence to posterity.

2. As it must be extremely dangerous to any political body settled in any district, that any lands within the same should remain exempt from the civil power of the united body, to be a receptacle to fugitives or foreign enemies ; 'tis justly presumed that when any body of men possessing such a district of land constitute a civil power, each one thus subjects his lands to it, that no person can hold the same without also subjecting himself to it, and uniting with the body political.

3. And yet, in times of ease and peace, it would seem unjust and dishonourable to any state to hinder its citizens from selling their lands, removing to any other state they please, and freeing themselves from their former political relation. For the several subjects by the taxes or tributes they pay annually, compensate all the ordinary advantages they receive from the community : and it would be unjust to hinder them to

\* This is an obligation *quasi ex contractu*. See Book II. xiv. 2.

consult better their own interest if they can elsewhere. Nor is there danger that any state will be deserted by many of its subjects, unless it be either miserably constituted or administered; and in such cases the citizens have a better right to quit it, and cannot be compelled to remain its subjects.

III. A state constituted in this manner becomes as *one person* in law, holding *rights* different from those of the several members; and under *obligations*, which bind no individual; and committing to certain persons or councils the management of its common interests. Among several states thus constituted, as they are all with respect to each other in natural liberty and independence, the like rights and laws obtain as among individuals in liberty. States have their perfect rights, and obligations to each other, and are bound to offices of humanity, in a like manner as individuals in natural liberty: and have like rights of self-defence. This is the case of all states which are independent, whether greater or smaller, whatever names and titles they bear, more humble or more ostentatious. By an easy substitution therefor of states for individuals, the natural law with respect to individuals in liberty, makes all that *publick law* of states with respect to each other, which is of necessary obligation. As to voluntary or positive *publick law*, we shall touch at it hereafter\*.

IV. THE several powers requisite for governing a people are divided into the *greater* and *lesser*. Of these greater powers some are executed within the bounds of the state, and others respecting other states are to be exerted abroad. Of the former class, is that of *making*

\* Ch. ix. and x. of this book.

*laws* to regulate the behaviour of the subjects, and maintain their rights, still regarding the law of nature.

2. Another is, that of *exacting all such tributes* or revenues as the administration of the state requires: this some make a branch of the former. Revenues are sometimes raised from subjects, sometimes from conquered provinces; some destined for support of the families of the supreme governors, and some for the publick uses of the state. As to the former, elective princes are deemed only as life-renters, and hereditary princes have a right like that in fiefs, to be transmitted unburdened to their heirs. As to the other branch, princes can only be deemed administrators or trustees for the whole state.

3. A third branch of power is the *executive*, containing all jurisdiction civil and criminal; and the right of constituting magistrates, and judges to take care of all publick affairs, and decide controversies, as also officers to collect the tributes.

The powers to be exerted abroad are first those of *war*, in enlisting soldiers, and appointing officers, and directing all military operations.

2. The power of making *treaties*, either for settling peace, or maintaining commerce, and of constituting ambassadors for this purpose.

There's beside all these a certain *extraordinary right* in the supreme governors of any people, in great exigencies, to incroach upon those rights of the subjects which for ordinary are to be religiously maintained to them: as when it happens to be absolutely necessary, in some perilous emergencies, either to compell them to some extraordinary dangerous services, or to contri-

butions of their goods beyond the ordinary proportions. This right in civil life answers to these extraordinary rights of necessity, we formerly \* mentioned in natural liberty.

The smaller rights commonly vested in the supreme governor, are those of conferring civil honours, coining of money, granting to hold fairs or markets, legitimating of children, erecting corporations, admitting minors as if they were of due age, pardoning criminals, giving protections to debtors, and such like ; which we briefly pass over as of less importance, and not always necessary in every state.

V. THOSE persons or councils have the supreme power, who are intrusted with the greater branches of power abovementioned, or the greater part of them, so that they can exert them according to their own judgment, and no other person or council can rescind their deeds. Many have supreme power who don't hold it unlimited, nor even for life : such too as cannot alter the order of succession, or abolish any of the fundamental laws of the state. He is supreme to whom the chief parts of civil power are committed, tho' within certain limits, to be executed by his own order for the good of the body, so that he does not act by new commands, or commissions from any other ; and whose deeds derive not their force from the consent of any superior.

In every state the same quantity of power is deemed to be lodged some where or other ; either with a monarch, a senate, or popular assembly, or at least with the whole body of the people. Nor is it any diminuti-

\* Book II. ch. 16. art. 3. near the end.

on of the supremacy or independence of a state that it is bound by its treaties with others, even tho' they be very inconvenient ones; provided the state can still exercise all the greater parts of civil power, and can govern itself independently of others.

If a number of states enter into such a strict alliance, as to constitute some one person or permanent common council for them all, and commit to this person or council some parts of the supreme power, to be executed for them all; they are called a *system of states*, or *Achaian states*, from a famous instance of that kind. But independent states then incorporate entirely into one, when the very same persons or councils have committed to them all the parts of the supreme power to be executed for them all.

## C H A P. VI.

*Of the* VARIOUS PLANS of GOVERNMENT.

**T**HE simple forms of government are divided into three classes, according as the power is committed to one person, or to one council. When it is committed to one person, it is called monarchy; when to a council of some few eminent citizens, it is an aristocracy; and when it is committed to a popular assembly either of all the free citizens, or of some more reputable persons deputed by them, 'tis democracy.

When power is committed to a council, that is deemed the will of the council which is determined by the major part; unless by some fundamental law, a certain number of members is made necessary for determining any matters of publick administration, as a *quorum*; and what proportion of this number, can make any alterations. Precaution should also be taken against an inconvenience which may always happen when a question of three or more parts is put to a vote, that that part to which a great majority may be most averse, may yet have more votes than any one of the other parts, and thus be enacted. This may always be prevented by reducing a complex question into two or more simple ones, of two parts each; or by excluding by previous votes one or two of the parts of the complex question, so as only two parts shall remain for the last decisive vote. A like method may be taken where many candidates set up for the same office.

II. OF each of these simple kinds there are many species. Monarchy is either *absolute*, where the whole administration is committed to the prudence of the monarch, without any other limits than those which are always understood from the general end of all civil government; or it is *limited* in the original conveyance of the power; and certain rights reserved to the people and exempted from it. And then each of these kinds are subdivided into *hereditary* and *elective*: the elective princes again may either be chosen for *life*, or for a *certain term*.

There are likewise several kinds of *aristocracys*, *absolute*, or *limited*; *hereditary* or *elective*; *perpetual* or *temporary*. \* In this last sort the senators hold their seats for a certain term; upon the expiration of which, others are substituted in their places. If such new senators are elected by the people, and any free citizen may stand candidate, the council is rather *democratical*: but if the places are filled by the votes of the remaining members of the council; or only some eminent families can be candidates, it is *aristocratical*. When the seat in the senate depends upon a certain quantity of wealth; or is held in virtue of certain lands justly possessed; 'tis called properly *oligarchical*. When these alone can be elected who have discharged certain great offices with approbation, this is deemed *aristocracy* in the properest sense, and the plan of it

\* The characters of aristocracy, are *cooptation* by the senate, to a perpetual seat, and a limitation to certain eminent families, distinguished by fortune, or bearing great offices. The characters of democracy are *popular elections*, *temporary seats*, and *access to all* citizens to stand candidates. There's in many constitutions a mixture of these different characters.



most commended by some great authors of antiquity.

There are also different kinds of *democracies*, as the popular assembly is differently constituted. We have examples of two ways in the *comitia curiata*, and *centuriata* of the Romans. In the former all citizens voted equally: In the later according to their fortunes. In some states the lot determined the members of the assembly: in others the people being divided into a number of tribes, counties, or districts, and these again subdivided; each division sends so many delegates or deputies, chosen by themselves, to be members of the popular assembly.

The complex forms are innumerable, according as any of the different sorts of senates jointly share the supreme power, with any of the sorts of monarchy; and again as any of those complex kinds are again conjoined with one or other of the popular assemblies: and then as such or such parts of the supreme power are vested in one or other of these councils, or in the monarch; or in all three jointly.

III. THAT we may discern which of these forms is preferable, the following observations seem proper.

1. In constituting of a state these four points are to be aimed at; that first, there be sufficient *wisdom* in the government to see what is best for the state; and then *fidelity* to choose what is best; and next that *concord* be maintained; and lastly a *secret and speedy execution*. If in any plan sufficient precaution is taken for all these, a people cannot desire more from its civil polity.

2. Where the parts of the supreme power are placed in different subjects or bodies; there must be some such

political bonds between them, as shall prevent their acting in opposition to each other ; that the prince, for instance, may do nothing of high importance without consent of the senate or popular assembly ; nor these bodies do any thing without consent of the prince ; nor one of these bodies without the concurrence of the other. If any sufficient precautions of this kind be taken, the civil power is better lodged by parts in different bodies, than all committed to either a monarch, or to any one council.

3. The power wheresoever lodged will never remain stable unless it has large *property* for its foundation ; without this it must be fluctuating, and exposed to frequent seditions. Wealth carries force along with it, which will overturn rights not supported by wealth ; or be wrested from the owners by the civil power. An hereditary monarchy needs for its stability large crownlands, or hereditary provinces, belonging to the monarch's family. A senate will not remain stable unless a large share of the lands are the property of the senators : and lands must be dispersed among great multitudes, and preserved thus dispersed by agrarian laws, to make a stable democracy ; or some other causes must keep property much diffused. And altho' the diligent and active should not, without weighty causes, be any way restrained in their just acquisitions : (and indeed the best sorts of democracy may allow them to acquire as much as can be requisite for any elegance or pleasure of life that a wise man could desire :) yet we are never to put in the ballance with the liberty or safety of a people, the gratifying the vain ambition, luxury, or avarice of a few. It may therefor often be just to prevent by agrarian laws such vast wealth coming into a few

hands, that a cabal of them might endanger the state.

4. No such insolent or oppressive privileges should be granted to any one order in the state, as would exclude all others from publick offices of dignity or profit. For they will become occasions of perpetual seditions\*.

5. As it would be of little consequence what were the form of polity, were it provided that none but good and wise men got into power; (which perhaps no precaution can ensure) the main drift of good policy is, to provide that even tho' bad men come into power, they shall either have small temptations to abuse it, or at least no hopes of gain and impunity in doing so.

6. As to the fittest number for making an happy state, nothing can be precisely determined. If the number is small, there won't be strength enough against bands of the avowedly unjust, who may attack it by surprize; nor will there be sufficient wealth to execute any wise designs for the improvement of life. On the other hand when the numbers and the extent of a country is very large, no governors can take sufficient care of all their interests, and prevent frauds, extortions and oppressions, even by the avarice of the deputy magistrates, as access to complain must be more difficult. And besides, far fewer men can be employed in the greater and more important state-affairs, and thus improve in that most important part of wisdom, than if out of the same numbers and the same tract of ground, several distinct independent societies had been framed. Indeed this is seldom matter of choice, what numbers

\* Of this we have a clear instance in the Roman state, till the plebeians got access even to the consulate.

should unite. For if once vast empires are formed, it becomes necessary to any little states around them to incorporate together, as many of them as may be, for their defence against a potent neighbour. But as agrarian laws are often justifiable in a state, to prevent the immoderate increase of wealth in the hands of a few; 'tis equally just, for the same reasons, that smaller neighbouring states should take timely precautions, and that by violence too, if gentler methods are not like to succeed, that no neighbour-state should acquire such force as may enslave all around; especially if they see a prevalent disposition in all the institutions and manners of any neighbour-state toward military affairs and conquest.

IV. MONARCHY has these peculiar advantages, that it is adapted to preserve concord, and make a secret and speedy execution of any design. But then in hereditary monarchies there's small security for either the wisdom or fidelity of the monarch. In elective monarchies there's greater probability for wisdom; but rather less for fidelity: and upon the death of each monarch there's an open gate to civil wars. Under an absolute hereditary monarchy nothing is secure. Under the limited hereditary, no better precaution is taken for wisdom, but there is better precaution as to a faithful administration: since if the monarch violates the fundamental laws, or breaks over the bounds set by them to his power, he plainly declares himself a tyrant, and forfeits his right; which all the subjects must plainly see: and hence will more readily agree in de-throning him to set up another, or to constitute some better plan. But then in the limited monarchies there

generally prevail factions, which sometimes turn into civil wars.

In the simpler hereditary aristocracies scarce sufficient precaution is taken for wisdom, and scarce any for fidelity, concord, or secret and speedy execution. In the elective are better precautions for wisdom and fidelity, but no better for concord or execution.

In democracies we are always secured as to fidelity; and may have a tolerable prospect as to wisdom too, when mens votes are according to their fortunes; or when the assembly is made up of deputies elected by the people: but there's no security of concord, or of speedy and secret execution in any pure democracy.

The most convenient way of voting in all large councils or assemblies is by the ballot: as by this means, men need not dread the resentments of men in power; and 'tis less easy to use any indirect influence. And altho' in the ballot there's no restraint of shame, but a door opened for private favour, hatred, and envy; yet it seldom happens that these passions work in the majority of a people without some just or probable cause. But if something of the lot be also intermixed,\* it may often quite defeat great cabals, and their arts of corruption, and stop the power of malice and envy. But the lot alone must be quite unfit to determine any point of consequence, or to advance any persons to offices; for tho' no man is affronted by a disappointment this way, nor is there any room for partial favour; yet it is plainly void of all prudence or wisdom.

V. WE have said enough to shew that none of the

\* All these points are fully explained by *Harrington*.

simple forms of government are well adapted to preserve any state happy. Nor is it of any avail to plead antiquity here. If all the most antient ways were best, we should return to caves and beast-skins for our shelter and drefs. What flatterers of princes often tell us, that monarchy was the earliest form, is rather dishonourable to it; importing indeed that it at first pleased a rude and unexperienced populace, but could not continue to please upon experience and the increase of wisdom. And indeed in nothing could one less expect that the first essays would be perfect, than in the constitution of civil polity; a work requiring the greatest knowledge and prudence, to be acquired only by much thought and experience of human life. The several great inconveniences attending each of the simple forms shew the necessity of having recourse to the mixt and complex; and the several great advantages peculiar to each of the simple, shew that those mixed forms are best where all the three kinds are artfully compounded: and this was the opinion of the wisest men of antiquity.\*

As a council of delegates or deputies duly elected by a general popular interest can never want fidelity or good intention, and seldom can be deficient in wisdom, it may seem adviseable that a large share of the civil power should be lodged in such a body; such as that of enacting laws and even determining definitively the most weighty affairs in deliberation. And this part of a constitution should be secured by agrarian laws: not so strait however as to discourage industry, or exclude any innocent elegance or ornament of life.

\* *Plato, Aristotle, Zeno, Cicero.*

If there be also a *senate* of a few who have approved their abilities and fidelity in discharging the great offices of the common-wealth; it may safely be intrusted with the sole right of deliberating, debating, and proposing business to the popular assembly. In both councils it may be proper to contrive a rotation, by new members gradually succeeding to the old, so that neither council may have above one third of unexperienced new men, nor yet any one man continue a member perpetually. Laws limiting the times that any general, minister of state, or magistrate can continue in office have also great advantages, to prevent any person's so rooting himself in power or popularity, as to be dangerous to the constitution; and to train up greater numbers in political wisdom, by experience in all the important offices; so that the state may never be obliged to have all its hopes depending upon one mortal life. Where such laws are sacredly established, the state will never want the benefit of the wisdom or experience of such as have served out their legal time. For it will be no matter of offence that at the expiration of it they must lay down their offices according to law.

And lastly, for sudden unexpected exigences or dangers, and for the secret and speedy execution of what the publick interest may require, some sort of regal or dictatorial power is requisite; but such an one as has no other foundation of its force but the laws themselves. And to this power may be committed the command in war, and the execution of the laws. This third branch may be as an arbitrator, holding the ballance between the two other parts of the con-

stitution, if there should arise any high contention between the senatorial order and the plebeian.

The power of promoting to all sorts of offices may be some way vested in these three jointly, or divided among them; so that offices requiring great abilities and wisdom should be filled by the nomination of the senate; such officers as are to be employed in speedy execution, to be nominated by the prince: and such as are to protect the rights of the people, and administer justice among them, to be elected by the people.

A censorial power too would be of the highest use, to reform, or prevent the corruption of manners; by degrading persons of any dignity whatsoever, as soon as they run into a dissolute course of debauchery.



## C H A P. VII.

*The RIGHTS of the SUPREME POWER: and the  
METHODS of ACQUIRING IT.*

**T**HE persons vested with the supreme power, have it with that extent which the constitution or fundamental laws have given them. The sum of *civil power* in all states is the same; the same quantity of it in every state resides some-where or other, at least with the body of the people. But the powers vested in the king, or in any councils, in one state, may be very different from what is vested in like persons or councils in others. For in some, certain rights of the people are expressly exempted from the power of any prince or political council; but in others, there's no such exemptions. But as the end of all civil power is acknowledged by all to be the safety and happiness of the whole body; any power not naturally conducive to this end is unjust; which the people, who rashly granted it under an error, may justly abolish again, when they find it necessary to their safety to do so. Nor can any thing be conceived more insolent or perfidious, than that persons intrusted with power solely for the good of a people, should strive to retain it by force, for their own grandeur, when it is found destructive to the people.

It were to be wished that in these cases, such powers should be abolished in a peaceable manner, by mu-

tual consent, rather than by force. Nor is it justifiable in a people to have recourse for any lighter causes to violence and civil wars against their rulers, while the publick interests are tolerably secured and consulted. But when it is evident, that the publick liberty and safety is not tolerably secured, and that more mischiefs, and these of a more lasting kind, are like to arise from the continuance of any plan of civil power than are to be feared from the violent efforts for an alteration of it, then it becomes lawful, nay honourable, to make such efforts, and change the plan of government.

What is alleged about some peculiarly divine right, and inviolable sanctity of governors, especially monarchs, is a mere dream of court-flatterers. In one sense every right is divine which is constituted by the law of God and nature. The rights of the people are thus divine, as well as those of princes: nay since the latter were constituted for the defence and protection of the former; the former should be deemed the more divine and sacred. The rights of the governor, as they are more important than those of any one private man, may be deemed more sacred than his private rights; but can never be deemed more sacred than the rights of the whole body. A good subject ought to bear patiently many injuries done only to himself, rather than take arms against a prince in the main good and useful to the state; provided the danger only extends to himself. But when the common rights of the community are trampled upon; and what at first is attempted against one, is to be made a precedent against all the rest, then as the governor is plainly perfidious to his trust, he has forfeited all the power committed to him.

II. In every sort of government the people has this right of defending themselves against the abuse of power. If the prince's power be limited, and yet he breaks over its bounds, invading such rights as the people had reserved in the very constitution of the power; the people's right of resistance is unquestionable. But even in absolute governments they have the same right; if their governor, ceasing to use his power, as if he owned it destined for the good of the body, should govern the whole state as his own property; and neglecting the common safety of all, turn every thing to the gratification of his own lust or avarice; or if he plainly declares a hatred of his people; or conducts all affairs in such a wretched manner, that not even the most sacred rights of the people, such as are necessary to any tolerable life, remain secure to them. Nor does this doctrine of resistance give to the people a civil superiority over their governors: for even slaves adjudged to the most miserable subjection for their crimes, may have a right to defend themselves against certain injuries their masters may attempt against them.

As to that question, who shall be judge in this disputed point, whether the governors by their perfidy and mal-administration have forfeited their right? If 'tis alleged, the people cannot judge as they are parties: for the same reason the governors cannot judge. The only recourse then should be to impartial arbiters, either within the state, or in some other nation, if this could be safe: but if not; surely the people have a better claim to judge in this point; since *they* at first entrusted their governors with such powers, and the powers were designed for the management of the

people's interests, and were constituted for their behoof. 'Tis true there are great dangers of mistakes on this head: but the governors are not exempted from errors more than the people. Men have often erred both about publick rights, and the private ones too of self-defence: but we must not for that reason deny that they have such rights.

In this most important matter, no doubt, persons concerned are bound to use the utmost caution, and weigh all things on both sides. Nor ought we to involve our fellow-citizens in civil-wars, the most miserable of all wars, for any such lighter injuries, or wrong conduct of our governors, as may be incident sometimes to persons in the main good and of upright intentions. But when there's no other way of preserving a people; and when their governors by their perfidious frauds have plainly forfeited their right; they may justly be divested of their power, and others put into their places, or a new plan of power established.

Nor does this doctrine of the right of resistance in defence of the rights of a people, naturally tend to excite seditions and civil wars. Nay they have been more frequently occasioned by the contrary tenets. In all ages there has been too much patience in the body of the people, and too stupid a veneration for their princes or rulers; which for each one free kingdom or state has produced many monstrous herds of miserable abject slaves or beasts of burden, rather than civil politics of rational creatures, under the most inhuman and worthless masters, trampling upon all things human and divine with the utmost effrontery.

III. UPON dethroning a tyrant, or upon the natural extinction of a royal family, or the death of an elec-

tive prince, there arises an *interregnum*. In which case, even altho' there be nothing expressly provided in the constitution, yet the political union of the people is not quite dissolved. They all continue bound by that first covenant we mentioned, to consult their common interest by joint counsels. They seem to be in a sort of simple democracy for some time; in which it should be determined by plurality of votes of the whole, or of those at least who used to be concerned in the publick affairs, what shall be their future form of polity and who are to be promoted to the government. Nor is it just that any smaller part, without consent of the rest, should break off from the political union; unless the majority are setting up some unjust or destructive plan of polity.

IV. To princes, or rulers of any kind, who have evidenced integrity and fidelity in their trust, the highest deference and honour is due from their subjects; they should be supported and defended with the lives and fortunes of all, whether against rebels or foreign enemies. Nor are subjects freed from this obligation, by any such lighter faults or mistakes of their governors, as may be incident to men in the main upright and faithful to their trust. But if after all the efforts of their subjects, such princes are conquered and dethroned, either by some competitor or some foreign power, so that there remain no probable hopes of their recovering their just rights; 'tis their duty in such cases to quit their claim: nay 'tis justly deemed extinct: since all obligations between governors and subjects are mutual, depending upon mutual offices. And when it becomes impossible for one side to perform his part, the other is freed from his obligation. The people

therefor, after their utmost efforts for their old rulers have proved unsuccessful, may justly submit to the conqueror, when they cannot otherways consult their own safety. It would indeed be strange arrogance in any prince to expect that a whole people should be bound, by a vain zeal for his dignity and interest, to expose themselves to all the rage and fury of a conqueror, to no valuable purpose.

V. As natural liberty is “the right of acting as one inclines within the bounds of the law of nature;” (nor could we hold any such liberty, were there no laws to defend it from the force of the stronger:) so we say a people enjoys liberty when “each one is allowed to act as he inclines, within the bounds of civil law, and not subjected to the caprice of any other.” We should never look upon laws as everlive of liberty; but that its sole enemy is the capricious humourous will or command of men in power. The Romans indeed in speaking of a *free people*, generally meant a democratical state; where men had their turns of commanding, as well as of obeying.

VI. It was already shewn that civil power can scarce be constituted justly any other way than by the consent of the people: and that rulers have no other sacred rights or majesty, than what may arise from this: that of a large multitude of men, each one for himself subjected part of his rights to the administration of a certain person or council. And thus from a part of our natural liberty transferred to the ruler, and our property in a certain degree subjected to his disposal, arises the legislative power. In natural liberty also each one had a right to expose his life to the greatest

dangers, in any honourable services in defence of his family or his neighbours, and when the common interest required it, he could commit himself to the direction of others in such services; and hence the right of military command. Men had also this right of repelling injuries, and punishing by violence any one who attempted or executed any injury, and even of putting him to death if this was necessary for the common safety: and hence arises all *criminal jurisdiction*, even to the inflicting of capital punishments. Nor need we have recourse to any extraordinary grants or commissions from God to explain any of these rights of civil sovereigns.

VII. NOR can any one form of government be esteemed more divine than others, on any other account than that it is better adapted to promote the prosperity of the community; which can least of all be alleged of absolute hereditary monarchies. Need we suggest here that no divine law natural or positive determines the order of succession to monarchies, whether the *general hereditary*, and that either by males only, or also by females; or the *lineal hereditary*. In the succession to private fortunes, tho' this be manifest in general, that the goods plainly acquired for the behoof of a man's family and kinsmen, should descend to his family or kinsmen upon his decease; yet there are not a few difficulties in determining the proportions. But as to civil governments, which, 'tis obvious, were never constituted for the behoof of a family, but for the interest of a whole nation; there seems no natural reasons that the succession to them should depend upon the proximity of blood to the former possessor; and much less that the lineal succession should be

regarded. \* All such right of succession must arise from human laws, or decrees of a people, and these sometimes very incautious and imprudent.

VIII. As to that much celebrated *right of conquest*, by which the conqueror claims the civil power to himself and his heirs over the conquered people; it has little better foundation generally than the claim of robbers and pirates upon persons and their goods which have fallen into their hands. † For first, unless the conqueror had a just cause, he acquires no right. And then tho' his cause was just, yet, as we said above, ‡ his claim has certain bounds; nor has he a right to exact more from the vanquished than what is requisite to repell the injury attempted, to repair all damages done, or to obtain sufficient security against injuries for the

\* See Book II. Ch. viii. 4. The decisions of some questions about the succession in hereditary lineal kingdoms, turn upon very fantastick reasons. Some allege proximity as a natural reason; and yet an elder cousin-germain's grandchild, shall often be preferred to a younger cousin-germain. They say too that seniority is a natural reason of preference; and yet the infant-grandchild of a deceased elder-brother takes before a second-brother of mature years. The preeminence of sex too is made a great matter; and yet the infant-grand-daughter by an elder-uncle deceased, shall take before a younger-uncle. In general, these potent causes of preference, proximity, seniority, and the sex, are not regarded as they are found in the competitors themselves; but as they were perhaps in their great-grandfathers or great grandmothers, deceased an age or two before.

† Upon this subject see *Locke on Government*; whose reasonings are well abridged in Mr. *Carmichaell's* notes on *Pufendorf's* smaller book. Book II. ch. x.

‡ Book II. ch. xv. 5. 8. and Book III. ch. iii. 2.



future. If he insists on more, he has no justice on his side in such demands. Now it is never necessary, either for averting of injuries, or repairing of damages, that the conquered should be deprived of their liberty, or independency, and be reduced into the form of a province to the conqueror. Nay 'tis generally very pernicious to the common interests of mankind, that states should thus enlarge their power, and make it formidable to all around them. All present danger to the victorious is averted, and full reparation of damages generally obtained, long before their enemies are entirely subdued and over-run by their arms. The conquerors generally soon take to themselves abundant compensation out of the moveable goods of the conquered: and every state when thoroughly defeated, would always consent to make compensation this way, nay would pay an annual contribution for a certain term, to make up what was wanting; rather than lose their liberty and sovereignty, and be subjected to foreigners. And surely by these ways all damages could be abundantly repaired.\*

As to securities against future injuries: surely such securities as are universally allowed to be sufficient against a state yet retaining much of its strength, shall be more than sufficient against one wholly exhausted and almost ruined by war: now in all treaties, these are deemed sufficient securities against states yet retaining much of their force, if they deliver hostages, give up their fleets, or a great part of them, surrender fron-

\* The reasonings in this and the following articles are designed against the pleas of *Grotius* and *Puffendorf* for the rights of conquest, and *patrimonial kingdoms*, or *principalities*, founded on it.

tier towns with their fortifications, or receive garrisons of their neighbours into them, or even if they dismantle them, or demolish all the fortifications. Nor is there any state that would not rather consent to all these, rather than become a province subjected to another.

IX. IF it be alleged that punishments should also be inflicted as a further security by deterring others: yet surely none should be punished but the guilty. Now the far greater part of any conquered people were involved in no guilt by their governors having entered into even the most unjust wars. \* The conqueror therefor can demand no more of the body of a people than that they either give up their injurious governors, or desist to defend them any further, that the victor may punish them as they deserve. But as to any thing done unjustly or inhumanly in publick wars, the common interest of mankind would dissuade from making it matter of proper punishment. Within the bounds of any regular polity, 'tis generally highly probable or certain that the power of the laws and magistrates will be superiour to that of any criminal citizens; and that therefor they may be brought to justice. But in publick wars, the forces of the parties by their confederates and allies are so generally brought to a parity, that the event is very uncertain: and the just cause is often unsuccessful. This should restrain conquerors even in the justest causes from any severities, under the notion of punishment; as they will become precedents to others in very bad causes, which yet they may judge to be just. The victorious therefor should beware of establishing a precedent, which may be

\* See Book III. ch. iii. 2.

followed thereafter against themselves or their friends.

'Tis vain to allege any tacit convention between the parties in war, that that side shall have the civil power over both which happens to be victorious. Taking arms is rather an open declaration of the contrary, that neither side intends to submit its rights of any sort to the other; unless in those cases where there has been such covenants expressly made; nor was it ever, in any other case, deemed perfidious, that the party defeated rallies its forces, makes new levies, or gets new allies to continue the war. Can any one pretend, that that side which has a just cause, defending or prosecuting its own rights, makes any such convention? and if one side is known not to do it, we can never presume it on the other side. The patrons of this right of conquest too, can allege only that the supreme governors consented, and not the body of the people: but with what shadow of right can any governors, whose power was granted to them only in trust for protection of the people, pretend to alienate or transfer the whole people with all their rights to another, either absolutely or upon any contingency? suppose the governors made such an express convention: by this audacious perfidy they plainly forfeit their power; nor is the state bound by such a deed.

X. SINCE therefor all the authors who plead that certain civil sovereignties are *patrimonial*, so that they may be sold, divided, or any way transferred at the pleasure of the sovereign, suppose also that they are generally founded in conquest; what is said above shews that such power has no just foundation. Nay if it should happen that a state in the greatest consternation, upon an invasion from barbarians, should by their

own deed submit themselves and all their rights to some potent neighbour, demanding nothing from them but protection; yet even such a deed cannot constitute a patrimonial power. \* For not to mention the exception of unjust force and terror; or that this covenant being plainly of the onerous kind, yet does not maintain the essential equality: the very nature of the covenant, and the matter of it, shews that no patrimonial power could be intended in it. A state by submitting itself to a humane, civilized neighbour which exercised a gentle rule over its subjects, cannot be deemed to have consented also to any manner of oppression or vexations that thereafter this neighbour may inflict on them; nor that they should be made over to any barbarous prince or people at the pleasure of those they entrusted themselves to. Nay if this superior state should attempt any thing very oppressive of this nature, the subject-people may justly shake off the yoke: since it was plainly upon other terms that they subjected themselves. They have a right to demand arbitration, as to the equity of any thing imposed beyond what should be deemed a just compensation for the protection received.

Nor can any right of sovereignty arise from any seeming consent of the conquered, which was only extorted by present force. For we shewed † above that such force is plainly unjust. But if the victor establishes among the vanquished such an equitable plan of civil power, as sufficiently consults their future safety and prosperity, so that upon experience of it they are truly satisfied to submit to it; this subsequent consent

\* The reasons here confuted are found in Grotius, L. I. iv.

† § 8th of this chap.

becomes a just foundation of his power, and is a sort of civil expiation of the injury done in the conquest.

XI. BUT further, as the right of any person of the royal blood to succeed upon the demise of his predecessor, is not founded on any natural causes, but solely upon some old law or decree of the state: the words of such laws or deeds are to be understood in the same way as like words about other matters deemed hereditary; and thus we are to collect from them what was the intention of the people in such deeds. When therefor this universally obtained in any country, that when the present possessor of any thing hereditary forfeits it, he forfeits not only for himself but all his kindred; we justly conclude that the peoples intention was that the forfeitures of the hereditary sovereignty should be in the same manner. The plea against extending forfeitures to the whole kindred of the person forfeiting, is very strong and plausible as to private fortunes, which all know were acquired chiefly for the behoof of the proprietor and his family; and this according to a natural obligation: so that children and kinsmen too have a natural claim to be supported and have their condition advanced out of such fortunes: and 'tis unjust that the fault of one of the joint proprietors should prejudice the rest, and prevent their obtaining what they are naturally entitled to. But as to hereditary sovereignties the case is quite different. They were not constituted for the behoof of the royal family, nor founded in consequence of any just claim they had for their own behoof; but for the interest of the whole nation, and chiefly to prevent the mischiefs to be apprehended in new elections of sove-

reigns: and therefor they are much more justly made liable to entire forfeitures from the whole family, than any private fortunes.

As therefor a people may justly dethrone a perfidious prince; they have a better right to exclude from the succession any one who shews himself plainly unfit for the trust: and such are those who hold tenets about divine rights which must excite them to trample upon the most sacred rights of the people, as soon as they get into power; or those who possessed with some furious superstition will subject their crown, or alienate no small parts of the supreme power, to some foreign prince, under the shew of a religious character; and at the same time think themselves commissioned by God to break through in the most audacious manner the fundamental laws or constitution, and all limits set by it to their power; and to force the subjects by the severest tortures either to believe, or falsely profess to believe, the most monstrous absurdities in religion, and to worship God in a way they judge impious. Any heir apparent who professes such tenets, or refuses upon a just demand to renounce and abjure them in the most solemn manner, may be excluded from succession with much better ground than if he were an idiot or a madman; as the holding of such tenets must make him more dangerous to a free people than any folly or madness.

What we have said relates not only to monarchs but all sorts of governours, and to the power of a state itself over its colonies, or provinces. If any citizens, with permission of the government, leave their country, and at their own expence find new habitations; they may justly constitute themselves into an indepen-

dent state, in amity with their mother-country. If any are sent off at the publick charge as a colony, to make settlements subject to the state, for augmenting its commerce and power; such persons should hold all the rights of the other subjects, and whatever grants are made to them are to be faithfully observed. If the mother-country attempts any thing oppressive toward a colony, and the colony be able to subsist as a sovereign state by itself; or if the mother-country lose its liberty, or have its plan of polity miserably changed to the worse: the colony is not bound to remain subject any longer: 'tis enough that it remain a friendly state. Nor are we to imagine that any early covenants founded upon errors about the most essential points in view, can still bind large societies of men fit to subsist as happy independent states, to continue in a submission everlive of all prosperity and safety. Nor has any thing occasioned more misery in human life than a vain and insolent ambition, both in princes and popular states of extending their empires, and bringing every neighbouring state under subjection to them; without consulting the real felicity either of their own people or of their new acquisitions. And hence have arose these vast unwieldy empires; the plagues of all around them; which after some time are ruined by their own bulk, with vast destruction of mankind.

## C H A P. VIII.

*Of CIVIL LAWS and their EXECUTION.*

THE power of making and executing laws is the most important internal power. Every law should be intended for some real utility to the state; and as far as human power can go, laws should enjoin whatever is of consequence to the general prosperity. But if in the very constitution of the civil polity, the sovereign or chief magistrate is only entrusted with such power as is requisite for the preservation of the secular rights of men; then they cannot exert any sort of coercive power about the means of forming mens minds to religion or inward virtue. But when they are entrusted with certain revenues, to be employed for the publick utility at their discretion; and where they are not expressly restricted to the care of the secular rights of men; since human happiness chiefly depends upon virtue, the civil governors must think it belonging to their office, to instill into the minds of their subjects the true sentiments of religion and virtue, and to influence their hearts to relish them, by the best instruction and discipline from their infancy, that they may be furnished for all the honourable offices of life.

But at the same time they must maintain to all, their sacred right of judging for themselves; which would be plainly encroached upon by any penal laws about such opinions, whether secret or divulged, which don't



lead to any practices destructive to society. Nay tho' such tenets should be divulged by men who imagine themselves bound in conscience to divulge them; it would generally be more advisable only to insist that such persons give proper security that they will give no disturbance to the state, and bear their share in all services required of them for the publick; and to punish rigorously only the injuries done in consequence of such dangerous opinions; rather than to inflict any penalties on men for these opinions themselves. 'Tis often better to leave such tenets to be exploded by the juster reasonings of wise men, than to proceed to any severities on account of the tenets themselves.

But as the far greater part of every people will not use this right; but induced by specious appearances of sanctity, and ostentation of superior wisdom in some designing men, will incautiously give up themselves to be led by them; it must plainly be the business of the magistrate to get this *leading* into his own hands; by appointing men of character and learning to teach the people the just sentiments of religion and virtue, and to confirm them by the most effectual reasonings; that they may not be perverted by the wicked arts of others. And if men in power have any tolerable wisdom, and hold any tolerable scheme of religion, they will always find the far greater part of the people very tractable to follow as they lead them, so that little need be apprehended from a few who may dissent from the publick schemes.

The exacting by law, under any penalties, that people should conform in opinion and practice to any tenets or rites of worship, that are either false and absurd, or tho' true yet of little consequence, generally

occasions great mischief to any state; since according to the different genius's and tempers of men, they have and always will run into different opinions and practices in matters of religion: and thence some of the most useful hands will desert the country when they are harrassed about such matters: the state will be plagued with sedition and discord: and the activity of men turned off from the services and occupations which are most useful to the community, and occupied upon trifles. No good subject should meet with any vexation, or be excluded from any civil right, on account of any opinions or modes of worship which don't hurt any of their neighbours.

II. THE example of those in supreme power will have the highest influence in promoting the virtue of the people: especially if they advance to honours only such as are of approved integrity and purity of manners. The populace in their elections, if they are truly free, always follow some appearance of virtue; and will seldom promote any but such as are of distinguished integrity. Nor will honor or power alter the tempers of the persons advanced, if there are proper terms fixed by law for the holding of offices; so that upon expiration of the term, they must return into the common condition of the people. Where the power of promoting to offices is in the monarch, the men promoted will probably resemble their political creator.

Next to *piety toward God*, the great source of happiness, and the strongest incentive to all other virtues, the virtues to be most cultivated in a state are, *temperance, justice, fortitude, and industry*. Such temperance as restrains not only excessive impulses toward pleasure, but all luxury and immoderate expences on

the shew and grandeur of life, must be allowed, by all who consider it, to be necessary to the prosperity of any state. There is a certain measure of sensual pleasures and elegance both grateful and innocent; to provide us to this degree God and nature have produced many fruits and other materials with exquisite art. Nor is there any moral turpitude in the enjoyment of any pleasure, if it be inconsistent with no duty of life, nor tends so to soften or weaken the mind that it shall be distressed in the want of it, or be apt to neglect and counteract its duty to obtain it. Luxury therefor should be defined, "such an excessive desire "or use of the lower pleasures, as is inconsistent with "discharging the offices of life." Nor is it possible precisely to fix general measures of lawful enjoyment for all; they must be various as their fortunes, attachments, dependent friends, and even bodily constitutions are various. Now luxury, in this notion of it, as it lavishes out mens fortunes, and yet increases their keen desires, making them needy, and craving; it must occasion the strongest temptations to desert their duty to their country, whenever it is inconsistent with pleasure: it must lead the citizens to betray their country, either to a tyrant at home, or a foreign enemy, when they cannot otherways get funds for their luxury. With the luxurious generally every thing is venal.

Nor is it justly alleged, that luxury is necessary or useful to encourage arts and manufactures. For arts and industry may be encouraged to the highest without any luxury, at least all innocent, necessary, or elegant arts. Men of higher fortunes may without any luxury purchase the most ingenious and nice manufactures, as far as their several obligations in life allow

it. And if any such deny themselves such expences, from views of a finer liberality, in raising the condition of indigent friends; they along with their families, kinsmen, and friends thus supported, may make a much greater consumption of the very same products and manufactures; or of others equally deserving encouragement in the state; and thus they with their dependents are more beneficial to artificers.

Need we mention too, that a sober, frugal oeconomist, in a long and healthy copious life, generally makes greater consumption than a prodigal of equal fortune; who is often punished with a long tract of diseases and penury, for the extravagance of a few years. And then, as lower orders are always imitating the manners of their superiors; the plague of luxury will soon infect the very lowest, and even the mechanicks. Then they cannot subsist without higher prices for their labours; the manufactures must consequently rise in their prices, and cannot be vended abroad, if any more industrious and sober country can afford the like in foreign markets at lower prices.

III. 'Tis scarce necessary to shew the necessity of *diligence* and industry, since the wealth and power of a nation depends almost wholly upon them. Agriculture is necessary, to prevent a constant drain for the food of our people, to obtain grain for exportation, and furnish the very materials for many of our artizans, which otherways we must buy abroad. And in like manner all mechanick arts, either simpler, or more elegant, should be encouraged, lest our wealth be drained by our buying foreign manufactures. Merchandize and fishery are of great consequence: nay the very building of ships too, that we may not lose the profit of

the carriage either of our own or foreign goods, and with this, the training of sailors; which contributes both to the increase of wealth and to the defence of the state in war. The mechanick trades should be held in reputation, so that people of better fortunes and families may not deem it below them to be concerned in them.

IV. THAT justice is necessary cannot be a question. For if laws and justice don't prevail, as without them no right natural or acquired can be safe, all industry must languish. Nay as merchants must augment their prices in proportion to all their casual losses: where there's much injustice, the merchants must charge in the price of their goods the losses they sustain by the frauds of the unjust; and thus the best citizens must be loaded with this burden: nay further, any neighbouring state where justice more prevails, if other circumstances be equal, can undersell us, on this account. Where therefor justice is not maintained, the commerce of a nation must sink, with all its attendant profits.

To examine into the best methods of *administring justice*, would require long dissertations. We only briefly suggest, that a small number of simple easy laws might sufficiently protect and regulate the citizens, if there were such a contrivance for the courts of judicature, as would entrust the decision of suits to men of great goodness and equity and approved integrity: severe restraints upon vexatious or oppressive suits would be of the highest advantage. The earlier laws and constitutions of the Romans about these matters are worthy of imitation.

V. MILITARY arts and virtues are accomplish-

ments highly becoming all the more honourable citizens. Warfare therefor should be no man's perpetual profession; but all ought to take their turns in such services. And however it may be observed, that, when according to modern custom, armies are made up of the very dregs of a people, fellows too dissolute and worthless for any other occupation, whosoever takes to this way of life for a few years is made unfit for any other occupation for the future; yet the case would be quite otherways if all the best citizens served in our armies by turns. This method too would bring along with it these grand advantages: all the people would be trained and skilled in military service. Should one of our armies be entirely cut off, we could have another of veterans immediately: were the chief officers cut off; we would have others of equal experience in readiness to take the command: and it would be no easy matter for either any ambitious citizen at home, or any foreign invader, to trample upon the rights of an armed people well trained in military service.

VI. THE laws and whole constitution of the state should be such as may prevent any smaller bodys of citizens to be more strongly attached to each other, or to any foreign interest, whether of prince or bishop, than they are to their own country, or have greater dependance and expectations of promotion by them. And the citizens should be taught that no antient engagements, obtained from their ancestors by the most impious frauds, can be of any validity against the prosperity of their country. For it cannot be of use to religion that ecclesiasticks should have great secular power of any kind; and much less that all ecclesiasticks through the world should be deemed as a great cor-

poration to be governed by a common prince or council; who too should have power to promote, in many nations, what favourites they pleased, to high dignities and princely revenues; and to whom there should lye appeals from the highest courts of the several nations, in matters upon which wealth and power depend.

VII. It is one great design of civil laws to strengthen by political sanctions the several laws of nature; and to appoint such forms of business, and of process in courts, as may prevent frauds and promote justice. The populace often needs also to be taught, and engaged by laws, into the best methods of managing their own affairs, and exercising their mechanick arts: and in general, civil laws should more precisely determine many points in which the law of nature leaves much latitude.

From the very best body of civil laws certain external rights must arise, which tho' no man can insist upon with a good conscience, yet if the persons to whom they are granted claim them, they must hold them with impunity: nor can any one rightly have recourse to violence against such rights, or obtain redress at law. Many also of the most sacred duties can be no matters of compulsion, but must be left to the honour and conscience of those concerned. There are certain benefits granted by law, which no good man would claim, but when claimed they cannot be refused. \* Any such covenants or testaments too as for want of the legal formalities are not confirmed by human laws, a good

\* On these two heads there are two good orations of Barbeyraque, annexed to his translation of the smaller book of Puffendorf, *De legum permissione et beneficiis*.

man would often think himself bound to hold as valid, if there's nothing appointed in them beyond the moral power of the parties or testator, nor contrary to equity. But if they are wrong in either of these respects, a good man may take the benefit of the law.

VIII. THE *sanctions* of laws are *rewards* and *punishments*. There's this common reward annexed to obedience to civil laws, that these who obey them continue to enjoy all the advantages of civil life. Some few civil laws have peculiar rewards, such as honours, and premiums in money. The natural honour is "the good opinion others entertain of our moral excellencies." Civil honours are "these external indications of deference which are appointed by law."

The *simple estimation*, or character of common honesty, is so much every man's right, that no governors can deprive one of it at pleasure, without a cause determined in judgment. The higher estimation, or *intensive*, as some call it, is not a matter of perfect right; as no man can at the command of others form high opinions of any person, without he is persuaded of his merit. But as to external marks of deference, and precedence, the civil powers have a right to determine about them, as they do about other civil rights. If these are conferred only upon real merit, they will be of high account with wise men. But if they are often conferred injudiciously, they will grow mean and despicable to wise men, and matter of scorn and jest: as they are often seen where they are hereditary, and there's no censorial power to degrade the unworthy.

IX. THE true end of all punishment is this, that all bad men by the terror of them may be restrained from doing any thing injurious, and thus the commu-



nity be preserved in safety. *Chastisement* as distinguished from punishment, has in view only the reformation of the sufferer: and *reparation of damage*, aims at the utility of the one who sustained the loss: to this men are often bound even without any preceeding crime or fault.

Neither anger, nor hatred of the criminal, nor even that honest indignation at moral evil, which is natural to every good man, should be the sole springs of punishing: but rather a calm regard to the common interest, and the safety of the innocent. The true measure of punishment is not to be taken from the degrees of moral turpitude, but the exigence of society. A great deal of high moral turpitude must pass unpunished: and yet on the other hand if the safety of the community require it, some actions which shew smaller depravity of temper, must be punished severely. Thus no penalties are inflicted on ingratitude, and want of humanity; while any insurrection against the supreme power, tho' upon plausible pretences of the right of some competitor, must be punished severely. But the crimes which deserve the highest punishments on both accounts, are the publick ones of men in power, perverting what was intrusted to them for the safety of others, to the oppression of the citizens.

Though it may not be necessary to punish the first motions or hasty intentions of wickedness, nor is it often practicable; as such rash motions may upon sudden provocation arise in the breasts of good men, who will soon restrain them of themselves: yet such as have proceeded to any external actions which might have effectually accomplished the evil, but were prevented by accident, or force, or the timely aid of others, and

which shew furious malice and obstinate purposes of injury, these deserve as high punishments as if they had obtained their effect. Sometimes indeed the publick interest may require the granting even rewards to some bad actions, and pardoning the greatest criminals.

The *respect of persons* which is highly culpable in judgment, is when any regard is had to such qualities of actions or circumstances of the guilty as neither affect the turpitude of the crime, nor the sense of the punishment, nor the common interest of society. But circumstances which affect any of these three must always be regarded. And therefor when other circumstances are equal, pecuniary fines are to be enlarged for equal crimes according to the fortunes of the criminals, and corporal punishments according to their strength of body; and ignominious ones are to be abated according to the dignity of the persons.

But we must not go on in increasing without bounds the severities of punishment upon the higher crimes. For frequent spectacles of tortures have a tendency to diminish our natural compassion and tenderness of heart, and to make the tempers of men more savage and cruel.

X. 'Tis unjust to punish any man for the crimes of others; nor is it equitable to confiscate the whole fortune of a family for any crime of the head of it. All the natural claims of the wife and children to a support out of it, as well as debts due to any innocent persons, should first be discharged. Nor is it naturally just to punish any bodies corporate for any crimes; the guilty only in such cases should be punished, whether private persons or magistrates of the corporation. It may sometimes be just to take from the corporation either these privileges, or fortifications, or arms, by

which the criminal members of it were encouraged or enabled to do injuries to their neighbours, if security against like injuries can be obtained no other way. The corporation may sometimes be bound to compensate damages out of its publick stock, or even the private fortunes of its members, when the criminals can't be found, or cannot repair the damage ; if it has been occasioned or encouraged by any of these advantages, privileges or fortifications, which the body had obtained for their own behoof.

XI. EVERY government has the justest right to exact tributes from the subjects by law, provided they are no more than what are requisite for the prudent administration of publick affairs ; as this publick expence is made for the behoof of all. The violating such laws by any subject is equally criminal with theft. Nor is the injury so properly done to the governors, as to our fellow-subjects, who must be obliged to make up deficiencies occasioned by these frauds, some other way, and must be subjected to other burdens on this account ; beside many other inconveniencies. There is no other possible method, of making men contribute in just proportions to the publick charge, than by instituting a *census*, or valuation of all their fortunes.

XII. THESE are the obligations of subjects toward their governors: first, they are sacredly bound to obey all their just laws and commands: and secondly, if the thing commanded be a matter committed to the power of the governor ; 'tis generally the duty of subjects to obey, even when they judge that the orders are imprudent. This holds most obviously in military operations. For to allow the inferior to judge of his orders, and only to obey when he thinks them prudent for the

good of the state, would destroy all military discipline, and reduce an army into a tumultuous mob.

3. Hence it follows that in matters committed to the wisdom of governors, the subjects may act a just nay an honourable part in obeying such orders as were very criminal to their governor : the subject by obeying is preventing the greatest mischief ; since from the relaxing of all order and government, far greater evils must generally ensue, than from the execution of very imprudent orders.

4. But if the thing commanded seems to the subject so entirely pernicious and ruining to the state, that it were better to break through and destroy the authority of such commanders, than to execute such destructive orders : the subject may refuse obedience. But in such matters they should use the utmost caution that they don't judge amiss.

5. Where we are commanded to do any act directly irreverent and impious toward God, or contrary to the perfect rights of others ; or where the matter commanded was not committed to the power of the commander ; we are under no obligation to obedience. Nay 'tis often highly honourable to endure rather any punishment, than submit to a precedent that may be ruinous to our country. We shewed above \* in what cases it is lawful for subjects to resist their governors.

The common duties of all subjects must easily appear from the nature and origin of civil power and the political union. Their peculiar duties arise from their several stations, relations, and offices in the state.

\* Book III. vii. 2.

# C H A P. IX.

## *The LAWS of WAR.*

**T**HE rights of war and treaties are of that class which respect foreigners. The principal matters of right in war, as to their causes and bounds, were explained in the former book\*, when treating of war among persons in natural liberty. The same maxims hold in the publick wars of states, which with respect to each other are in the same state of natural liberty.

As to publick wars of a less solemn kind, without the order of sovereign states on both sides; they may be sufficiently understood from what was already said about the right of governors to repress tumults and insurrections, and from the right of resistance that subjects may have in defence of themselves against perfidious governors†. “A war undertaken by order of independent states on both sides” is called a *solemn war*. Nor need we add to the definition, that it be *previously proclaimed*; tho’ it be highly becoming every civilized nation, when they have recourse to force, to let all around know the grounds of it, as soon as they can conveniently. But ’tis plainly not incumbent on the nation invaded by another, to make a previous declaration before it defends itself. Nor is it always necessary that the aggressor should make such previous declaration; as perhaps his surest method of obtaining his right may be by surprizing the enemy; and a

\* Ch. xv.

† Book III. vii. 2.

previous declaration might prevent his best opportunity of success. What has led ingenious and learned men to make a previous proclamation necessary, was too great a deference to the *foeial laws* among the Romans. But as contending by violence is not agreeable to the rational and social nature, 'tis unworthy of a good man, when he is forced to betake himself to it, not to declare openly, as soon as he can with safety, his motives and intentions, that all may see that he could not otherways obtain his right.

As in civil wars there are often specious reasons on both sides; all neighbouring states should shew the same favour to both the contending parties as to these engaged in solemn wars. Nay in civil wars there are as frequently as in the solemn, just causes on one side, and specious ones on the other. Nor is either of the parties engaged in them to be deemed like robbers or pirates, abdicating or forfeiting all the rights of mankind.

II. THE laws of war either respect the contending parties or neutral states. "What right reason shews necessary to be observed in war for the general interest of mankind" may be called *the law of nations of necessary obligation*. But "what a long tract of time has made customary, with a tacit approbation or consent of nations;" which however might be altered by contrary custom, or taken away at once by a timeous premonition of all concerned, we may call the *voluntary law of nations*.

The just causes of war were explained in the former book \*. But with respect to neighbouring states we

may suggest, that as among citizens there are allowed actions at law for prevention of damages not yet done, and agrarian laws restrain such excessive acquisitions of wealth as may prove dangerous to the society, tho' the acquisitions are not to be made by injurious means; so sometimes among neighbouring states, a dangerous increase of power in any one of them may give a just cause of war, if no gentler securities can be obtained: especially when the people of that state shew a general ambition of military glory and conquest, and quit all peaceful arts: so that their neighbours must be in perpetual dangers, unless they also quit the innocent arts of peace, and are always a training to war. But this is an instance of these *extraordinary rights* which seldom occur.

In publick wars the term of commencement, and the term of ending, or the bounds of our demands, may be fixed the same way as those of private persons in natural liberty; of which formerly.

The just methods of carrying on war are open violence, or such arts of deceiving as carry along with them no profession or tacit engagement of communicating our sentiments to the enemy\*. Violence is justifiable only against men in battle, or such as violently obstruct our obtaining our rights; altho' by the inhuman customs which have prevailed, men may exercise with impunity any sort of cruelties toward their enemies. 'Tis also very ordinary to deceive enemies by any false narrations, or any sort of discourse, except such as imports making some covenant or treaty with them. But as it is by treaties alone that either

\* Book II. x. 2.

peace can be restored, or more humane methods of war maintained, and horrid mutual cruelties prevented; it never was, nor ought it to be allowed to deceive enemies by any form of treaties.

III. THERE are many other obligations introduced by long custom importing tacit covenants; which however could be taken away by a timeous premonition of all concerned. Such as, that none should use poisons in war, or employ any of the enemies subjects or foldiers to assassinate their prince or their generals. That all messengers or envoys, or ambassadors sent on either side should have protection to their persons, is indeed matter of necessary obligation; since it is by their means alone that peace can be obtained, without the entire destruction of one side, or any humane methods of war preserved. But 'tis matter only of voluntary right that passports should be mutually allowed, to any subjects of the hostile nation who come unarmed, to travel through their countries, or to reside in their cities.

IV. UPON what grounds of justice the goods of the subjects of hostile states are seized mutually, comes next to be explained.

1. All states in amity are bound to restrain their subjects from depredations, or any way injuring the subjects of states around them: and when such injuries are done, they are obliged to compel the authors of them to make reparation. We speak now of subjects who are amenable by law, and not of pirates or robbers.

2. When such reparation is demanded and refused, the injured state may justly have recourse to force, seizing the goods wrongfully taken, or if they can't find



them, taking to their value from the authors of the injury, or from the state, which by defending the depredators bring the guilt upon themselves. And this right is still more obvious if the injuries have been done by publick order.

3. If there's no opportunity of seizing the publick goods of the injurious state, the injured may seize the private goods of any citizens of that state. For as the political constitution and the civil power was erected for the behoof of all the subjects, they are bound to repair any damages arising from this contrivance which they fell upon for their own utility\*. And the civil powers by giving their protection, have plainly supported and excited their subjects to such injuries.

4. But then these innocent subjects who suffer thus by these reprisals, on account of their community, may justly claim from their community to have their losses repaired, out of the common stock, or out of the goods of the depredators. It certainly would be the more equitable and clear way, that goods thus seized as reprisals from the innocent subjects were only detained as pledges, till the injured state received reparation another way, and then were restored to the owners. But a contrary custom has prevailed †; and the old property is on all sides deemed to be extinguished, as soon as such goods taken are brought into any fortresses of the captors, and adjudged, either to them or their community: so that should they even be retaken afterwards, the old proprietors cannot claim them. Nor can

\* Book II. xiv. 2. and Book III. iii. 2, art. 5.

† Probably with a view to make the soldiers more active in distressing the enemy: as large shares of the goods taken are usually given to the captors.

they be taken by violence, or any claim be made upon them by the old proprietors, after they are any way legally acquired by any subjects of a neutral state, and brought within their territories.

V. THE principal laws with respect to neutral states are briefly these. 1. A neighbour-state under no engagement to send auxiliaries to either side, ought neither to be involved in the war, nor sustain any damage by it.

2. If the neutral state by some former treaties be obliged to send auxiliaries to both upon the event of wars; when its two confederates are at war with each other, it ought to send aids to neither; or if it is inclined to engage in war, it should send aids to that state whose cause it judges to be just. For all such offensive and defensive alliances bind only upon supposal that the cause be just: nor can they bind the neutral state to make war upon such as are allied to them by solemn treaties.

3. A neutral state may justly purchase, or take by any other title, any moveable spoils taken on either side after they are adjudged as lawful prize: nor can the former proprietors have any further claim upon them. The neutral states or their citizens are no competent judges of the justice of the war and the captures; and they may frequently be ignorant whether the goods they purchase are prizes taken in war or not.

4. But as to lands, forts, or cities the case is different. The neutral state must know by what title they are held, and that they were taken from a state in amity with them: and by purchasing them they must preclude that state from retaking them again. What annual rents or services may be due by any district or

smaller town, to any great city or fort lately taken by the enemy, may justly be paid by such as are neutral, to the present possessor; and the refusal of such payment might be deemed a declaration against the justice of the capture. If such great cities or forts be again recovered by the old governors, the payments made to the enemy during his possession must be sustained as good; nor can the repayment of the same sums or services be demanded. But if the violent possessor pretends to sell or alienate or relinquish for ever any such rents or services due by a neutral territory, or to exact payments of old debts, or to abolish them, the deed will not be valid against the old proprietor when he recovers his old possessions again.

5. Whatever new favour is granted, by a neutral state to one of the parties in war, it must grant the like to the other, if it would preserve neutrality; such as the allowing any of its subjects to enlist, or hiring out its troops, or supplying with military stores. Indeed the sending arms or military stores, by way of merchandize, to either of the states in war, is deemed commonly by the other a breach of the neutrality; and they are accordingly seizable: and so are even common provisions into any place besieged.

6. Neutral states must not be hindered in their commerce with either of the parties, except in arms or military stores; the nature of which too 'tis not easy to define. A neutral state may set to freight its merchant-ships to either side for trade. If they are taken, the enemys cargo is justly seizable, but not the ship. Neutral states may freight the ships of either side; and if they are taken, the cargo cannot be made a prize, but the ship may. Nor should any neutral state lose any

right of pledge or mortgage formerly constituted, in any goods moveable or immoveable which happen to be taken in war.

7. Neither of the parties at war ought to use any violence against each other within the territories of a neutral state, by taking men, ships, or other goods of their enemies, found in neutral ports. And the territory of each includes not only their harbours, but any narrow bays running far into the land, the shoars, and such contiguous parts of the sea as are within reach of any military engines. For if such violence were allowed, a neutral state might suffer greatly by being made a seat of war; and their commerce with both sides must be entirely obstructed.

8. As to deserters and fugitives; neither of the contending parties can exercise any jurisdiction conjoined with force, over their own citizens within the bounds of a neutral state, except by commission first obtained from the civil powers of the neutral state. No state indeed should protect such as have been guilty of the more atrocious, detestable crimes; such criminals should be seized and delivered up to justice. But as to deserters in war from either side, or persons who have fled on account of religion, or any state-crimes they committed, in conjunction with any state-faction, upon some plausible shews of right; a humane custom has obtained that they should find protection in all other states, while they don't make any new attempts against the civil powers of their country.

## C H A P. X.

*Of TREATIES and AMBASSADORS, and the entire  
DISSOLUTION of STATES.*

THE chief laws of nature about treaties were explained in the doctrine of contracts in natural liberty\*. But we must remember that the exception of unjust force and fear cannot be admitted against the obligation of any treaties of peace; otherwise the old controversies might always be kept a-foot. And yet such exceptions may justly take place when the war is manifestly and avowedly unjust on one side; or if the terms imposed by the more potent side are manifestly injurious and contrary to all humanity. In these cases the party injured may insist upon an arbitration; and if the other side refuse to submit to it, each side must by force consult its own safety and the maintenance of its rights, by what aids it can find.

Treaties are divided into *real*, and *personal*: the personal, which are less in use, are entered into in favour of the prince's person, and cease to bind upon his demise. The *real*, respect the body of the people, or the nation, which is deemed immortal. Treaties are also divided into the *equal*, such as bring equal or proportionable burdens on each side, and *unequal* which bring unequal burdens. But 'tis not every unequal treaty that any way impairs or diminishes the † majesty

\* Book II. ix.

† Book III. v. 5.

fly and independency of the side submitting to the greater burden.

*Hostages* in former ages were securities commonly given for performance of treaties, but they are now gone into disuse; because it would be exceedingly inhumane to treat the innocent hostages any way harshly because of the perfidy of their country.

II. IN making treaties *ambassadors* are employed. Their rights are all the same, whatever names are given them, if they are entrusted to transact the affairs of a sovereign state. Their persons should be sacred and inviolable, as we said above. They have a just natural right to demand that their proposals should be delivered. But as to an allowance to reside any time in the state to which they are sent, they may claim it as due out of humanity, but cannot insist on it as a perfect right. Since the business of the more active ambassadors is much the same with that of spies upon the nations where they reside. If they are allowed to reside; the law of nature would give them no higher rights or immunities, than any other foreigner might claim without any publick character.

But by the voluntary laws of nations, they have many singular privileges and immunities, both for themselves and all their necessary retinue: all which however any state might without any iniquity refuse to grant them, if they give timeous intimation of their design to do so to all concerned.

I. This is customary in the first place, that no action can be brought against an ambassador or his necessary retinue, such as his secretaries, or domesticks, in any courts to which he was not subject previously to his taking this character. What has been in view

in this custom, was this; that an ambassador, the more vigilant he is in his office, will be generally so much the more disliked and hated in the state where he resides: and therefor were he subject to its courts, he would not have a fair hazard for justice in a nation prejudiced against him. The subjects of the state where he resides may easily abstain from any contracts with him in which they may be wronged, since they can have no action against him. Should an ambassador or his retinue commit any outrageous crimes; he may be sent home, and justice demanded of his constituents; the refusal of which may be a just cause of war. If any ambassador intermeddles in trade, his merchant-goods, except such as are necessary for his support in his embassy, are liable to attachments or arrests for the debts he contracts in trade.

2. An ambassador's house is deemed a sanctuary to himself and all his retinue and attendants: of which however a list may justly be demanded upon his admission; and the state where he is to reside have a right to fix what retinue of his they will receive or grant immunities to. But an ambassador by this privilege must not impair the jurisdiction of the state where he resides over its own subjects, by making his house a sanctuary for any criminals among them.

3. An ambassador has the ordinary power of the head of a family over his own domesticks; or such jurisdiction in their civil actions as his constituents have granted him. But neither an ambassador, nor even a prince residing in a foreign state, has a criminal jurisdiction or power of inflicting capital punishments upon his own subjects, except by permission of the state where he resides.

4. *Inhibitions* may justly be used against an ambassador, to restrain him from any outrages against our subjects: and they themselves have the natural right of repelling force by force.

5. No state is bound to admit any exiled criminal or fugitive subject of theirs, as an ambassador from any neighbouring state. But if such a one is sent with such commission, he cannot justly be seized or punished, but he may be immediately ordered to quit our country.

6. The honours and precedencies of ambassadors must be determined by express conventions or the tacit ones of long custom. The sole natural causes of precedence would be the superior excellency of the constitution of the state he represents; or his own superior personal worth. The absolute or hereditary power of his constituent is the worst reason of all; if we regard true merit, and not customs introduced by barbarians.

III. As to the dissolution of our political relations, we may observe: that by perpetual banishment, one ceases to be a subject any further. But it is not so in temporary banishments; much less in perpetual confinements to any remote parts of the state.

2. No man can claim it as his perfect right to quit his country without the permission of the civil powers or the laws, while it remains unaltered.

3. Where the old constitution is much altered, either by foreign force or any potent faction; subjects who dissent from these changes have a right to consult their own safety elsewhere. And provinces may resume their independency if they can: as they were sub-



jected, as we said above\*, only by their own consent, and that to a state constituted in a very different manner.

4. But upon any improvements made in a constitution, subjects can have no just right to desert it.

5. Whatever changes be made by the citizens themselves in their own constitution, their treaties with foreigners still remain obligatory on both sides.

IV. WE may from what was said above see, what right any state can have to give up any part of its district, or any province with the people dwelling in it, to an enemy, or any foreign potentate. For first, as the several parts of any community, and even provinces, submitted themselves to the whole body for the common utility of the whole, in which each one was to share; the community has no right to give up or alienate any parts or any provinces without their own consent; or to oblige them to be subject to any other power, when they think they can otherways better consult their own interest. But on the other hand, as there can be no obligation to impossibilities; if a state cannot defend its more exposed parts, or its provinces; it must leave them unprotected: nay, if the safety of the whole cannot otherways be maintained, it may bind itself by a treaty to give no further defence to these parts or provinces. But such a treaty imposes no obligation upon the part or province so deserted, to submit to this new claimant. It may justly consult its own interest any other way; either by obtaining new confederates, or giving itself up to some other state upon as good terms as it can; that it may be protec-

\* Book III. vii. 8, 9, 10.

ted against the present invader. For that covenant about the common defence of all, by which the several parts were united into one state, is now come into the case of contracts \* about what proves impossible to be performed.

What is said about any part of a people or a province, holds also as to any brave citizen, whom an enraged enemy demands to be given up to him. Such a brave man in cases of the utmost extremity may be as it were abandoned; or no further protected. But his country has not a right to seize and deliver him to the enemy, or to hinder him to consult his safety elsewhere.

V. As to the entire dissolution of states; these maxims hold: when a state is entirely conquered, the several subjects of it, and the provinces too, have a right to secure themselves as well as they can; whether by adjoining themselves to any other state, or by attempting to set up a new sovereign state to themselves in the province. Citizens no doubt are bound to hazard all for their country, and not to despair too hastily about its safety. But if they have made all possible efforts for their country, and yet all in vain, they may justly consult their own safety as they can.

2. If by any unexpected accidents, a state which seemed extinct and conquered for some considerable time, finds opportunity of setting up again independently, its former subjects and provinces seem bound to re-unite themselves to it; provided that during the conquest they came under no new and just engagements inconsistent with this re-union. For such engagements as the citizens or provinces of the ruined state

\* Book III. vii. 8, 9, 10.

have entered into with foreigners, without any fraud, while their former country seemed destroyed, must be as obligatory as any.

3. A state which has long continued conquered, and was made a province to the conqueror, has lost all its rights over any of its former citizens who have fled to other countries, and over its former provinces. And tho' after a course of ages a new state should be formed in the same tracts of land formerly occupied by the old state; this new state can claim none of the peculiar rights of the old one. The states occupying the same lands in different ages may be quite different political bodies: and the political body may remain the same when they change entirely their lands, nay while they have none at all in possession.

While our country remains, all good men should be united in this purpose, to deem nothing too hard to be endured or done for its interest; provided it be consistent with the laws of that more antient and sacred association of all mankind, of which God is the parent and governor. "Our children are dear to us, our wives are dear, so are our parents, our kinsmen, our friends and acquaintance. But our country contains within it all these objects of endearment, and pre-serves them to us: and therefor every good man should be ready to lay down his life for it, if he can thus do it service."

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