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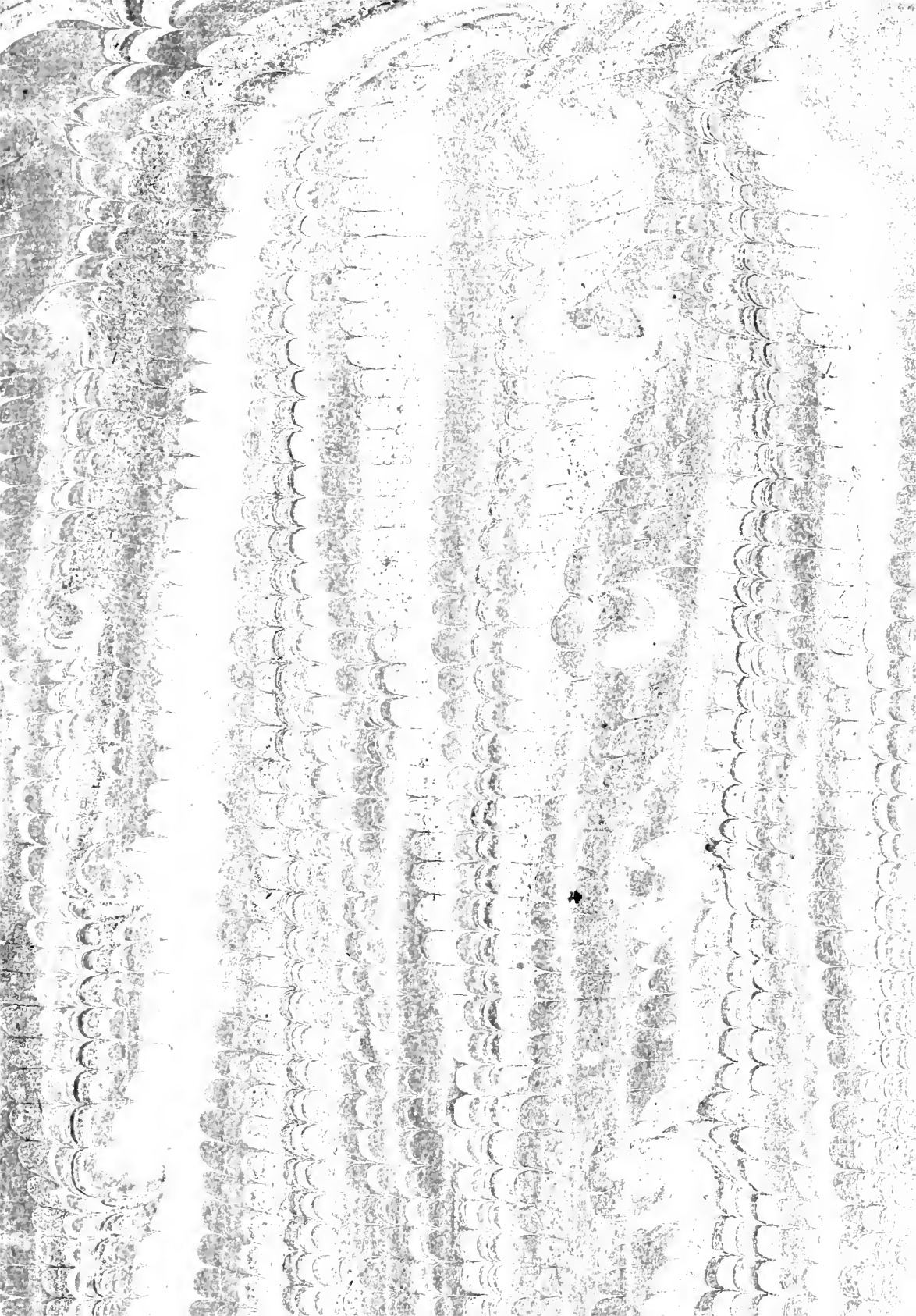


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A
S Y S T E M
O F
M O R A L
P H I L O S O P H Y.
IN THREE BOOKS;

WRITTEN BY THE LATE
FRANCIS HUTCHESON, L.L.D.
PROFESSOR OF PHILOSOPHY
IN THE UNIVERSITY OF GLASGOW.

PUBLISHED FROM THE ORIGINAL MANUSCRIPT,
BY HIS SON FRANCIS HUTCHESON, M.D.

To which is prefixed
SOME ACCOUNT OF THE LIFE, WRITINGS, AND CHARACTER OF THE AUTHOR,
BY THE REVEREND WILLIAM LEECHMAN, D.D.
PROFESSOR OF DIVINITY IN THE SAME UNIVERSITY.

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A
S Y S T E M
O F
M O R A L P H I L O S O P H Y.

BOOK II. CHAP. IX.

Concerning CONTRACTS or COVENANTS.

A CONTRACT is “ the consent of two or more in *A contract what.*
“ the same design, mutually expressed with a
“ view to constitute or abolish some right or
“ obligation.” We have already seen the necessity of
frequent translations of property by consent of the pro-
prietor, and of a constant, social intercourse of offices
among men in giving mutual assistance. The law of
nature requires and obliges us all to be ready volun-
tarily to do all kind offices in our power, and every good
man is thus disposed; and yet express contracts about
them are necessary among the best of men.

For tho’ men are obliged to social offices, yet they *The necessity of them.*
are not bound, except humanity to the indigent re-
quires it, to give their goods or labours to others for
nothing. Such obligation would have all the bad ef-
fects of a community of goods. The wealthy need
more frequently the labours of the indigent, and the
indigent must be supported by the compensations they
get for them. There must be mutual agreements a-
bout these things.

BOOK II. Again suppose the very best dispositions in my neighbours toward me, and toward each other; yet I cannot take my measures in dependance on their assistance, without a previous contract. I must know their leisure hours, the services they can do me consistently with their other duties of life; and they must know how far I can supply their wants, and assist them in their need, otherways they must concert their affairs with others who can answer their necessities. The reasons therefore which shew the necessity of a social life, shew also the necessity of contracts, and the obligation of faithfully observing them.

*The grounds of
obligation.*

Some more immediate principles in our nature first suggest our obligation. Nature has given us the sagacity to contrive means by speech, or sounds appointed to be the signs of thoughts, to communicate our sentiments, designs, and inclinations to others, and has made us prone to communicate them by a natural openness of mind, till some experience of inconvenience from too much openness restrain us; we have also an immediate natural approbation of this disposition; and a yet higher approbation of a steadfast veracity and candour in speech, whether we are relating facts, or assuring others of our designs and intentions; and on the other hand have a natural immediate dislike of a selfish sullen dark taciturnity, and a yet higher disapprobation of falshood and insincerity in narrations, or professions of our intentions or engagements, and of all intentions of deceiving others, and disappointing them of what by our speech we caused them

to expect from us. Such conduct also appears plainly CHAP. 9. injurious and affronting to our fellows, who have a natural desire to know the truth, and an aversion to error and deception; and who from our social constitution have a claim upon us that we shall not disappoint the hopes we have given them about any offices we undertake for them. These parts of our constitution more immediately suggest our obligation to faith in contracts, and the moral turpitude of violating them.

The violation of contracts, on this account, is plainly a greater crime, than refusing a like unpromised office of humanity which is in our power, when other circumstances are equal. The latter shews indeed a want of the proper degree of social dispositions, but causes no new detriment in life. But infidelity in a contract offends also against a strong moral feeling in our hearts, and disconcerts the measures of others, who in dependance on the contract may have omitted to provide the assistance they might otherways have obtained. Such breaches of faith, were they frequent in society, must destroy all social commerce. The guilt of violating them.

II. Tho' men are on all occasions obliged to act the humane prudent part toward others, and not to grasp at unreasonable advantages from their rash or weak engagements; yet so great is the necessity of maintaining faith in contracts, and the detriment to society from diminishing it, by allowing many evasions and inextricable disputes about contracts; that in all matters of commerce about which men are valid

BOOK II. disposers, whatever contracts we make, not induced by any fraud or error in the known and professed conditions or unjust violence, we are obliged to observe and fulfil, tho' we have contracted imprudently for our own interest, or even contrary to some imperfect obligations toward others. The other party acquires an *external right*, with which we are obliged to comply when it is insisted on; tho' he is acting against humanity and real justice in insisting upon it. To such cases the common maxim* is applicable, that "many things which ought not to have been done, yet when done, are obligatory."

In what matters they are valid.

This rule holds generally in all matters of commerce † committed to human prudence, in all alienable rights, in such actions or performances as are not directly impious toward God, nor opposite to some perfect right of another, nor to some special law prohibiting our transactions about them: contracts in which men sin against some general law may be obligatory; or such as are against the interests of their friends or families, where their right is only imperfect: such contracts too must likewise be of some detriment to the publick. But the allowing men to recede from all imprudent contracts would be of far greater detriment, as it would obstruct all commerce, or occasion innumerable inextricable debates. Whoever repented of a bargain, could always plead the imprudence of it,

* *Plurima fieri non debent, quae facta valent.*

† Here moral writers regard chiefly the moral power, or right of administration or

managing such matters: the *principium vel facultas dñs validitatem actui*, more than the prudence of what is done.

the loss his friends or family would sustain, its opposition to the general command of *providing for our own*, and to our obligations of humanity. All nations appear sensible of this, by confirming imprudent contracts about matters of commerce, and seldom allowing redress, except where the inequality or the loss sustained by one party is very great and manifest. CHAP. 9.

III. The law of nature as well as civil laws distinguish three forms of speaking about our future actions or prestations. Three forms of speaking about future actions, expressing our design. 1. A bare declaring our present intention or purpose: this produces no obligation. One indeed may be censured as inconstant who often changes without cause.

2. The second is when we promise something for the advantage of another, expecting his dependence on our promise, and yet not designing to convey to him any right to compel us to observe it. Imperfect promise. Such promises are well known to be conditional, upon the good behaviour of the person to whom they are made, even when this is not expressed; and we are understood to reserve to ourselves the right of judging of his behaviour. Receding from such promises without a just cause, is very faulty in point of veracity, and must be highly disapproved by every honest heart on that very account, as well as the cruelty and inhumanity sometimes displayed in defeating the just hopes we had raised by another's dependence on our veracity. This consideration should make men both cautious of promising inconsiderately, and religiously careful not to depart from their promises without suffi-

BOOK II. ent cause, such as must justify them to every honest man. But when one departs from such a promise, the other party has no other perfect right than to demand compensation of any damage he sustained by taking his measures in dependence on the promise; submitting it to arbitration whether his deportment gave just cause of departing from the promise, or not; and whether his measures taken in consequence of it were justifiable. If he is justified by proper arbitrators, he has a perfect right to be indemnified; but cannot, even so, compel the performance of the promise.

Perfect contracts.

3. The third form is a perfect contract or promise, not only binding in point of veracity and conscience, but conferring a perfect right to another.

What signs binding.

IV. In contracts 'tis by one's own consent that we deem him obliged. And he is justly deemed to consent who uses the signs which commonly import consent. No exception can be allowed upon any alledged secret dissent or different intention not imparted to others*, or upon any roving of mind or inadvertence alledged while he was using such signs as declared his consent; otherways all contracts might be eluded by such pretences, which could not be confuted.

Tacit conventions.

Words or writing declare our consent most distinctly, but it may also be declared abundantly by any other signs previously agreed upon by the parties as evidences of consent. When any sign is agreed upon and used with that professed design, 'tis an express contract. But there are also certain actions which in

* *De non apparentibus et non existentibus idem est judicium.*

their own nature import a consent to covenants or conditions proposed. Thus if certain advantages are offered to such only as subject themselves to certain engagements or obligations ; he who assumes these advantages which he could not claim except upon the offer made, is justly deemed to have subjected himself to the conditions or obligations expected by the other party. So when one acts what no reasonable man would do without consenting to certain articles, or what is universally taken for a consent to them, he is justly reputed to have consented to them. These are tacit contracts or conventions. The obligation of such significant actions may indeed always be prevented by express premonition of all concerned, to the contrary. And in this the tacit contracts differ from the *quasi-contractus*, or the *obligatio quasi ex contractu* of the civilians. In these later the obligation is founded in some obvious maxims of justice, upon some action of the person obliged, or his deriving to himself some advantage at the expence of others who neither intended to be at such expence gratuitously, nor were obliged to it. No premonition or remonstrance will free a man from these obligations, of which hereafter. But in tacit contracts the obligation arises only from consent, which is as naturally intimated by action, as it could be by words; and therefore an express previous declaration to the contrary may take away all cause of presuming upon consent.

Examples will best explain both. When lands are offered only to such as are willing to settle in a colony

Examples of them.

BOOK II. upon certain conditions of civil subjection; one who takes possession of such lands, is deemed to consent to the conditions. A foreigner settling with us, and sharing the protection of our laws and polity, tacitly consents to be subject to such of our laws as oblige foreigners, and to our courts of justice. An heir possessing an estate subjected by the ancestor to this condition that all who enjoy it shall be subject to such polity and laws, tacitly consents to this subjection. If he previously declares against this subjection, he is not bound by it; but the state may perhaps justly prevent his possessing these lands, as it would prevent the residence of a foreigner who previously refused subjection to our laws. Addressing speech to another imports a convention of speaking according to our sentiments, and using words in their customary sense; otherways the action would be foolish. But timely premonition that the speaker only pronounces absurd propositions as examples in logick, would prevent the obligation: these are tacit conventions. But an heir possessing an inheritance, or an executor the personal estate, are * lyable to pay the debts and legacies which affect the estate, and no premonition of the heir or executor can prevent this obligation which they say arises *quasi ex contractu*.

Valid exceptions
against contracts.
Want of reason.

V. From the nature of property and the ways of conveying it, it may often happen that men become

* In the civil law the obligation of the heir to pay debts is not called a *quasi-contractus*, but he is supposed by a *fictio juris* the same person with the deceased. This is a subtilty of law; the natural reason of obligation is the same as that to pay legacies, which they say arises *quasi ex contractu*.

proprietors before they have knowledge of the value CHAP. 9.
of their goods, or the use of reason to manage them. ~~~~~
'Tis plainly for the good of such, and for the publick
interest too, that such persons be kept from the disposal
of their goods, or entering into any important contracts,
till they attain to some tolerable knowledge of human
affairs. Men disordered in their reason by sickness,
or madness, are in the same case. On the other hand
'tis plainly unjust to restrain men of sufficient wisdom
from the exercise of the duties of life, and the enjoyment
of their property. Men attain to maturity at very different
ages. Before civil laws, the maturity of reason, when
any dispute arose upon this exception against a contract,
could be determined only by the arbitration of such who
knew the ordinary conduct of the person at the time of
the contract. By the law of nature one is obliged by any
equitable contract he entered into at any age, provided
he knew what he was doing. But to prevent frauds and
vexatious trials about the maturity of reason, which too
must at several times be determined as to the same
person according to the different subjects about which
young people may have occasion to transact, and that
men may have at last some security against the
inextricable exceptions about the mature reason of the
persons they have to deal with, 'tis absolutely necessary
that in civil society some positive law should fix a
certain age in a prudent medium, so as to admit as
few as possible to manage their affairs before maturity
of reason, and yet exclude as few as may be after

BOOK II. they have attained it. The exception of a phrenzy is more easily determined by arbitrators or judges.

Minority.

The Roman law about minors, now partly received over Europe, had great conveniencies. To the age of fourteen compleat in males, and twelve in females, they acted nothing validly. Tutors acted in their names. After these years the minor acted, but nothing was obligatory, without the consent of curators, until he had compleated his twenty-first year. In earlier times this term was delayed to the twenty-fifth year. In this period a minor was made acquainted with his affairs, as the curator could not act without him, and he might be a check upon any fraudulent design if he had attained to any wisdom; while the superior prudence of the curator prevented the minor from hurting himself. The law to prevent the frauds minors are exposed to, gave them leave to recede from any contract entered into without consent of curators before maturity, tho' they might be obligatory in conscience, and are so always where there is no iniquity in them, and the minor knew what he was doing at the time of contracting. After the twenty-first year compleated, they were capable alone of all legal action, except finally discharging their curators; for doing this validly they were allowed the further experience of four years.

But as a minor should not be injured by imprudent contracts; so he is obliged, after coming of age, to let no man suffer by any equitable contract entered into with him during his minority, out of real kindness

or confidence of his integrity, without any fraudulent design, even tho' civil courts do not confirm such contracts. And courts of equity always sustain whatever was prudently advanced for the maintenance or education of a minor in the absence of his parents, or curators, as a just debt upon him. CHAP. 9.

'Tis pleasant to observe how those authors who paint out our nature as a compound of sensuality, selfishness, and cunning, forget themselves on this subject in their descriptions of youth, when the natural temper is less disguised than in the subsequent parts of life. 'Tis made up of many keen inconstant passions, many of them generous; 'tis fond of present pleasure; but 'tis also profusely kind and liberal to favourites; careless about distant interests of its own; full of confidence in others; studious of praise for kindness and generosity; prone to friendships, and void of suspicion.

VI. The contracts of such as are manifestly disordered in their reason by drunkenness, are not obligatory, as 'tis fraudulent in one to entice them into contracts during such disorder. If my disorder was not known to others, I am plainly obliged to compensate any damage occasioned by my contracting, tho' I am not bound by it. A disorder I have culpably brought on myself can never free me from this obligation; tho' it may from that of a contract. Men are not obliged to preserve themselves always in a capacity for contracting with others, otherways they should never fall asleep. But they should always prevent their doing hurt to others, and take precautions against any

Drunkenness.

BOOK II. thing in their conduct that may be injurious. If they do not, they are bound to make full compensation.

*Mutual consent
necessary.*

VII. To the validity of contracts mutual consent is necessary; and that even in donations, as well as other translations of right. In donations indeed the consent of the receiver is easily presumed; and yet if he accepts not, the property is not altered. The proprietors can suspend their conveyances upon any lawful conditions or contingencies they please. Present acceptance is not always necessary; as in legacies to persons absent; and in all conveyances to infants. No man indeed acquires property against his will, or until he consents to it; but the granter may order the property to remain in suspense till it can be accepted by the grantee; or may commit the goods to trustees till the grantee shews his will to accept them. Goods may thus be preserved in suspense for the benefit of persons unborn.

All this is very intelligible if we remember that property is not a physical quality; and that all intended in this doctrine is this, * that such management of goods is humane to individuals, and consistent with, nay conducive to the good of society; and that a different conduct would be inhuman toward the grantees, or the persons concerned for them, and hurtful to society. If property were a physical quality, it must indeed have a present subject.

If the child when come to maturity declines to accept, no man can force him to it; the goods remain

* See the preceding chap. § 3.

with the granter; or such as have a right to succeed to him. But from the sure prospect we have that valuable grants will be accepted, we usually call the grantees proprietors, as soon as the conveyance is completed. CHAP. 9.

VIII. In contracts made upon a *condition* there is no obligation unless the condition exists. A *condition* is properly "some event, now uncertain, upon the existence of which the force of the contract is suspended." And 'tis always distinct from the mutual prestations stipulated, and from the consent of the parties. In the Civil law a condition is an event which has not yet happened. If the event existed at the time of the contract, tho' unknown to the parties, the contract was called absolute. If it was then impossible, there was no contract. This needless distinction was of no moment in contracts, tho' it made a great difference in conditional legacies, and inheritances. If the heir died before the existence of the condition, tho' it afterwards existed, the estate passed from his family to another. If it existed before his death, tho' it was unknown, the estate continued in his family. These are unreasonable subtilties. *Defects of the Conditions.*

These conditions alone can affect the obligation of a contract which are either expressed in the contract as conditions, or which are understood as such from the nature of the affair by all men of understanding; or such events as one party asserted to another and undertook for the existence of them in the transaction, which consequently the other party may be presumed


BOOK II. to have made the condition of his consenting. To allow exceptions against contracts from the non-existence of any event or circumstance which one of the parties alledges he secretly had in view, while such things are not commonly expected or understood as conditions in such transactions, would make all contracts uncertain.

Many tacit conditions.

In many of our common promises and contracts many conditions are universally understood to be adjoined tho' they are not expressed; this all men of sense conclude from the nature and importance of the matter we are employed about. Thus if one promised his assistance to-morrow to his friend in any common business, this condition is always understood "provided he continues in health, and no calamity befalls his own family or friends, in which his aid may be of incomparably greater consequence than the assistance promised." Should a man's own house take fire, or any great distress befall his family, he is free from the obligation. In like manner when one promises implicitly at the desire of another to grant him a request he has not yet expressed, 'tis always understood, "provided the granting it be lawful, not contrary to piety, or any right of another; provided the favour requested be one of these friendly offices which a good man can reasonably ask of his friend." If it have not these qualities, there shall be no obligation.

Error and fraud as to the object.

IX. He who mistook the very object of the contract, or was deceived in these qualities for which such goods are commonly valued and desired, is not obli-

ged by the contract. He bargained for different things CHAP. 9.
 from those obtruded upon him. He should restore or 
 compensate whatever he received on account of the
 contract from which he now recedes. When one's own
 folly or negligence occasioned the mistake, by expect-
 ing such qualities as are not usually expected in such
 goods and for which the other did not undertake, he
 is bound by the contract; otherways all contracts
 might be eluded upon pretence of disappointment in
 some such secret hopes. If the mistake or deception
 has only been about the current value or mercat price,
 or about some fact quite foreign to the present sub-
 ject of the bargain, without any fraud of the party I
 deal with, I am bound; but have in the former case
 a perfect claim to have the price lowered to the cur-
 rent value; and in the later, have a claim in humani-
 ty, when I can shew that I was led into the contract by
 mistake, to be freed from it, if it occasions no loss to
 the other party; or if I am willing to compensate it.
 But this I can seldom insist on as a perfect right.

In all contracts good men should use all possible
 candour in discovering the qualities and circumstan-
 ces which raise or lower the values of the goods; and
 are bound to restore where too much is received, or
 add where too little was given. This conduct tho' not
 very common, is necessary to satisfy an honest heart.
 'Tis also our duty to release others from inconvenient
 bargains upon receiving compensation of any loss we
 sustain by the disappointment. In all these affairs 'tis
 of great use to examine well the feelings of our own

*Obligation to
 sincerity.*

BOOK II. hearts, and to consider how we should like such conduct toward ourselves as we are intending toward others *. This prepares the heart for an impartial discernment of what is just and honourable, and what not, by making the selfish passions operate a little on the other side. And thus the *moral faculty* shall be freed from their byas and their sophistry, and all humane sentiments in favour of the other party shall occur to us. There cannot be a more useful piece of self-discipline in all our dealings with others.

*Unjust force
and fear of two
sorts.*

X. The next class of exceptions from the obligations of contracts are those from unjust force and fear. Fear affecting contracts is of two sorts; sometimes we intend by it a suspicion that after we have performed on our part, the other party will decline his part. In this case 'tis plain that he who contracts with one who disregards avowedly all faith and honesty, without having proper means to compel him, acts very imprudently, and yet the contract is not void. Where there is just ground for this suspicion, one has a right to defer performing on his part, till the other either performs his part first, or gives sufficient security for it. When he

* *Matth. vii. 12.* This excellent rule is mistaken by some authors, who without acknowledging any prior principle of moral reasoning, or any inward immediate taste of action, would make this proposition an axiom whence they would deduce all rules of conduct. 'Tis not useful this way. A miser desires an exorbitant price when he sells: he's not obliged to give it when he buys. A lewd person desires that others should yield to his solicitations:

should he therefore yield to the solicitations of others? The person indicted wishes to be absolved tho' he is guilty. Is it therefore his duty, were he sitting in judgment, to absolve the guilty? The axiom needs these two limitations, 1. that the desire be just, and again that circumstances be equal. The former must presuppose the rules of justice previously known: they cannot therefore be inferences from this axiom.

does either, a good man should observe his contract with him were he the worst of mankind. CHAP. 9.

No tenet can be of more horrid consequence than this, that “bad men have no valid rights, or that good men are under no obligations to them,” whether they are deemed bad on account of practices, or of opinions we may call heresies. The laws of God and nature bind us to consult the happiness even of the worst of men as far as it consists with that of the more useful members of the great system, and to do them all good offices which do not encourage them in their vices. To observe lawful covenants voluntarily entered into with them is so far from encouraging their vices that it has the contrary tendency. It shews them the beauty of integrity, and its usefulness even to themselves. The contrary practice gives them an example of injustice, and provokes them to it. They conclude that there is no honesty; that all pretences to it are hypocrisy; that their own infamy is unjust, since others are no better. The moral characters of men are not unalterable; some who were once distinguished in wickedness have become eminent in virtue: no man is unworthy of our care. *Faith obligatory toward the worst of men.*

Again, how dangerous must this tenet be while it is so hard to judge of the moral goodness of others, and men are so frequently led by prejudice and party-zeal into the most unfavourable opinions of the best of men, and then by this tenet they are doomed by us to have lost all the rights of mankind. None are free from all faults. And how shall we fix that degree of

BOOK II. vice which forfeits the common rights of men, or makes them incapable of acquiring any. This tenet cannot take place even against such as avowedly disregard all laws of God and nature. Even such men forfeit only those rights the denying or non-observance of which is necessary for the safety of others against their injustice and violence, as we shall shew hereafter.

XI. Another species of fear affecting contracts is when one is moved to contract or promise by some evil threatened if he do not.

That threatened by one of the parties, or by others.

Here 1. If I contract with any honest man for his assistance against any evil unjustly threatened by a third person; the contract is obligatory: the aid given against such dangers deserves compensation, as well as any other service.

2. If the dread of some great evil unjustly threatened by one, compels me to contract with a third person not in concert with him who compels me, and unapprized of my being compelled: the contract seems void when I can make proof that this dread alone engaged me to it; since it had not that free consent which seems necessary in contracts. And yet I am plainly obliged to compensate all losses any innocent man has sustained by my means, in order to secure me from danger.

3. Contracts to which one is compelled by fear upon the just sentence of a judge, are plainly valid, since the sentence is just. An external right often attends the sentences of judges which are not just, and men out

of duty to the state or civil constitution, to which they have subjected themselves, may be obliged to comply with them, when no peaceable means can prevail with the other party to remit his external claim, as it becomes a truly good man to do. CHAP. 9.

4. In cases where the person with whom I make the contract has extorted it by his own unjust violence, a distinction must be made between "violence really unjust, yet upon such species of reasons as may impose upon men whose general purpose of life is to act justly;" and that "violence which is used without any shew of right by men who openly renounce all regard to the social laws of mankind." The former sort of unjust violence at least, must ever be on one side in all the solemn wars of nations, and in all civil wars: and sometimes there is unjust violence of the latter sort even in these publick wars. More frequently indeed there are even on the unjust side in publick wars such specious pretences, as through the secret influence of the passions of ambition, zeal for one's own side, or desires of advantages, may impose upon men to believe their cause to be just: and many in lower stations upon the unjust side are under invincible ignorance of the injustice. The side which is really unjust, cannot by violence obtain any perfect right which they can use with a good conscience: what is taken ought to be restored, and the promises or contracts extorted should be remitted again. And yet where there are such specious reasons on their side, there is an external right acquired by treaties obtained. *Rights valid from publick treaties.*

BOOK II. *side* are under an obligation, out of regard to the general interest of mankind, not to violate such treaties, tho' very disadvantageous to themselves and naturally iniquitous; at least, while they are not quite inconsistent with their liberty, independency, and enjoyment of the grand rights of mankind, for securing of which all these laws of nature are constituted: unless they can prevail upon the victorious side to release them from their covenants, they are bound by them. Some extraordinary pleas of necessity may make just exceptions from any general rules which can be found out in those matters. Of these hereafter.

For what reason.

The grand reason of our obligation by such treaties really unjust, is this, that if they were held as of no effect, if the exception of the unjust violence by which they were extorted were sustained, no treaty could have any effect to put an end to wars. They must be ended only by the ruin or entire slavery of one side, as each side would have this exception of unjust force to renew hostilities upon against the treaty, whenever they inclined. This exception therefore is always understood as precluded in publick treaties of peace.


These hold not for pirates and robbers.

5. But where violence is avowedly unjust, without any such colours of right as could impose upon a good man, which sometimes has been the case in publick wars; or when persons by the course of life they betake themselves to, renounce all regards to law and justice, as bands of pirates and robbers; the case is very different. Such persons by the whole tenor of their lives seem to abdicate all rights and claims founded on the

social law of nature; as they directly and avowedly oppose the whole foundation and end of that law, the happiness of mankind. The publick interest, the end of all law, requires that such avowed enemies of all should be destroyed, and should hold no benefit by those laws, which they renounce in this very act of extorting promises by unjust violence. The non-observance of such promises cannot hurt society; but the observance may, as it puts good men more in the power of such monsters, and makes this monstrous life more advantageous and inviting. If none regarded such promises, they would not be extorted. Robbers would expect no more than their present spoils. Can one be under obligation in the use of speech to such as renounce all right and obligation? Sure such manifest renunciation may release from the alledged tacit convention in the use of speech. When one allows me to speak without expressing my own sentiments, I may do so without a fault, as the hearer has relinquished his right. As rights are acquired in tacit contracts, and the *quasi-contractus*, by action; rights also may be renounced and abdicated by action, or forfeited by it, whether the agent directly intended it, or not.

We owe indeed good-will to the worst of men, and should do them such good offices as consist with the publick good. But pirates and robbers, or such as shew the same spirit in higher stations or offices, are the avowed enemies of mankind. We should desire their reformation, and avoid useless cruelties toward

This not opposite to universal good-will.

BOOK II. them when they are in our power. But our regard to the
 general interest must recommend to us all the necessary means of putting a stop to such a course of life, and to prevent their reaping any advantage by such avowed hostility to mankind, and abdication of all laws.

*When they have
 a right by con-
 tracts.*

If indeed we have contracted with such persons without compulsion in the ordinary matters of commerce, we are faulty in maintaining commerce with them; and civil laws justly refuse them any action upon such contracts: but yet unless we are prohibited by the laws of our country, we should observe our contract, or restore whatever we have received. In these acts no force was supposed, and by our voluntarily contracting with such men when we knew their characters, we seem to have tacitly renounced that exception founded upon the general tenor of their lives.

If such persons shew any disposition to reform, and return to a social life, as 'tis possible for the worst to amend; whatever a state or community has voluntarily promised to them without immediate compulsion, should be religiously executed as to their impunity, or retaining their present possessions, since in a voluntary treaty with them the exception which arises from their course of life is tacitly renounced. 'Tis foolish indeed to trust their bare promises. But if they offer real securities by first surrendering arms, ships of force, or forts, in which their strength consisted, a treaty securing to them impunity may be sometimes the wisest method of preventing future mischiefs without effusion of blood. Granting such men im-

punity, and the enjoyment of their spoils, has of it-
self a bad tendency, and must move our indignation; CHAP. 9.
but there may sometimes be potent reasons to justify
it, and then compensation should be made out of the
goods of the community to such private persons as for
publick reasons are thus precluded from claiming it
from those who injured them.

XII. To the validity of a contract 'tis necessary that
the matter of it be possible. We call that *naturally* *Impossibility of
the matter natu-
ral and moral.*
possible which we can get accomplished when we in-
cline, by ourselves or others. And that is called *mo-
rally* possible which no law prohibits.*

As to the exception against contracts from natu-
ral impossibility; if what seemed possible when we
contracted, becomes or appears afterwards to be im-
possible, we cannot be bound to it; but whatever was
given to us or performed on account of it should be
restored or compensated. When one knew at first the
impossibility of his part, or designedly afterwards made
it impossible, but fraudulently engaged the other to
perform his part first, the fraudulent party is not only
obliged to † compensate the damage, but to make good
the value of the bargain, or all the profit the other
could have made, had the contract been faithfully ex-
ecuted ‡. Where there has been no fraud, but only in-
advertence in such contracts, 'tis generally enough
that the damage be compensated by him who was cul-
pably inadvertent.

* *Nihil possumus nisi quod jure possumus.* † *Pensare damnum.* ‡ *Pensare quod
interest.*


BOOK II. How far the matter of contracts should be lawful may appear from what was said above.* We cannot ^{Moral possibility distinguished.} bind ourselves to any thing directly impious toward God, but our duties of worship are not fixed invariably to certain times. A man may be bound by contract to such offices as may vindicate his omission of external worship at the ordinary times of it. But he cannot be bound either to evil affections, or any acts of impiety which naturally evidence such affections, such as blasphemy, or abjuring the religion he judges to be right. Urgent offices of humanity which cannot be delayed, justify the postponing of worship for sometime, for mercy is at all times more acceptable to God than sacrifice. Were indeed the omission of publick worship demanded as a symbol or testimony of our concurrence in idolatry, or of renouncing the true religion, no promise or contract, or prohibition of a civil superior, could justify such omission. And in many cases the most open † opposition to such prohibitions would be heroick.

In like manner tho' contracts may oblige us in matters of commerce contrary to the imperfect rights of others, when we contracted without a fraudulent design knowable by the other party: yet where the fraudulent design must appear, as if one conveyed ‡ by contract or promise to any person or society all that portion of his wealth which should otherways be employed in humane or grateful offices, declaring that it was that portion; and that he conveyed it to evade

* Sect. 2. of this chap. † *Daniel* vi. 7.—11. ‡ *Matth.* xv. 5. *Mark* vii. 11.

such obligations, the deed is invalid as being fraudulent on both sides. The ascertaining of commerce CHAP. 9. requires that contracts conveying perfect rights should take place of duties of humanity, where both cannot be fulfilled, provided such contracts are made without a fraudulent design. But where such designs are known on both sides, there is no reason for sustaining them as valid.

When contracts are made about matters we had no moral power to contract about, if this was known on both sides, or both sides were equally culpable in their ignorance of it, the contracts are void. No contract binds where there was not a moral power of contracting. Either party repenting before any thing unlawful is executed, is free from the engagement; but then one should not retain any price or consideration given in view of it. If the fact is committed by one who was invincibly ignorant of its unlawfulness, he has a right to what was promised; especially when the guilt would only affect the other party. As when any officer of justice executes a writ at my suit against my friend or benefactor whom I am inhumanly or ungratefully prosecuting. If both knew the guilt of the action, and it equally affected both; or both were criminally ignorant of its guilt, and the fact be committed; no right should arise to either side from such contracts or actions. The executor should not receive the reward of his iniquity. If it has been previously received, the hirer should not get it restored. No advantages or hopes of gain should attend such engagements or actions; they should be discouraged by all means. If the un-

BOOK II. dertaker has received the price before the execution and relents, he should not indeed retain it; nor yet should he restore it to one more criminal than himself. It should go to some publick use.

One who contracts or promises about the goods of others and mutually known to be so, is only then bound to use all lawful means to obtain them from the proprietor. When these are ineffectual he is in the case of such as contracted for impossibilities. If the promiser may be presumed to know this right of a third person while the other party is ignorant of it, the promise is fraudulent, and binds to the making good of the value of it to the innocent party.

*What contracts
are preferable to
others.*

XIII. Of two covenants conveying to different persons the like right to the same thing, the * prior must take effect. All commerce would be uncertain if a subsequent contract could defeat a prior of the same nature. The second contract is in the case of an impossible contract fraudulently made, and is to be judged of by the same † rules. Where the contracts are of different natures, one conveying a real, the other a personal right to obtain the same thing, the real right will take place of the personal tho' prior to it, for reasons above-mentioned‡. The personal contract is in the case of those made about impossibilities, and has the same moral effects. If indeed the prior personal or unfinished contract was previously known to both the parties in the subsequent real contract, the subsequent

* *Qui prior tempore potior jure.* † See sect. 12 of this chap. ‡ See chap. v. sect. 1. of this book.

being plainly fraudulent on both sides, should be made void. CHAP. 9.

XIV. Men contract with others either in person, or by agents, factors, deputies, ambassadors, or any one they have by their deed empowered to transact validly in their names. Where unlimited general powers are given by the constituents, they seem obliged to ratify whatever is done by their deputies in the matters committed to their management without reservation, unless the constituent can directly prove that their deputies were corrupted by the other party, or the terms agreed to are so manifestly unreasonable as to give sufficient proof of corruption to any wise unbiassed arbitrator. To avoid the dangers of unlimited powers, publick instructions or powers are now given, declaring what matters are committed to these deputies and within what bounds; which powers are mutually made known. The constituents are bound only by such contracts of their deputies of any kind as are within the limits of their powers.



C H A P. X.

The OBLIGATIONS in the USE of SPEECH.

Natural principles binding to veracity.

WE mentioned in the former chapter some natural principles which are plainly destined to regulate our speech. As the power of communicating to each other our sentiments, desires, and intentions is one of the great blessings of the human species, so appositely joined with our social feelings and affections; nature has also implanted a moral feeling in our hearts to regulate this power. We are naturally prone to communicate our sentiments. Truth is the natural production of the mind when it gets the capacity of communicating it, dissimulation and disguise are plainly artificial effects of design and reflection, and an immediate approbation naturally attends both this communicativeness, and the steadfast purpose of speaking according to our sentiments. In the exerting these powers of speech in the manner our heart at first approves, we must no doubt have a regard to some of the more general controlling principles in our constitution, so as not to follow any inferior one in opposition to the superior, as we must controul sometimes and restrain the exercise of pity, gratitude, and other lovely principles when they interfere with the publick happiness: but where candour, openness, and a sincere discovery of our sentiments does not interfere with it, the immediate feelings of our hearts suggest our duty

and obligation to it, and that prior to the general obligation of using this powerful instrument of so many blessings in society in that manner which the general interest requires. CHAP. 10.

There are other ways in which we may communicate our sentiments, desires, or intentions, as by symbols, hieroglyphics, painting, motions significant from nature, or custom. But speech and writing are by far the most distinct and useful signs.

II. To understand our duty in the use of signs, we must observe that grand * distinction among them, that some of them either by natural similitude and connexion, or by custom, intimate to the observer a proposition, or give him occasion to infer it, without his imagining that the person who used these signs had any intention, or made any profession of communicating by them his sentiments or designs to him. Thus by seeing smoke, we conclude there is fire; by seeing it arise in many places of an hostile camp in an evening, we conclude that the army is not in motion; by seeing light all night in a window, we conclude that some person is watching; nor do we imagine that by these signs any person professes to communicate to us his sentiments, or to inform us of any proposition. But 2. There is another use of signs, whether natural or customary, which plainly imports such a profession in the man who uses them; and 'tis only by doing so that they suggest to us any proposition. *A necessary distinction of signs.*

* See *Grot.* de J. B. et P. lib. iii. c. 21. § 8. N. ii. et *Puffend.* de J. N. et G. lib. iv. c. 1.

BOOK II.

~~~~~ This division of signs is different from that into *natural*, and *customary* or *instituted*. Both natural and customary signs may be so used as to import a profession of communicating our sentiments to others. The sending little wings or spurs to a friend at a distant court, signifies to him that he is in danger; and that only upon this justly presumed profession of ours to intimate to him our opinion about his danger. Designedly to deceive one by such signs, or by any hieroglyphicks, would be as criminal as by a letter; and yet these are natural signs. On the other hand, instituted signs may lead one into a conclusion about our sentiments without his imagining that our using them was a profession of imparting our sentiments to him. A letter intercepted, or speech over-heard by one to whom it was not addressed, may lead him to such conclusions, while he yet knows there was no such intention or profession of communicating any thing to him.

Our duty in these  
which do not pro-  
fess to express  
our sentiments.

III. As to signs importing no such profession, there is this general obligation in the use of them “to do  
“no detriment to any innocent person, or to the pub-  
“lick, by leading men into any false conclusions which  
“may be pernicious to them.” Wherever another has a right, perfect or imperfect, to know our sentiments, there even concealing them by silence, as well as all deception by any signs, is criminal. But where others have no such right, and much more where there is a just cause of war, so that even violence is lawful; or wherever deceiving others may do good; we may deceive them by such use of signs as imports no pro-


profession of communicating our sentiments. Such *stratagems* are justified by all, and may be used toward a friend for any innocent purpose. A studious man may darken his chamber that others may conclude that he is abroad.

But in that use of signs which imports a profession of imparting our sentiments, upon which their signification depends, the case is different. A great part of the pleasure of a social life arises from mutual confidence in each others veracity in narrations, as well as promises. We often take our measures in dependence on the narrations of others, and derive from them much of our knowledge in human affairs. Deceiving others therefore designedly by signs justly understood as containing this profession of imparting our sentiments, and interpreted by them in the usual manner; as our hearts must immediately condemn the insincerity of it, so upon reflection we see it tends to deprive human life of all these advantages from mutual confidence in conversation.

This use of signs too imports a tacit convention to impart our sentiments to the person we address them to. Were not men persuaded of such an engagement, it would be vain and foolish to address speech seriously to another, or to listen to what is said. Suppose men imagined there was no obligation to veracity, and acted accordingly; speaking as often against their opinion, as according to it; would not all pleasure of conversation be destroyed, and all confidence in narration? Men would only speak in bargaining,

*In those which profess it there is a tacit convention.*

CHAP. 10.

BOOK II. and in this too would soon lose all mutual confidence.  Tho' we are not always obliged to disclose our sentiments, yet from these considerations it must appear that we are obliged, whenever we use signs in a way that imports a profession of imparting our sentiments, to be faithful in this profession; or to "use them so as" "shall impart our real sentiments according to the" "reasonable interpretation of such signs." And this is the general law of veracity.

*Necessary limitations.*

*Change of signification.*

IV. There are some necessary limitations of this rule, or some rules of interpretation of signs, especially of words, to be observed. 1. When the signification of words, or other signs dependent on institution and custom, is changed from the old original one, we are not guilty of falshood if their signification according to the present custom is true. Thus expressions of courtesy, and the ordinary designations of certain orders and offices, import no such opinions of the relations, or moral qualities of the persons they are addressed or applied to, as the words would import on some other occasions; and so no body is deceived by them. They only signify our intention of common civilities, or of paying the ordinary deference to these stations.

*Allowance given to deceive.*

2. When in certain affairs 'tis known that men do not conceive it an injury to be deceived, there is no crime in false speech about such matters. This is the case in some diversions. In these trifling matters we see there is no mutual confidence, and thence may discern what would be the effect of falshood in serious

narrations. If in some few greater matters men have CHAP. 10. relinquished their claim to the veracity of others, there is no obligation to it. A tacit remission can free from a tacit convention; or rather in such matters, addressing speech to one imports no convention. No man censures a physician for deceiving a patient too much dejected, by expressing good hopes of him, or by denying that he gives him a proper medicine which he is foolishly prejudiced against: the patient afterwards will not reproach him for it. 'Tis true men cannot be often deceived in such matters; confidence is soon lost in them. But the good end may be obtained, the prejudice may be removed, and the patient does not disapprove the deceit. Wise men allow this liberty to the physician in whose skill and fidelity they trust. Or if they do not, there may be a just plea from necessity; of which presently.

3. Nay if false narrations are frequently practised on all sides in war; if the custom be so received that Not censured by parties concerned. none complain of it as an improper artifice: however before the custom was received and known such narrations were unjust and treacherous; yet, when it is avowedly received, they can scarce be called unjust: since men seem mutually to remit their right. Such artifices indeed cannot be often repeated with success, as they are soon suspected.


The case is quite otherways in all serious narrations of men at peace. Nor indeed is the custom universally received in war. But as to any deceptions in any form of treaty or convention, even during a state

BOOK II. of hostility, they never were or can be allowed as lawful. 'Tis by means of treaties alone that an end can be put to war without the cruel ruin and devastation of one party; by treaties alone can any humane methods of war be received: to make them engines of deceit and hostility makes them usefess, and all horrid devastations must ensue: it must therefore be highly criminal.

*Cases of unjust force.* 4. Another limitation or exception allowed by most authors on this subject is, when promises or narrations are extorted by the avowedly unjust violence of men who in their course of life renounce all the laws of nature: as 'tis alledged that they have forfeited all these rights of mankind, the maintaining of which to them would fortify or encourage them, or give them advantages in their wicked courses.

*Previous intimation made.* 5. Another exception is obvious, when one has previously intimated to those concerned that he does not on a certain occasion speak according to his sentiments, or in the common acceptation of words. Thus when in teaching, men give examples of false propositions; or when men have declared that they appropriate certain ambiguous words to a signification different from what is common; or when friends have previously agreed upon meanings peculiar to themselves in their correspondence; there is no fault, tho' the words would intimate to others a false proposition.

*Cases of singular necessity.* 6. Another exception much insisted on is in cases of singular imminent necessity, which 'tis alledged su-

perfeſdes the obligation of many of the ſpecial laws CHAP. 10. of nature which bind us ſacredly in all ordinary caſes.  As this plea from extraordinary caſes of neceſſity is not peculiar to the ſubject of veracity in ſpeech, we defer it to be conſidered more generally \* hereafter. And ſubjoin here ſome more ſpecial uſeful rules in which good men muſt agree.

IV. The general advantages of ſincerity and of the mutual confidence thence ariſing in ſociety are ſo great, and the effects of inſincerity and falſhood ſo pernicious, that if any exceptions are allowed in caſes of neceſſity, the neceſſity muſt be very great and manifeſt, that it may over-balance the evils on the other ſide. Some ſpecial rules.

2. Wherever we are under obligation to impart our ſentiments, we are bound to uſe ſuch words as we judge moſt proper and effectual for that purpoſe; and to uſe other words deſignedly which we foreſee will deceive the hearers, tho' in ſome other way of interpretation they may be true, is criminal. But in caſes where we are not obliged to declare our ſentiments, on account of the bad conduct or intentions of ſome hearers, or where our reſuſing to anſwer ſome captious queſtions might diſcover, as much as direct ſpeech, what the inquirers have no right to know, and would abuſe to the worſt purpoſes, if they knew it; there it may be lawful to uſe ſuch evaſive anſwers as to a good unprejudiced mind, according to a juſt interpretation, would not intimate any thing falſe, while yet we Evaſive ſpeech when lawful.

\* Chap. xvii. of this book.

BOOK II. foresee that others will interpret the words another way, and be deceived by them, through their own temerity, or unjust prejudices. Of such speeches and answers there are instances in some of the most sacred characters. \*


*Sincerity to be inculcated on all.*

3. An habit of sincerity so naturally attends and assists a virtuous disposition, and a contrary one is so pernicious, that all dissimulation and disguises, as well as direct falshood, should be severely restrained in the young; nor ought they before the full use of reason to be allowed in such arts of concealment as a good man in mature years may sometimes justly use.

*When declarations honourable even without effect.*

4. There are some tenets of piety and virtue of such high dignity, and a good mind must have such an ardour to own and divulge them, that one is justified in openly declaring them at all hazards to himself, even when he has no prospects that others shall be brought into the same sentiments by these declarations. And wherever there is just ground of hope that such declarations shall do more good to the publick by enlightening the minds of others, than what over-ballances all our own sufferings we foresee, there we are obliged to such declarations and cannot innocently decline them: as when God has promised success by these means to a virtuous cause, or an institution most beneficial to mankind. And yet, on the other hand, where there is no rational hope of success, or of having any good

\* *Plato de Repub.* l. iii. seems to allow deception to be one of those powerful medicines which none but the skilful state-physician should use, and that too only on extraordinary occasions.

influence on others, one cannot be said to be criminal CHAP. 10 in omitting such voluntary declarations as can have  no other effect than his own sufferings.

5. As one most important end of civil power is the taking the decision of controversies, and the execution of justice, out of the hands of the interested and passionate parties, and committing it to unbiassed men of wisdom interested on neither side; and to this all the subjects of a state have implicitly consented: 'tis the duty of a person cited as a witness in judgment, not only to maintain the strictest veracity in what he affirms, but to discover fully what he knows in the cause when required. And 'tis necessary in all states that severe punishments be inflicted on such witnesses as even conceal any thing required, out of pity, or favour to one whose cause they think just, or who has incurred the penalty of a law they may judge to be too severe. Were witnesses allowed with impunity to falsify, or to deny their knowledge of what they truly know, all civil judicatories would be useless: the decision of causes must remain in the hands of the imprudent, or such as are interested one way or another, as the witnesses generally are, by favour, or pity at least. If laws, or judges are too severe, or unjust, one would act the heroick part who rather than contribute to the sufferings of the innocent would refuse to give testimony, and submit to any penalty of refusing it, when thus he could obtain safety to the person in danger.

6. As in addressing speech to others who have a right to know our sentiments, we do not merely pro- The crime of equivocation and mental reservations.

BOOK II. fess that the words shall in some possible interpretation be true, but that they shall impart the truth in the ordinary acceptation in which a wise man would take them: since one might as well change all the significations of words, and make a new dictionary, according to which he might affirm or deny any thing, as make a new grammar, or way of construction unknown and unexpected by others. Both practices would destroy all use of speech: so, for the same reason, 'tis plainly unlawful to speak what in the terms expressed is false, tho' a secret reservation or addition would make the proposition true. No sentence is so false or absurd that it cannot, in this manner, be made true.

*Practical rules  
of conversation;  
that it be profit-  
able to others.*

V. The former rules are designed to keep men from the crime of falsehood: but there are many others pointing out the duties, the virtues, and beauties of conversation, as speech may be the means of great good in human life. An honest heart possessed with kind affections to its fellows will incline to employ his conversation for their service as much as he can: such a one will desire useful knowledge in human affairs as a fund of good offices; his serious discourses will be instructive, or persuasive to something honourable, and even his gayety will either be subservient to the same purposes, or at least innocent. And for these ends a winning courtesy in conversation, and even an agreeable external behaviour, is not unworthy of the regards of the highest characters.

*Not calum-  
nious, this exceed-  
ingly criminal.*

2. As all men have a tender sense of honour and reputation, and the utmost aversion to infamy, and

the contempt of their fellows; as being esteemed and beloved by our neighbours is one of the sweetest enjoyments of this life, and suffering reproach, and infamy, and contempt, is among the bitterest afflictions to the finest spirits; all dispositions of humanity, all our moral notions of justice recommend to men the greatest caution about the characters of others. We may indeed look upon ourselves as at some liberty as to the measure in conferring praises or honours on men for any eminent virtues or services which happen to be ascribed to them. And yet even in this matter, a low envious poor spirit may be evidenced by denying the just praise to eminent merit, or by detracting from it, and studiously diminishing its importance; and such practices discourage all generous dispositions. Yet still each one is some way judge for himself as to the degree of eminent praises he will confer; and the right of others in this matter is only of the imperfect kind, tho' in men's judging wrong, and violating such rights, they often discover a most odious disposition. But as to the simple character of integrity, honesty, and purity of manners, or the reputation of a good honest man, every one has a perfect right to it, unless he has forfeited it by grossly immoral actions. Unjust calumny and detraction therefore must be among the most grievous injuries; and the more odious that they can often be executed by hints, insinuations, shrugs, whispers in the dark.

Such as have any regard to virtue, to the goodness of their own hearts, or any moral worth, should the

BOOK II. more carefully observe the first inclinations to such wickedness, and consider how base the roots are from which it springs. At best from want of all examination at home, and a vain humour of talking about and intermeddling with other people's affairs; often from pride, and a mean delight in our own imagined superiority in virtue: often from a baser envy, when others are like to excel ourselves; and sometimes from an habitual sort of malice toward such as seem to vye with us in happiness, in wealth, in knowledge, or in popularity; or who have opposed any of our designs. Seldom are men led into such practices by any of the lovely dispositions of the heart even of a narrower kind; and all the generous and humane principles must make us abhor them.

*Secret faults of  
others not to be  
divulged.*

3. Nay suppose we are well assured of the secret faults or vices of others, it seldom can do good to divulge them. The restraint of shame, which is so powerful in life, is taken away when a character is lost. Publick infamy may be too cruel a punishment to such as a private admonition might reform, who perhaps are already sincerely penitent, and repairing all wrongs as far as they can. Suppose a private admonition does not reform the offender, yet if the action can continue secret, and there be no fear of further injuries, or that others shall be seduced, 'tis hard to tell what is the advantage of publishing secret crimes. When there is hope that publick censure may reform where private admonition prove ineffectual; where 'tis necessary to prevent future crimes, or the seduction of o-

thers; or to obtain reparation of damage, then it is CHAP. 10. prudent and just. But where these motives do not recommend it; where the secrecy can prevent the hurt of the example; where damages are repaired, and no new injuries apprehended; what can the divulging of faults do except gratifying our ill-nature, or pride, or envy, or vanity in our superior purity, or an idle inclination to inconsiderate talking. The vicious are easiest reclaimed while the restraint of shame remains; which is lost by publick infamy: the frequency of crimes makes them appear less shameful to others; their vicious inclinations are less restrained when they find that many indulge them, and the virtuous become more suspected of hypocrisy.

When indeed the gross vices of men are publick, 'tis the duty of every society to declare their dislike of them; and yet to retain good-will toward the offenders, and endeavour to reclaim them. But while vice can be concealed, a good friend, or neighbour, has the best opportunity of the kindest office to the offender, whom he may reclaim by admonition, and oblige in the highest manner by concealing his faults.

4. One of the most amiable and useful offices of life comes in on this subject, the reconciling friends, Doing good offices in conversation. or neighbours, who are at variance, by free conversation with both sides, representing the matters of offence in the most favourable lights, suggesting all extenuations, recalling past kindnesses, and presenting the great motives we all have to mutual forgiveness,

BOOK II. since all of us need so often the mercy of God, and  
 ~~~~~ the indulgence of good men.

5. Under this head of the use of speech comes likewise in the old logical and moral debate between the Cynicks and the other sects of antient philosophy, about obscenity. The Cynicks allege that “ there is no
 “ work of God, no natural action, which may not be
 “ matter of inquiry and conversation to good men, and
 “ we must use their names; hence, they conclude there
 “ is no obscenity.” The answer to this is obvious.

*The nature and
 crime of obscen-
 ity.*

Many words in every language, beside their primary signification of some object or action, carry along additional ideas of some affections in the speaker; other words of the same primary meaning may have the additional signification of contrary affections; and a third set of words may barely denote the object or action, without intimating any affection of the speaker. We shall find this difference in comparing the terms of contempt and indignation one uses when provoked, with those of the same primary meaning used by a calm man relating the same event. Few objects want these three sorts of names, one barely denoting it, another sort denoting also our joy or approbation, or our relish for it, and a third denoting our aversion or contempt of it. *Adultery, incest, fornication, lewdness*, denote these vices, and the dislike and condemnation of the speaker: other terms for the same actions may denote our liking them, and our lewd inclinations: a serious mournful account of any battle

or unhappy riot has its grave words importing also CHAP. 10.
pity and regret : a burlesque poem has its ludicrous
words for the same things, importing our indifference
and contempt of them. A chirurgeon uses middle
words, importing no passion of either kind.

An anatomist, or any modest man, can find words denoting any parts of the body, or any natural actions, or inclinations, without expressing any lewd dispositions, or any relish for vicious pleasures. In such words there is no obscenity. Other words may import an immoderate keenness for such pleasures, a dissoluteness of mind, a want of the natural modesty, a neglect of all the sober restrictions on our brutal appetites, and a recommendation of a dissolute conduct to others. These are the obscenities of conversation unworthy of a rational being, and opposite to the modesty of our nature, as well as all the manly principles of virtue.

In immoderate sensual enjoyments of other sorts there is vice; and a base despicable soul may be discovered by great delicacy and concern about them. Conversation expressing such a low taste, or recommending it, may also be shamefully vicious. But as the amorous appetite is generally more violent, there is a sense of shame peculiarly fitted to restrain it; the breaking through this strong restraint of modesty, by our conversation, is generally more infectious and corrupting to others, who have not got a finer taste to make it wholly nauseous, than mean conversation about other sorts of sensuality.



C H A P. XI.

Concerning OATHS and VOWS.

OATHS fall under consideration here, as they are natural confirmations of promises, and testimony or narration.

*The nature of
Oaths.*

I. As nothing can have greater influence on one who believes a righteous providence rewarding the good, and punishing the evil, to engage him to truth in narrations, and faith in contracts, than “a solemn invocation of God as the witness and avenger of falshood,” such confirmations have been required to matters of greater importance in all nations, and are called *oaths*. And when devoutly taken, they are natural acknowledgements of the Divine Perfections and Providence. We do not either make the Deity more attentive, or give him any new right of punishing. But by such invocation we present to our own minds the strongest motives to veracity and fidelity, and exceedingly increase the guilt of falshood or infidelity.

*Their strong
obligation, and
dangerous abu-
ses.*

As all the moral feelings of the heart must enjoin upon all rational creatures who know their Creator, the deepest reverence, admiration, gratitude, and love toward him, so 'tis of the highest importance to influence men to every thing great and honourable in social life, and to deter them from the contrary, that such devout affections toward God should universally pre-

vail. And therefore whatever practice tends to abate CHAP. II. this awful reverence of the Divine Majesty, must be extremely criminal. Such plainly is the interposing of oaths in trifling or ludicrous subjects; the insisting on them without great necessity even in serious matters which often occur: the requiring them frequently where we could have sufficient security without them, and where there are strong temptations upon men to perjury, with a probable prospect of impunity: or the administering them in a careless manner which neither evidences any devout dispositions in such as enjoin them, nor is apt to raise them in the person who swears, or in the spectators. Such practices must naturally abate the devotion of a nation in all its parts, and particularly as to the sense of obligation in that most sacred bond of an oath. What folly is it in princes to expect that men shall be bound by oaths of allegiance to themselves, when they so little regard the preserving among their people an universal reverence for oaths? Nay when by foolish and unnecessary oaths, every day imposed and irreverently administered, they are debauching the consciences of their subjects, and abating more and more any small remains of religion and integrity among them.

'Tis a monstrous abuse too to employ oaths where they can give little or no security. Such are those required in declaring our assent to long systems of disputable and sometimes unnecessary opinions in matters of religion and promising to adhere to them. Not to mention the great hazard of debauching the con-

BOOK II. sciences of men by prevarication about their present sentiments; whensoever by further inquiry they see ground to change their sentiments, such oaths are no security; as they were confirmations of promises now become impossible to be fulfilled. Nor indeed can oaths of allegiance have much further effect. Men of no conscience are not bound by them. Men of virtue would be loyal to their lawful prince without them. If a good man after swearing allegiance should find cause to change his opinion as to the right of the prince in possession, he will conclude too that he is not bound by the oath, since it was contrary to the right of another.

*Oaths only by
the Deity.*

II. As 'tis a foolish and profane action to swear by any being who is not believed to be possessed of divine power, forms commonly received, if they have any meaning, are metonymical oaths by God. Swearing by one's life, by his head, or by one dear to him, is invoking the Divine vengeance upon them in case of falsehood. Swearing by the sun, the light, or the earth, is imprecating that we may be deprived of all use of them. Other metonymies are more obvious. Using any of these forms in trifling matters is either foolish, if we do not know the meaning of them, or very profane if we do. None of them should be used in common conversation *, nor even without a real intention to incur the obligation of an oath.

*Who is deemed
to swear.*

As in covenants, so in oaths, he is deemed to have

* This is plainly the intention of *Matth. v. 32.* That we should use none of those forms *without intention of obligation.* That this sentence is thus elliptick, appears from the context, and the Jewish casuistry *Matth. xxiii. 20.*

consented, or sworn, who used the signs which commonly denote such actions, and professed to use them as consenting or swearing, howsoever his mind was secretly employed at such times. And he is punishable for perjury if he falsifies in testimony, or breaks the promise so confirmed. Men can judge of our inward actions only by the signs. CHAP. II.

The oath is properly a distinct act from the profession or promise, tho' it may be involved in the same grammatical sentence by some elliptick form. The oath is the invocation of God as the witness and avenger of falshood, in some promise or assertion presupposed. It therefore neither increases nor alters the matter of obligation, but confirms what was previously constituted. By it we imprecate vengeance upon our neglect of our duty. A contract therefore which is void because of the fraud of a party, or by any error about the essentials of it, or by defect of some valid condition, tho' it was confirmed by an oath, is not thereby made obligatory, nor is any just exception precluded. Having invoked punishment upon our failing in our duty, has no effect when we do nothing contrary to our duty. *Oaths a distinct act.*

III. An oath cannot bind us to what is directly impious toward God, or contrary to the perfect right of another; or to what is specially prohibited by a law excluding our moral power of transacting in those matters. Could oaths bind us in such cases, they would be the most pernicious engines of evading every obligation to God, or man; and of destroying all the rights *How far they can bind.*

BOOK II. of others. The invoking of God as a witness and avenger, can never move him to punish us for omitting any impiety, or injustice: but in the natural matters of commerce committed to human prudence, tho' we have contracted rashly, and offended in doing so against some general laws, we are obliged, as was shown above; and much more when the deed is confirmed by an oath. "Tis in such matters that a good man *changeth not when he has sworn to his own hurt.*

In a promissary oath there is no obligation without the acceptance of him in whose favour it is made, or if after acceptance he voluntarily remits his right, or when any third person without whose consent we cannot transact in such matters denies his consent. Where we have deceived others by acting as if we had full moral power in such cases, we are obliged at least to compensate the damage.

The sense of the words how to be taken.

When one justly demands of us an oath we should either swear in the sense he requires us, or not swear at all. In oaths required by private persons we may always know their sense: in those required by law we must swear in the sense of the legislator, or decline them altogether. No deputy magistrate, or court, has the power of explaining them. "Tis exceedingly pernicious to enjoin oaths conceived in ambiguous terms, or such as cannot easily be understood by all on whom they are enjoined.

Affertory, and promissary oaths.

IV. Beside the general division of oaths into *promissary* and *affertory*, there are several sub-divisions. Affertory oaths demanded from witnesses under a pe-

CHAP. II.
 nalty, are called *necessary*. When one of the contend-
 ing parties, with consent of the judge, leaves the
 cause to the oath of the other, 'tis called a *judicial*
oath. When the same is done without order of a
 judge, by mutual consent, 'tis called a *voluntary*
oath. When it is enjoined on the party accused in a
 criminal action, in which he is to be absolved upon
 swearing to his innocence, 'tis called a *purgatory oath*.
 When the oath is demanded only that the person
 accused may discover his crime, or be deemed guilty
 upon his declining to swear, it is called *expletory*, as
 it compleats an imperfect proof. But where one's life
 or character is at stake, the temptation to perjury is
 so strong with those who are guilty, and it is so little
 necessary for any publick good to punish a man of
 such integrity, as will not swear falsely to save his life
 or character, for a crime perhaps done in a transient
 passion, that the humane laws of some states have
 justly excluded all purgatory or expletory oaths in
 criminal matters; since by them the impious are not
 detected, and only such can suffer as have a pretty
 strong sense of piety. 'Tis certainly better that either
 direct testimony, or concurring circumstances, should
 be made the sole methods of convicting any man.

It were to be wished that in matters of property
 too we could avoid obliging men to swear in their
 own causes. In civil actions the magistrate does not
 require the oaths for the sake of any publick right of
 the state, but as the sole means of deciding justly be-
 tween the parties. And the temptation to perjury in

BOOK II. these cases is not generally so great as in criminal actions, and it can be more easily detected.

The nature of vows. V. A vow is an oath in which men are not confirming any conveyance of right properly and immediately to their fellows, or any contract with them; but 'tis "a promise made to *God*, binding us to some performance, and an invocation of divine punishment if we omit it." By vows we convey no right to men in the matters of commerce; we oblige ourselves only to *God*.

their use. When men vow what is truly wise, and prudent, and pious and charitable, the omission of such offices becomes more criminal after the vow; and thus by vows men may have deeper impressions made of their obligations to what is good and honourable; and may create in themselves a more firm abhorrence of what is evil, or of any negligence in their duty: and this is the proper use of vows, to confirm every good and wise resolution by solemn engagements in the presence of *God*.

How far obligatory. 1. But first, what we could not bind ourselves to by a contract, we cannot be bound to by vows; such as actions impious toward *God*, or contrary to the perfect right of another, or contrary to any special precept depriving us of the moral power of contracting in such matters.

2. Again, we may be further obliged by contracts, than we can by vows. When we contract imprudently with men in matters of commerce, against those general laws which require a wise administration of our

affairs for the benefit of our families and friends, and CHAP. II. the other party insists upon the contract; a regard to a distant good, and the necessity of maintaining the faith of commerce, and of excluding vexatious suits, and endless evasions, obliges us to observe what we have engaged. But when one makes an imprudent vow to *God*, we are sure *God* does not accept of it, or insist on our performing it: nor is there any such reasons as those from the necessity of maintaining commerce, to oblige us to it. Thus should the parent of a numerous family, in any danger, vow to give the half of his goods to the poor, or to certain orders called *religious*, or for building or adorning certain edifices; or should he undertake useless penances; while all the indigent are sufficiently provided other-ways, or might be so by a far smaller proportion of the goods of the wealthy; while all useful orders of men have sufficient support, and there are sufficient buildings and utensils for all religious uses; and while the penances vowed are no way useful for his improvement in virtue; he is under no obligation, as *God* cannot be supposed to accept of such promises; and there's no conveyance made of any rights to men.

'Tis impious to conceive *God*, like the worst of our fellows, catching at all advantages from the fears or weakness of men, and insisting on every rash promise of theirs; or like a tricking agent for a party, to the detriment of the rest of his rational creatures, and to that of these very orders of men, by corrupting them in luxury and lazy opulence: much less can we ima-

Foolish or impious oaths do not oblige.

BOOK II. gine him fond of splendid structures and furniture, to the oppression of his own living temples. All such foolish vows made upon any false notions of sanctity in certain orders, or of piety in enriching them to the oppression and enslaving the rest, or of some promotion of religion by such means as do not conduce to it, are entirely void: and as soon as we come to juster notions, we may conclude we are free from their obligation. What we have superstitiously given under such mistakes about the true nature of these subjects, we have a right to redemand; as in other contracts where we have erred in what was essential to them. And in these causes we generally have a just exception founded upon the fraud used by those who really get the use of what is thus given to superstitious purposes.

'Tis still more evident that vows proceeding from wrath, ill-nature, or envy, or any vicious or immoderate passion contrary to the ties of humanity, such as those "never to forgive, or be reconciled, or hold any conversation with such as have offended us," cannot oblige; but must be offensive to *God*, and disapproved by good men. We ought to repent of our ill-nature and impiety, and not persist in it by observing the wicked vow. Vows therefore produce no new matter of obligation, nor make that to be our duty which was not just and wise, and becoming us, before we vowed; but like oaths, they make a deeper sense of our obligation to what was our duty before. To violate any just engagement, or any contract confirmed

by such invocation of *God*, must evidence the most horrible impiety, and must be infamous in the highest degree. CHAP. II.

C H A P. XII.

The Values of Goods in Commerce and the Nature of COIN.

I. **I**N commerce it must often happen that one may need such goods of mine as yield a great and lasting use in life, and have cost a long course of labour to acquire and cultivate, while yet he has none of those goods I want in exchange, or not sufficient quantities; or what goods of his I want, may be such as yield but a small use, and are procurable by little labour. In such cases it cannot be expected that I should exchange with him. I must search for others who have the goods I want, and such quantities of them as are equivalent in use to my goods, and require as much labour to procure them; and the goods on both sides must be brought to some estimation or value. Prices must be settled for all commerce.

The natural ground of all value or price is some sort of use which goods afford in life; this is prerequisite to all estimation. But the prices or values in commerce do not at all follow the real use or importance of goods for the support, or natural pleasure of life. By the wisdom and goodness of Providence there is such plenty of the means of support, and of natural pleasures, that their prices are much lower than of many other things which to a wise man seem of little The natural causes of prices.

BOOK II. use. But when some aptitude to human use is presupposed, we shall find that the prices of goods depend on these two jointly, the *demand* on account of some use or other which many desire, and the *difficulty* of acquiring, or cultivating for human use. When goods are equal in these respects men are willing to interchange them with each other; nor can any artifice or policy make the values of goods depend on any thing else. When there is no *demand*, there is no price, were the *difficulty* of acquiring never so great: and were there no *difficulty* or labour requisite to acquire, the most universal *demand* will not cause a price; as we see in fresh water in these climates. Where the demand for two sorts of goods is equal, the prices are as the difficulty. Where the difficulty is equal, the prices are as the demand.

By the use causing a demand we mean not only a natural subserviency to our support, or to some natural pleasure, but any tendency to give any satisfaction, by prevailing custom or fancy, as a matter of ornament or distinction in the more eminent stations; for this will cause a demand as well as natural use. In like manner by difficulty of acquiring, we do not only mean great labour or toil, but all other circumstances which prevent a great plenty of the goods or performances demanded. Thus the price is encreased by the rarity or scarcity of the materials in nature, or such accidents as prevent plentiful crops of certain fruits of the earth; and the great ingenuity and nice taste requisite in the artists to finish well some works

of art, as men of such genius are rare. The value is CHAP. 12. also raised, by the dignity of station in which, according to the custom of a country, the men must live who provide us with certain goods, or works of art. Fewer can be supported in such stations than in the meaner; and the dignity and expence of their stations must be supported by the higher prices of their goods or services. Some other * singular considerations may exceedingly heighten the values of goods to some men, which will not affect their estimation with others. These above mentioned are the chief which obtain in commerce.

II. In settling the values of goods for commerce, they must be reduced to some common measure on A common measure or standard. both sides. Such as “equal to the value of so many
“ days labour, or to such quantities of grain, or to
“ so many cattle of such a species, to such a measure
“ or weight of certain fruits of the earth, to such
“ weights of certain metals.” The standard or common measure would readily be taken in something of very common use for which there would be a general demand: and in fixing upon it different nations would according to their prudence or circumstances choose different materials.

The qualities requisite to the most perfect standard Qualities requisite to it. are these; it must be something generally desired so that men are generally willing to take it in exchange. The very making any goods the standard will of itself give them this quality. It must be portable; which will


* *Pretium affectionis.*

BOOK II. often be the case if it is rare, so that small quantities
 ~~~~~ are of great value. It must be divisible without loss  
 into small parts, so as to be suited to the values of all  
 sorts of goods; and it must be durable, not easily wear-  
 ing by use, or perishing in its nature. One or other  
 of these prerequisites in the standard, shews the incon-  
 venience of many of our commonest goods for that  
 purpose. The man who wants a small quantity of my  
 corn will not give me a work-beast for it, and his  
 beast does not admit division. I want perhaps a pair  
 of shoes, but my ox is of far greater value, and the  
 other may not need him. I must travel to distant  
 lands, my grain cannot be carried along for my sup-  
 port, without unsufferable expence, and my wine  
 would perish in the carriage. 'Tis plain therefore that  
 when men found any use for the rarer metals, silver  
 and gold, in ornaments or utensils, and thus a de-  
 mand was raised for them, they would soon also see  
 that they were the fittest standards for commerce, on  
 all the accounts above-mentioned. They are rare, and  
 therefore a small quantity of them easily portable is  
 equivalent to large quantities of other goods; they  
 admit any divisions without loss; they are neither pe-  
 rishable, nor easily worn away by use. They are ac-  
 cordingly made standards in all civilized nations.

*Metals by  
 weight.*

Metals have first been used as standards by quan-  
 tity or weight, without coinage. This we see in an-  
 tient histories, and in the \* phrases of old languages.  
 But this way was attended with two inconveniencies;

\* *Impendere, expendere nummos, &c.*


one the trouble of making exact divisions, the other CHAP. II. the uncertainty as to the purity of the metal. To  prevent both, coinage has been introduced; in which pieces are made of very different well known sizes in the most convenient divisions: the quantity of pure metal in every piece is known; and finer methods of stamping secure us that they cannot be clipt or filed away without its being discernible at once. The public faith of the state is interposed by these stamps, both for the quantity and purity, so that there is no occasion for assays or weighing, or making divisions.

These are the sole purposes of coinage. No stamp The use of coinage. can add any considerable value, as it is easy workmanship in such valuable materials. But it may be good evidence for the value, when it is impressed by any just and wise authority. Trading nations cannot make the comparative value of their coin with respect to other goods, greater or less than the value of the metal, and of the easy workmanship of coinage. Coin is ever valued as a commodity in commerce, as well as other goods; and that in proportion to the rarity of the metal, for the demand is universal. A law can only fix or alter the legal denominations of pieces or ounces; and thus indeed affect, within the state, the legal claims formerly constituted in those denominations: but commerce will always follow the natural value. If one state had all the mines in the world in its power, then by circulating small quantities, it could make the values of these metals and coins high in respect of other goods; and by circulating more of

BOOK II. them, it could make their values fall. We say indeed commonly, that the rates of labour and goods have risen since these metals grew plenty; and that the rates of labour and goods were low when the metals were scarce; conceiving the value of the metals as invariable, because the legal names of the pieces, the pounds, shillings, or pence, continue to them always the same till a law alters them. But a days digging or ploughing was as uneasy to a man a thousand years ago as it is now, tho' he could not then get so much silver for it: and a barrel of wheat, or beef, was then of the same use to support the human body, as it is now when it is exchanged for four times as much silver. Properly, the value of labour, grain, and cattle, are always pretty much the same, as they afford the same uses in life, where no new inventions of tillage, or pasturage, cause a greater quantity in proportion to the demand. 'Tis the metal chiefly that has undergone the great change of value, since these metals have been in greater plenty, the value of the coin is altered tho' it keeps the old names.

*Value of coin not  
arbitrary.*

IV. The governors of a state which has no monopoly of silver and gold, may change the names of their coins, and cheat their subjects, or put them into a state of cheating each other in their legal demands: but in commerce coin will retain the natural value of the metal in it, with little variation. Where the legal denominations of value are considerably changed, the effects are obvious at once; and in smaller changes the effects are proportionable, tho' not so sensible.

If the legal names of our crown pieces were doubled CHAP. 12. so that the ounce of silver were called ten shillings,  the nominal prices of all goods would rise as much. It follows the quantity of metal. We should not get the barrel of wheat for the new ten shillings, as we do now in cheap years: we must give the two ounces of silver as we do now, tho' they would be called twenty shillings. Suppose people so stupid that they were contented with the same names, but half the silver. Coining with any stamp is an easy manufacture, any nation could make our crown-pieces, and get for them double the quantity of our goods they got formerly. Our own merchant therefore gets for an ounce of silver from the farmer or manufacturer what formerly cost two ounces, and yet at foreign mercats he will get as many ounces for these goods as before. Now he doubles his first cost, beside his former profit. 'This vast gain would invite so many, and make such a demand, that the prices of all our goods would gradually rise, till they came to the same quantities of gold and silver they were at before, but with double nominal values; and then the new exorbitant gain would stop. At first our country would lose one half upon all goods bought from us by foreigners: this loss would fall upon men of estates and manufacturers at last.

As to foreign goods 'tis obvious the nominal prices of them must rise at once upon changing the names of our coin. Foreigners who do not regard our laws, or legal names of coin, must have for their goods the same pieces or ounces they got formerly. Our mer-

BOOK II. chants therefore in selling these goods must have as many pieces or ounces, which now bear a double name.

Again, upon lowering the legal names of coin, the nominal prices of all goods must fall. The merchant cannot afford more pieces or ounces of metal, than he gave before for any goods to our farmer or manufacturer, as he will get no more at any foreign market, and this number now bears a smaller name. Foreign goods are bought abroad for the same ounces they were, and therefore the merchant can afford them here for the same ounces he formerly sold them at, and with the same profit, tho' the name be less. If one merchant refuses to sell so, another will, as all can afford it: or if all refuse, foreigners will send their goods into our country to be sold for the same ounces, now bearing a lower name.

'Tis a fundamental maxim about coin, that "its value in commerce cannot be varied by names," that prices of goods keep their proportion to the quantities of metal, and not to the legal names. No man values a piece more that 'tis called twenty livres, or twenty Scots pounds, than he would have done on account of the Sterling name.


*The effects of legal changes.*

V. The changing considerably the legal names of coin must cause innumerable wrongs among the subjects of any state, since the real values of goods continue the same. The lowering of coins wrongs all who are indebted in legal denominations; they must pay more ounces of gold and silver than they received,

or engaged for; and yet get no more ounces by any sales of their goods than they got formerly. All duties, taxes, rents, salaries payable in legal denominations are increased. More ounces are received by the creditors in such claims, and yet each ounce will purchase as much goods for the support or pleasure of life as before the change. The debtors therefore are so much wronged, and so much the creditors are unjustly enriched. CHAP. 12.


Raising the legal names has the like unjust effects on the other side. Debts, taxes, rents, salaries, specified in legal names, can then be discharged with fewer pieces or ounces; and yet the debtor gets as many ounces for any goods he sells as before; and the creditor can get no more of the goods necessary for life for an ounce than he got before. He is therefore so much wronged by the change made in the legal names.

The putting disproportioned values upon the several species of current coin must have bad effects on a country. The species under-valued at home will be carried abroad, and the species over-valued will be imported; as the former answers better at foreign markets, where the ounces of metal are regarded, and not the names, and the later answers best at home. Whatever sums are thus exchanged by foreigners, all their gain is so much loss to our country. What we export ourselves, hurts our country only by introducing perhaps a less convenient species. This disproportion often arises after the values were wisely fixed

BOOK II. at the time they were made, if either the mines of  
 one metal are more copious in proportion than those  
 of the other; or there be a greater drain of one sort  
 of metal by exportation, or by some consumption of  
 it in the splendour of life.

*How it changes  
 by the abundance  
 or scarcity of me-  
 tals.*

An increase of both metals by copious mines, na-  
 turally abates the value of both, without any change  
 of the names. And thus, properly speaking, the va-  
 lues of gold and silver are fallen within these two cen-  
 turies above one half: tho' we more commonly say  
 that the rates of goods are increased. Were the mines  
 quite drained and the quantities of these metals much  
 diminished by the various uses of them in plate, dress,  
 and furniture, their value would rise again; or, we  
 would vulgarly say, the rates of goods would fall.  
 The standard itself is varying insensibly: and there-  
 fore if we would settle fixed salaries, which in all e-  
 vents would answer the same purposes of life, or sup-  
 port those entitled to them in the same condition  
 with respect to others, they should neither be fixed  
 in the legal names of coin, nor in a certain number  
 of ounces of gold or silver. A decree of state may  
 change the legal names; and the value of the ounces  
 may alter by the increase or decrease of the quanti-  
 ties of these metals. Nor should such salaries be fix-  
 ed in any quantities of more ingenious manufactures,  
 for nice contrivances to facilitate labour, may lower  
 the value of such goods. The most invariable salary  
 would be so many days labour of men, or a fixed quan-  
 tity of goods produced by the plain inartificial la-

bours, such goods as answer the ordinary purposes of CHAP. 12. life. Quantities of grain come nearest to such a  standard.

In matters of commerce to fix the price we should not only compute the first cost, freights, duties, and all expences made, along with the interest of money employed in trade, but the labours too, the care, attention, accounts, and correspondence about them; and in some cases take in also the condition of the person so employed, according to the custom of our country. The expence of his station of life must be defrayed by the price of such labours; and they deserve compensation as much as any other. This additional price of their labours is the just foundation of the ordinary profit of merchants, on which account they justly demand an higher price in selling, than what answers all that was expended upon the goods. Their value *here* is augmented by those labours, as justly as by those of farmers or artificers.

As there are many contingent losses by the perishing of some goods, or their receiving damage, these losses may be justly compensated by a further augmentation of the price of such as are safe. As merchants lose sometimes by the falling of the rates of goods on hand, they may justly take the contingent advantage too of goods on hand, when the rates of such goods rise by any accident which makes them scarce. Men who are fortunate in these accidents may be much enriched, without any fraud, or extortion. The constant profit is the just reward of their la-

BOOK II. bours. Thus tho' the values of what is given and received in buying and selling should still be kept equal on both sides, as we shall see presently, yet there is a natural gain in trade, viz. that additional price which the labour and attendance of the trader adds to the goods; and a contingent one, by the rising of prices.

## C H A P. XIII.

*The Principal CONTRACTS in a SOCIAL LIFE.*

*Contracts beneficent or onerous.* CONTRACTS are either *beneficent*, where a gratuitous favour is professedly done on one side; or *onerous*, where men profess to give mutually equal values. Of the former there are three sorts known to the *Civilians*, the *mandatum*, *commodatum* and *depositum*; of which in order.\*

*The mandatum.* The *mandatum* is when "one contracts to manage the business of another without reward." This may be either with special instructions, or without them. In the former case, if the person employed departs from his instructions, he naturally seems liable to all damages occasioned by it, except he has done so upon such very specious reasons as might mislead a wise man zealous to do the best for his friend. In the other case, he is bound to such diligence and care as a wise man uses in like affairs of his own, and is only liable to compensate such damages as ensue upon a defect of this diligence. This is all that the obliging friend can be

\* There are other gratuitous contracts not included under any of these three, but they come under much the same rules, such as loan for consumption without interest.

presumed to have bound himself to, unless he has expressly undertaken for the very utmost diligence and care, or the singular nature of the business plainly required it; and then indeed he is answerable for every oversight, or neglect, which would not have been incident to the very best of men. We are not to lay severer burdens on the beneficent party than they consented to, or to make kind offices perilous to the undertaker, without the highest and clearest reasons. Nor yet should men on the other hand undertake the business of their friends without hearty purposes of executing them carefully; since by doing so they may have prevented their employing some better hands. The \* person employed, is bound to account to the \* employer when the business is finished: and to † restore his goods with their profits. And the employer is ‡ bound to indemnify his friend as to all losses or expences sustained in his service. The favour undertaken was to employ his labour and care gratuitously, and no more, from the ordinary nature of this contract.

II. *Commodatum* is “the loan for use without any price or hire, where the same individual goods are to be returned.” If a price or hire is given, the contract is not beneficent, it goes by another name, *location*, or setting to hire. † When the same individual

\* The *mandatarius* and \* *mandator*.

† This is demanded in the *actio directa mandati*.

‡ This is demanded in the *actio contraria*.

† *Mutuum versatur in rebus fungibilibus, quae reddendae sunt in genere, non in specie.*

By *genus* they mean what modern logicians call *species*, equal quantities, weights, measures of goods of the same kind: by *species*, the *Civilians* mean the same individual. *Instit.* l. iii. tit. 15. In this sense the classic authors too use these words.

BOOK II. is not to be returned, but equal quantities or measures, and this without price or interest, the contract is much of the same moral nature, but the *Civilians* call it *mutuum gratuitum*, or the gratuitous loan for consumption. If this loan for consumption be for a certain price beside the restitution of equal quantities, 'tis called lending for interest.

Rules in this contract.

In the gratuitous loan for use, the favour is done to the borrower. He is therefore certainly bound 1. to as high care of the goods as any wise man would use about such goods of his own, or rather to greater, out of gratitude. A good heart must recoil at suffering any friend to lose by his kindness. The lender expects this care, and we are justly deemed to have bound ourselves to it. 2. The borrower is bound to apply the goods to no other purposes than those for which they were lent: other conduct is perfidious and ungrateful. And, 3. He must restore them at the time agreed, in as good order as he received them, excepting the natural wear of such goods, by the prudent use allowed. In demanding nothing for the impairing of the goods by this use, consists the favour of the contract. 4. If the proprietor needs his own goods before the term of loan is expired, humanity and gratitude oblige the borrower to restore them, unless he is in some extraordinary strait himself, much beyond that of the lender. But this cannot be matter of compulsion, except in very singular cases of necessity. When the urgent occasions of the borrower hinder him to restore before his time of loan expires

as he is bound in gratitude, he must think himself CHAP. 13. obliged, to compensate any damage the lender sustains by his kindness to him. An honest heart cannot avoid this duty, tho' he cannot be compelled to restore the goods sooner. Could he be compelled, he might sometimes be greatly disappointed; since perhaps trusting to this loan, he has omitted providing himself otherways when he could have done it, whereas now the opportunity may be gone.

If goods lent, perish by such an accident as had reached them in the possession of the lender, the borrower is not obliged to compensate them; the lender suffers no more by the loan than he would have suffered without it. Suppose they would have escaped in the lender's possession, and yet the borrower was guilty of no negligence about them: here a loss must be sustained by one side, or by both: neither is supposed to be in any fault. If no other reason of humanity be on the other side, the borrower seems rather obliged to bear it, out of gratitude; nor is it so readily to be presumed that the lender, who had no views of gain, consented to bear such losses, as that the borrower did so; since for the advantage of the gratuitous loan, men would readily make themselves liable to such improbable hazards. The truth may be that neither thought of such contingencies; if they did, they would have expressly agreed on whom the loss should fall. And probably it had been on the borrower. There seems little occasion for a general rule to cast all such losses always on one of the parties. If the lender were

*The case when  
the goods lent per-  
ish by accident.*

BOOK II. rich, and the borrower poor, it would be mean in the lender to demand any compensation. If the borrower were rich, it would be base in him not to compensate. If their fortunes were equal, or so good that neither would be distressed by the loss, it would best become the borrower to bear it altogether, as he received a favour in the contract. The lovely and honourable part is easily seen; tho' it is not always easy to find reasons for rules casting the whole damages in this and such like cases, universally on one side.

The lender is bound to refund to the borrower, all expences made in necessary repairs by which the goods are preserved fit for the proprietors use; and no others, unless by express agreement.

*The depositum.* III. The *depositum* is a branch of the *mandatum*, where "the business committed and undertaken is the "safe custody of goods." The \* keeper, as he professes friendship, binds himself to such diligence as wise men use about like goods of their own; and must restore the goods upon the demand of the proprietor, † except only in such cases where one would have a right to oppose him by violence in an unjust design. Thus one may detain arms deposited, when demanded with a view to murder any innocent person, or to make war on our country. The depositer is bound to refund all prudent expences made in keeping his goods.

*Onerous contracts.* IV. In onerous contracts, both sides profess to give or transfer goods or rights of equal values. Most of

\* *Depositarius*. † *Cicero* gives a decision too general and inaccurate, *De Offic. l. i. c. 10*.

the necessary rules appear sufficiently from what was CHAP. 13.  
said \* above about contracts in general. The chief  
forts are,

1. *Barter*, or the exchanging goods of equal va- Barter.  
lues; which differs from mutual donation in this, that  
in donations there is no obligation to equality.

2. Buying and selling; the simplest manner of which Buying and sell-  
ing.  
is when the buyer at once pays the price, and re-  
ceives the goods. If the price be paid, or security for  
it accepted, and the goods delivered, as the property  
is compleatly transferred, no subsequent sale, or im-  
perfect prior contract about selling, can elude the  
buyer's right. If the goods are to be delivered on a  
future day, but the bargain compleated about them;  
if they perish before the day, the loss falls on the sel-  
ler. If they perish after that day, and the seller was  
ready to deliver them upon it, he is deemed after that  
day only as the depositary. All loss, without the sel-  
ler's fault, must be borne by the buyer. Where an a-  
greement is made about certain quantities of goods  
which cannot be now delivered, such as about a fu-  
ture crop; and the seller afterwards contracts with a  
third person not apprized of the prior contract; and  
delivers the goods upon receipt of the price; the civil  
law favours the latter, as a fair purchaser, and deems  
all sales imperfect without delivery; but gives to the  
person deceived in the former contract a full right a-  
gainst the fraudulent seller, to the whole value of the  
bargain. If both have paid the price, and the seller

\* See chap. 6. of this book.

BOOK II. proves insolvent, it is not easy to find valid reasons for casting the whole loss on either. There are many \* additional covenants in the bargains of sale which are sufficiently understood by the terms of the agreement.

*Setting to hire.* V. *Setting* and *hiring* includes all these contracts wherein “one agrees for a certain price to do any work, or to grant the use of any goods, moveable or immoveable” In these contracts men are obliged to use the goods they hire, as wise men use like goods of their own; and are truly liable in conscience for all damage done by using them otherways; as it is as injurious as any other sort of wrong. A man of true integrity and humanity would particularly regard the case of such indigent persons as often set houses, furniture, and other goods to hire; and be religiously cautious of doing any unnecessary damage to them.

When materials are given out to be manufactured or wrought by an artist at a certain price, the *Romans* have another † expression for the contract, but it is of the same nature with that of hiring labour. The setter of goods must make them fit for use, and keep them so, or refund any charges the hirer has been put to in doing it. And the hired labourer, as he is bound faithfully to execute his work, so he is not to be de-

\* Such as the *lex commissoria*, that is, if the price is not paid on a certain day, that the bargain is void. *Additio in diem*, where the seller may accept of a better price offered before such a day. *Clausula retractus*, or a right of redemption. *Jus pretimisei* | the right of redemption or the first offer, if the buyer inclines to sell again.  
 † *Locare opus faciendum*; where the locator pays the price. The *locator operæ* receives the price.

frauded of his hire. If he is hired for a long tract of CHAP. 13. time, the hirer cannot in humanity make any deductions on account of smaller interruptions given to his service by transient fits of sickness. Such fits are incident to the firmest constitutions; and the hirer is justly presumed to have precluded himself from such exceptions, or deductions from the price agreed to, by hiring for a tract of time.

VI. In loan for consumption at a set price or interest, the lender claims not the same individual, but equal quantities, and the price for the loan. Loan for consumption. Some goods bear natural fruits or increase, as lands, flocks, herds, gardens. The grant of these fruits naturally deserves a price or rent. Tho' goods have no fruits or increase, yet if they yield great convenience in life, and have cost such labour or expence as would have acquired goods naturally fruitful, if the proprietor grants the use of them, he may justly demand a price, such as he would have had if he had employed his money or labour on goods naturally fruitful. This is the case in setting of houses.

If in any way of trade men can make far greater gains by help of a large stock of money, than they could have made without it, 'tis but just that he who supplies them with the money, the necessary means of this gain, should have for the use of it some share of the profit, equal at least to the profit he could have made by purchasing things naturally fruitful or yielding a rent. This shews the just foundation of interest upon money lent, tho' it be not naturally The just foundation of interest on loans.

BOOK II. fruitful. Houses yield no fruits or increase, nor will some arable grounds yield any without great labour. Labour employed in managing money in trade, or manufactures, will make it as fruitful as any thing. Were interest prohibited, none would lend, except in charity; and many industrious hands, who are not objects of charity, would be excluded from large gains in a way very advantageous to the publick.

*The measure of  
just interest.*

VII. The reasonable interest varies according to the state of trade, and the quantity of coin. In a country newly settled, or but beginning to trade, where few hands and little money are employed that way, great profits are made by small sums: and as in such places more land-rents are purchased for any given sum than in countries flourishing in trade, and abounding with money; an higher interest is reasonable, and no man would lend except upon an high interest. The gain too made by any sum is so large, that traders or purchasers can afford to give it. When many hands and much wealth are employed in trade, as men can be supported by smaller gains in proportion upon their large stocks, the profit made upon any given sum employed is smaller, and the interest the trader can afford must be less. As money grows plentier, and bears less interest in loans, more incline to purchasses of lands than formerly; and this demand raises the rates of lands, so that smaller land-rents can be obtained for any sum. Men are therefore contented with smaller interest than formerly when they could have got greater land-rents. They should

be satisfied if it surpasse the annual profits of purchases, as much as compensates the greater troubles or hazards attending the loans: and thus it falls of course, without the force of laws. CHAP. 13.

Laws too must follow these natural causes in settling the interest, otherways they will seldom have their effect, and be iniquitous. If the legal interest is high in wealthy nations, where small gains are made upon any given sum employed in trade, traders will not borrow without abatement of interest, nor will men borrow for purchasing lands, when the annual rents of them are far below the interest. Moneyed men may first run upon purchases, and decline to lend upon smaller than the legal interest; but the demand for lands will soon raise their price, so that they shall get much smaller annual rents for a given sum: many will therefore accept of interest below the legal, but higher than the annual rents of lands. If the legal interest is made too low, few will incline to lend; they will first attempt to purchase lands: if the price of them rise by the great demand, so that small annual profit is made this way, moneyed men will turn to trade and manufactures. Men not educated to such business, or who choose to live without business, will find active traders always fond of borrowing at higher than the legal interest, and will find ways by discount, and annual gifts agreed upon, to elude the law. *The use of laws about it.*

The chief use of such laws is to settle the interest decreed by courts on many occasions, where there has

BOOK II. been no agreement of the parties; and to prevent the extortions of some grasping wretches upon the incautious, or the distressed. Prudent men will settle this point for themselves according to the natural causes.

If the polity of any state allows little commerce with foreigners, admits of no great increase of wealth in the hands of a few, nor of any alienation of lands to perpetuity; if it is design'd for a *republick of farmers*, which some great authors judge most adapted for virtue and happiness,\* there all interest of money might properly be prohibited. But where the strength of a state depends on trade, such a law would be ruinous.

*Partnership.* VIII. In the contracts of partnership, which are of very different sorts, the terms of agreement determine the rights and obligations of the partners. But as they profess mutual friendship to each other in this contract, there is more room for all reasons of equity and humanity in this than other onerous contracts; and all frauds deserve a severer punishment.

*Contracts of hazard-lotteries.*

IX. In some contracts a certain price is paid for an uncertain prospect of gain, as in the purchase of annuities for life, or of tickets in lotteries. If the sum of the prizes is no further exceeded by the sum of the prices paid for all the tickets, than what defrays the necessary charge of such projects, and makes a reasonable compensation for the attendance and labour of

\* This Harrington and others judge to be the polity of the Hebrews; and hence interest was prohibited among them, but it might be exacted from foreigners. Deut. xxiii. 19. Psalm. xv. 5.

the projectors; the contract is not censurable upon the CHAP. 13. account of any inequality; but such projects are often blameable on another account. Private lotteries, wagering, and contracts of gaming, produce no good to the publick, nor avert any evils. Some citizens are enriched by the loss of others, in a way wholly useless to the publick. Through the vain hopes of multitudes, and a sort of self-flattery in their good fortune, were there no restraint put to such practices by law, great sums of money which otherways would have done good to the publick in trade or manufactures advancing the wealth of a nation, would by base artifices be drawn into such useless channels, and men's minds be diverted from all useful industry. 'Tis therefore just to restrain such private projects or contracts, even where there is nothing directly fraudulent in them. Upon some publick exigence no doubt money may be prudently raised by this way of lottery, which can cause no complaint, since none are forced to contribute.

There are other contracts of hazard where a small price is paid to obtain security against a great uncertain danger; or to have such losses made up when they happen. Such are the insurances against the dangers at sea, or those from fire. Such contrivances are both humane and useful to the publick. The insurers are enabled to indemnify the sufferers by the premiums received from those whose houses and ships are safe. Thus a sort of partnership in losses is established over a nation; as the losses are made up by

*Insurances.*

BOOK II. small contributions from those who have escaped the calamity. Thus many active hands in business are preserved from early ruin by such accidents.

*Wagering and  
gaming.*

In the private contracts of hazard, or partly of hazard, partly of art, such as wagering upon uncertain events, or upon the success of a game; if the sums ventured do not exceed what the persons can afford to spend upon any amusement, without obstructing any duty of life; if no more time is spent in games than what is a necessary refreshment from serious business or study; and no habit of sloth or impatient hankering after such diversions is contracted; the contracts cannot be called criminal or faulty. But when the sums hazarded are so great that the loss of them would any way distress us, or our antagonist, and as no good can arise from such contracts, they are highly criminal. 'Tis most inhumane, as well as foolish, to expose the fortune which should support a family, our friends, or the poor, or even assist our country, to such unnecessary hazard. It is wicked to ly in wait for the ruining our neighbour through his own rashness or imprudence. No man of true virtue or conscience could retain such gains when he got them. And it is amazing how, in ages of luxury and corruption, men can so far forget the true natures and names of things, as not to look upon all such gains as scandalously infamous to men of better condition, when they are plainly acquired by the same mean spirit of injustice, or avarice, that we all abhor in a thief or a pick-pocket. 'Tis wise therefore in

every nation to restrain such practices by the severest CHAP. 14. laws, and most infamous punishments; especially in those orders of men who ought to be most above such baseness of soul, and whose vicious examples must be most extensively pernicious. But *quid leges sine moribus vanae proficiunt.*—

X. The common securities given for performance of contracts, are pledges and mortgages (of which already;) and bail, when other persons become bound in case the principal debtor fails. As the loans are often made more upon the faith of the surety than the principal, when the principal neglects to pay, or becomes insolvent, the surety is as much bound in honour and conscience, as the principal was; and can no more use any delays, evasions, or artifices, with a good conscience, than if the money had been lent for his own use; except he discovers some gross negligence in the lender, or some fraudulent collusion with the principal, by which this burden is unjustly, or maliciously cast upon him. Contracts of bail or surety.

#### C H A P. XIV.

*Personal rights arising from some lawful action of the person obliged, or of him who has the right.*

I. **S**OME rights arise, not from any contract, but from some other action either of him Rights arising from actions lawful or unlawful. who has the right, or of the person obliged. These actions founding rights are either lawful, or unlaw-

BOOK II. ful. When the actions are lawful, the *Civilians* to avoid multiplying the sources of obligation, or forms of action, call them \* *obligationes quasi ex contractu ortae*: feigning a contract obliging men in these cases to whatever could reasonably have been demanded by the one party, and wisely promised by the other, had they been contracting about these matters. The obligations indeed appear sufficiently, without recurring to the notion of a contract, from the nature of the actions, and the rights of property, and their effects. When the action is unlawful, these are the rights arising from injury, of which in the following chapter.

The former obligations *quasi ex contractu* are reducible to two classes. 1. These arising from taking possession of goods which one knows belong to others, or are subjected to the just claims of others. 2. Those arising where one derives to himself any valuable advantage at the expence or loss of others, who did not consent or contract to bear this loss gratuitously. These obligations arise either from the nature of property, or mens prior claims; or from the general social law, that none should suffer by any good offices done to others not intended as a gratuity, or be damaged in his property without his consent.

*The obligation  
by possessing the  
goods of others.*

II. Of the first class is the obligation upon the possessor of other mens goods to restore them with

\* Instit. l. iii. tit. 28.

their profits: the obligation upon the \* heir to pay the debts affecting the inheritance, and upon the executor to pay debts and legacies as far as the effects go. The estate descends subject to such claims, and the heir has a right only to what remains after discharging them: the effects of the deceased are the sole fund out of which such debts should be paid. Nor is there more left to the executor than the surplus after debts and legacies are discharged. The legatees have as just a right to their legacies as the executor or heir by will has to the surplus.

To this class too are reduced the obligations of all who have possession of the goods of others without contract, such as tutors and curators, or those who preserve and take care of the goods of the absent without commission; who are called *negotii utilis gestores*. All these are plainly obliged to restore, and account with the proprietors for their goods and the profits of them.

III. The second class contains the obligations on those for whom any important service is done, or to whom any advantage is derived, by the labours or expence of others, without a commission or contract. The person thus profited is plainly obliged to refund all prudent expences, and compensate all labours not intended gratuitously. The merchant whose shipwrecked goods are preserved by my labour or ex-

*The claim of the negotii utilis gestor.*

\* The obligation on the heir to pay debts is plainly of the same nature with that of the executor or heir to pay legacies, tho' the *Civilians* called the later only an obligation *quasi ex contractu*. They feigned the heir, as to the debts, the same person with the deceased, and thus made him liable.

BOOK II. pence, without my intention of doing such services, or bearing such charges as a favour, is obliged, when he claims his own goods, to compensate if required all my prudent labours and expences. Thus one is obliged to indemnify his tutors and curators in all their prudent management of his affairs; and for these claims there were particular \* actions in the *civil law*.

*The claim for maintenance.*

As to the obligations upon children for their maintenance, we may conclude, 1. What a parent expends upon his children when they have no fortunes of their own left them by some other friend, is universally presumed to be a donation, where the contrary is not declared. But tho' the parent be strictly obliged, from the strong tie of nature declaring to him his duty, to provide necessaries for his children, and even is bound by the strongest tie of humanity to improve their condition as he has fair opportunities; yet his not placing such offices to an account of debt to be compensated or discharged by the children, is to be reputed an obliging act of kindness, which he could not be compelled to by any perfect claim of the children. A parent may justly claim to have the expence refunded, if he falls into any distress. Nay without being in distress he may justly place to an account of debt all manner of necessary or prudent expences made upon a child who had a sufficient fortune of its own; and may get them refunded, either for his own more easy subsistence, or for the benefit of others of his children. But

\* *Actio contraria tutelae, et negotiorum gestorum.*

2. When one maintains the child of a stranger, CHAP. 14. whatever prudent expences are made may justly be charged as a debt, where the contrary is not declared. Here there is no presumption from parental affection that they were intended gratuitously.

The partiality which appears in the laws of some nations that pretend to pay great regard to the natural rights and liberties of mankind, is very surprising. The partiality of many laws. Whatever expences are made by any one on the child of the meanest citizen, or Fellow-Christian, must be a donation, whether so intended or not. It founds no right to the child's service, nor to claim any compensation. He may leave his supporter when he comes to the use of reason. And yet the equally innocent children of captives in war, or of men of a different complexion, are detained as slaves for ever, with all their posterity, upon no other pretence of right than this claim upon them for their maintenance; as if such were not of our species, and had not bodies and souls of the same feelings with our own; or as if mens secular rights were founded on their religion, or on their complexions.

'Tis true indeed the masters of the parent, or he who maintains another's child at his own expence, The sole just claim upon the children of slaves. has a right to claim compensation for all necessary and beneficial expences made on the child, and these only; not such as were for the splendour of his own family. But this right is no higher than that of any creditor in an equal sum over his debtor. If any friend of the child offers to come to account, and refund

BOOK II. the past expences, the master cannot justly refuse it, or detain him. If the child when he attains to the use of reason finds another he rather chooses to be indebted to, who will repay his former master's expences, the master cannot justly detain him. The labours of the child, after the time that he could earn any thing beyond the plainest food and cloathing, should be placed to account as discharging so much of his debt as their value surpassed that of his necessary maintenance. And when the sum of their value, after deducting the charge of the annual necessary maintenance, equals the expence of his maintenance in his childhood, the master has no further claim upon him. It would generally be found that the labours of any person found in body and mind, would sufficiently discharge this debt before he came to thirty years of age: and where there was any considerable dexterity, they would discharge it much sooner. The debtor has plainly a right to choose that labour by which he can soonest discharge the debt.

If greater expences are made on a child for its instruction in any art; the child is no doubt liable for any such higher expences as were made for its real benefit. But then, its labours in this art are so much more valuable that this greater debt would be sooner discharged: otherways the expences were not for its benefit.

*The plea in this case from hazard.*

'Tis pleaded that where any sum is advanced upon any hazard, there one may \* justly insist on more than

\* This is the case of contracts on Bottomry, where the only security is given upon the ship. A great premium is deemed just, because all is lost if the ship perish.

the restitution of the sum advanced, with all the legal interest: that in these *quasi contracts*, men are bound to all that could have been reasonably demanded, or prudently agreed to, if persons had been in a condition previously to have contracted. That to engage a man to advance any sum where there is an hazard of his losing all, he must also have a prospect of some considerable gain in case the event proves fortunate. What is thus advanced for a child will be entirely lost if he dies before his labours discharge it; therefore much more is due than the sum and the common interest. This claim can scarce wholly be denied, nor would it be unjust to insist on something more. And yet in other cases, where a plea of singular necessity is no greater than that a destitute infant has to a bare maintenance, we do not think it reasonable to oblige to further compensation than the principal and interest. If I take another's horse to assist me in escaping from some imminent danger, and return him safe with a proper price for the use of him, or if he is spoiled, if I pay his full value with interest for any time I delayed payment, no more is demanded, and yet had I perished he would have got no compensation. Sure the necessity of the child is as great.

Allow that there should be some inducement to men to rear such destitute children, of whom some may die without making any compensation. It cannot be alleged that the debt of such as die is chargeable on those who live. But 'tis truly reasonable that each one be charged with something further than

BOOK II. was expended, on account of the hazard run in expending it: and this a wise man would consent to in a like case of his own. But this claim cannot make a great addition. Grant that one third of the children born, die within the first three years; this would add justly one third to the charge of these three years and little more. The hazard grows always smaller as they advance in years till their labours could discharge the debt. On account of such hazards it would never be just to demand more than in proportion to the hazards in the several periods of life, and this would scarcely add a fifth part to the sum of the expences, till they attain to the age of ten or twelve, when their labours begin to compensate their maintenance, nay to abate the debt.

*From the preference  
giving them from  
laughter.*


'Tis further pleaded, that in some barbarous nations, unless the captives were bought for slaves they would all be murdered. They therefore owe their lives, and all they can do, to their purchasers; and so do their children who would not otherways have come into life. But this whole plea is no more than that of the *negotium utile gestum*, to which any civilized nation is bound by humanity; 'tis a prudent expensive office done for the service of others without a gratuitous intention: and this founds no other right than that to full compensation of all charges and labour employed for the benefit of others. Thus suppose a merchant buys an hundred such slaves; so that his whole charges on the voyage, and prime cost of the captives, adding also a reasonable merchant's

profit upon the stock employed, amount to a thousand pounds. These captives are his debtors jointly for this sum; and as soon as the value of their labours beyond their maintenance amounts to this sum, and the legal interest from the time it was advanced, they have a right to be free; and this it would do in ten or twelve years, tho' a third part of them died; and then all his claim, or that of any one under him, would cease. CHAP. 14.

A set of inaccurate popular phrases blind us in these matters. Captives owe their lives and all to the purchasers, say they. Just in the same manner, we, our nobles, and princes, often owe our lives to midwives, chirurgeons, physicians, fellow-soldiers, servants, neighbours: one who was the means of preserving a man's life is not therefore entituled to make him a slave, and sell him as a piece of goods. Strange, that in any nation where a sense of liberty prevails, where the Christian religion is professed, custom and high prospects of gain can so stupify the consciences of men, and all sense of natural justice, that they can hear such computations made about the value of their fellow-men, and their liberty, without abhorrence and indignation! *Causes of our mistakes.*

IV. To this second class of *quasi contracts* are reduced the obligations of such who using the privilege of necessity have done some damage to others; which they are always obliged to compensate as soon as they can. Such too is the obligation of one who \* received *The obligations from using the privileges of necessity.*

\* For this there was the *condictio indebita*.

BOOK II. as due what afterwards appears not to have been due;  or † received a price upon account of a service or prestation which cannot be performed: or received any thing on account of a contract or promise against which there lay a just exception. All these are obliged to restore or compensate what was thus received. Thus likewise, partners are obliged to refund proportionally what any one of them has usefully or by direction expended above his share, upon the common stock. Such too is the obligation of one who by any lawful action, or contrivance, or structure of his for his own behoof, has occasioned damages to others which they were not previously bound to bear without compensation; or had not contracted to bear gratuitously: he is naturally obliged to compensate them.

## C H A P. XV.

*The rights arising from injuries and damages done by others: and the abolition of right.*

*An injury defined.* I. T H E violation of any perfect right of another, is an *injury*, whether by violence to his person, attacks upon his character, restraints upon his right of liberty, depriving him of his goods, spoiling them, stopping the profits he had a right to, or withholding what he had a right to claim; whether any of these things be done with a malicious design, or a selfish one, or by culpable negligence;

† *Conditio causa data causa non secuta.*

whether \* by acting or omitting contrary to our du-  
ty. The damage includes, † beside the value of the  
goods taken away, spoiled, or detained, all losses or  
inconveniences ensuing upon the want of them; and  
all interception of gain which would have accrued.

The damage one has done he is sacredly obliged  
to compensate to the utmost of his power. The in-  
jury is persisted in till this be done: nor can one other-  
ways sincerely repent, or recover the character of ho-  
nesty. The person injured has a right to compel the  
author of it to this compensation: without this right,  
bad men would trample on all the rights of their fel-  
lows. 'Tis generally for the publick interest, as well  
as that of the sufferer, not to remit this right of com-  
pelling even by force to make compensation, and of  
inflicting further evils as punishments; and that not  
only for the future security of such who suffered, but  
for the general safety; that all bad men may be de-  
terred from the like attempts, by fear of the like pu-  
nishments.

When more than one have concurred in an inju-  
ry, he who by authority or power compelled others  
subject to him, is the principal cause; *he* ought to  
make reparation, and suffer the greatest punishment.  
But when we cannot reach him, as he cannot give  
impunity to others in injuries, we have not only a  
right of violent defence against those who injure us  
at his command, but of obtaining reparation from

\* *Faciendo, vel non faciendo secus quam debebat.*

† *Lucrum cessans vel damnum emergens.*

BOOK II. them; nay often of inflicting punishment upon them when they have acted knowingly against their duty, or through culpable ignorance. If the injury be reparable, and of a lighter sort, and the immediate agent undertook it only to avoid vastly greater evils threatened by those who had him in their power, his action perhaps was not criminal, it was excused by the plea of necessity; (of which hereafter) but this plea will not free him from the obligation of repairing any damages done to other innocent persons, as the means of his preservation.

Where many have by concert done any damage, each one is liable for the whole, when we cannot obtain reparation from the rest, even altho' we knew what share each one had in the action, or the spoil. But when at different times, without concert, different persons spoil a man of all his goods, each one seems liable only for his own part of the damage; tho' more may be demanded by way of punishment. In the former case when one has compensated the whole, no more is due to the sufferer on this head. The rest are bound each to refund his share to him who compensated the whole. In punishments the case is otherways; the sufferings of one do not exempt the rest. *Compensation*, and *punishment*, have different ends and measures; nay compensation is often due where there has been no fault.

When one employed in any useful perilous service to the publick, does any damage to others by such inadvertence as is scarce avoidable, the damage should

be compensated by the publick for the interest of CHAP. 15. which such services were undertaken. Thus if one in the heat of battle hurts any of his fellow soldiers undesignedly.

Damages done by hired servants, without orders Damages done by servants. from their masters, are chargeable only on themselves: when done by orders, they are principally chargeable on their masters. When damage is done by a slave, without his master's fault, the slave is naturally bound to compensate it, as he is a moral agent. But the master having a right to all his labours, by which alone he can compensate, the slave seems in the condition of one indebted to two creditors above the value of all his goods and labours; which therefore must be divided between them in proportion to their claims. Suppose the slave worth forty pounds, this is the master's claim; and that the damage is valued at twenty, this is the sufferer's claim: the master, if he retains the slave, should compensate two thirds of the damage. If the damage had been valued at forty pounds, the master should compensate the half of it. And he is always obliged to give security against future damages upon discovering the injurious disposition of his slave. Should the master compensate the whole damage, or deliver up the slave; in many cases the master would sustain all the loss, and the sufferer none at all, while yet both may be equally innocent; which seems unjust. *Civil laws* sometimes enjoin this, to make masters more vigilant about their slaves. But as slaves are moral agents, they are always liable them-

BOOK II. selves to such punishments as may be necessary to restrain their vices, whatever way damages be compensated: the change of service might be no punishment to them.

Damage done by  
beasts.

When damage is done by the beast of any one who had no ground to suspect such an hurtful disposition in it; a like decision, as to bearing a share of the damage with the sufferer, would seem reasonable. Some \* *civil laws* are severer on the proprietor, to engage the greater care that their cattle be not injurious. Where any unusual petulance or viciousness has been previously known to the owner, he is in all cases liable to full compensation; since he was obliged to prevent these damages, and such negligence is justly punishable.

The duty of such  
as do damage to  
others.

II. When one negligently, or in a sudden passion, has done any damage, he should voluntarily offer full compensation, and any reasonable assurance an unbiassed arbitrator shall appoint, against any future injuries; and upon this the person damaged or injured should be entirely reconciled. Voluntary submission to compensation, and such assurances for the future, are all that can be reasonably demanded. To refuse them, when demanded, shews an hostile injurious disposition.

The duty of de-  
laying payment.

One sort of damage is so common that many seem to overlook the injustice of it, the delaying payment of debts owned to be just. In some settled debts, as

\* Exed. ch. 21. Instit. l. iv tit. 9. Dig. 9. tit. 1. and others *de actionibus noxalibus et de pauperie.*

those upon bonds and some others, the law estimates CHAP. 15. the damage of delay at the common interest of the money; but by an unreasonable partiality allows no interest upon current accounts. A man of true honour and justice may think the common interest a sufficient compensation to a moneyed man who is not engaged in trade or manufactures, unless he sustains some other loss by our having delayed payment. But to men in trade, 'tis manifest that the injury and damage of even delaying payment is much more grievous; not to speak of the expensive suits they are forced to, the occasioning their credit to fail, or of defrauding them altogether, which to common sense must appear one of the vilest and most impudent sorts of theft, and should be punished accordingly, when done with design. But the very delay is an injury and a damage always equal to the gain a trader could have made by his money in the same time; which is generally double of the legal interest: for this double interest an action should certainly be allowed, upon all the delays after the time agreed upon in the contract. Not to mention the other grievous distresses occasioned by such delays, when the trader's credit fails, and a family is entirely ruined, which could otherways have had a decent subsistence. Manufacturers and traders must charge an additional price upon all goods to make up these losses by dilatory debtors, and vexatious expensive suits, as well as the losses by insolvent, or fraudulent debtors. These losses fall upon honest and good oeconomists who pay regu-

BOOK II. larly, as well as upon the dilatory, since on account of these losses all goods are sold so much dearer. By these means too the rates of our goods must be raised when sold in foreign markets: so that other nations, where there is a greater regard to justice, are enabled to sell like goods cheaper, and ruin our trade.

*Rights to force in  
natural liberty.*

III. In natural liberty men have a right by force to defend themselves and their neighbours, and all their perfect rights; and to compel others by violence to fulfil any perfect claims they have upon them. We are bound no doubt first to try all gentle methods; but when these fail of success, we have a right to use violence, with what assistance we can obtain from any others who are persuaded of the justice of our cause. In civil societies (as we shall see hereafter) the wisdom and force of the state should be employed for these purposes, to prevent the evils to be feared from the passion of interested men under fresh impressions of apprehended injuries. Citizens are generally understood to have committed these rights of violent prosecution and defence to the magistrate, wherever his aid can be obtained; and to have precluded themselves from exercising them in such cases. The rules about violent defence and prosecution must differ in these different states of liberty, or civil polity, and that in these \* three particulars, 1. the causes, 2. the time of beginning violence, and 3. the term to which it may be continued.

\* *Causæ, terminus a quo, et terminus ad quem.*

1. The causes, in natural liberty, are any violations of perfect rights great, or small. 'Tis true one is obliged in humanity to use all gentle methods at first, and to use no more violence or severity than may be necessary for his own safety, and that of others.

CHAP. 15.

*The just causes of violence in liberty.*

We should always be ready to offer a reference, or to submit any disputed point of right to arbitrators. If the injury be the effect of a sudden passion, of which the author will soon repent, and it be reparable; 'tis the humane part to bear it rather than rush into fatal violence in our defence. But if the injury be designed deliberately, and persisted in after friendly remonstrances, one has a right to defend himself by violence even with the death of the invader. To deny men the right of violent defence to the utmost in maintaining their smaller rights of the perfect kind, would expose all good men, and all their properties, as a perpetual prey to the insolent and injurious. A small injury may be repeated every hour by the same person, or by others equally insolent; life would be intolerable without a remedy for such evils. The publick interest and safety requires that men should be violently deterred from such insolent attempts.

As to the prosecution of smaller rights, 'tis hard to say that inconsiderable injuries can justify our going to the utmost extremity, or that it is necessary to proceed to any fatal violence to compel men to fulfil any trifling contract, or perform some small matter we have a right to claim. We can abstain from all future commerce with such persons: and 'tis better to

BOOK II. suffer a small loss than the reflection that for an unnecessary advantage we were intitled to, or for recovery of what was of no great value, we had taken away the life of our fellow, when we could be otherways secured against like injuries for the future.

*They are different under civil government.*

A subject under civil government should use no violence against such as are amenable to laws, except in defence against injuries irreparable, either in their own nature, or through the insolvency of the invader. In other cases the safer remedy is an action at law. If the invaders are not amenable to laws, such as fugitives, robbers, or pirates; the rights of natural liberty remain against them; as they do also wherever the hope of detecting and convicting them fails, as in the case of thieves in the night-time.\* 'Tis by actions at law alone that we are to compel such as are amenable to them, to fulfil our claims upon them.

*The time of commencing violence.*

IV. 2. The time when violence is justly begun in natural liberty, is when one has sufficiently declared an unjust and hostile disposition, and desists not upon such admonition, or remonstrance, as we have time to use. One is not obliged to receive the first attack or assault; this may frequently prove fatal; or occasion an irreparable damage. Defence and prevention of injury in this state, is generally less difficult than forcibly obtaining reparation. In all these matters, when our danger is not immediate, since the keenest

\* This is probably the reason of the distinction between the *fur nocturnus* and *diurnus* in the twelve tables. The killing is prohibited *nisi telo se defendat*. See also Exod. xxiii. 3.

passions are apt to arise, 'tis best to be directed in all methods of defence and prosecution, by wise arbitrators not immediately concerned in the injury. CHAP. 15.

Under civil government, tho' the injury intended be irreparable, yet unless the danger be so imminent that we cannot be defended by the magistrate, we should apply to him for defence; as we should always commit to him the violent prosecution of our rights against our fellow-subjects.

V. 3. The term to which violence should be continued in natural liberty, is until the danger be repelled, full compensation obtained of all damage and expences occasioned by the injury, full performance of all we can justly claim, and security against like injuries for the future. The interest of society, as well as that of the individual, requires that all these things be obtained.

*How far it may  
justly be continued.*

The publick, or mankind as a system, have even a further right of inflicting such further evils as are necessary to deter others from the like attempts. This last right the person who was in danger of immediate wrong should not execute alone, but in conjunction with others who have no private cause of resentment. Some horrid attempts, such as those of murder, assassination, poisoning, robbery, or piracy, shew so desperate a wickedness, that scarce any sufficient security can be obtained to society against the repetition of the like crimes, but the deaths of the criminals. And as men are much allured to injustice by hopes of secrecy, or of impunity by flight, or successful resistance, it must

*Punishing may  
be just in natural  
liberty.*

BOOK II. be necessary for society that the punishments of such as are taken and convicted be made so great as shall generally over-balance the invitation to such crimes from the hopes of impunity, and deter others from the like attempts. This is allowed just under civil government, when crimes abound, and many, one half perhaps, of the guilty escape conviction, that the punishment should be doubled at least, on this very account, that the greatness of the evil should outweigh the hopes of impunity. The very same reasons for punishments, and for increasing, or diminishing them, hold in natural liberty, tho' the execution will not generally be so easy or regular. The punishment of crimes in this state of liberty is rather more necessary, and is justified by all the same reasons. That the execution in this state may be attended with more inconveniences, does not prove that there is no right of punishing, or that all the right must arise from civil polity. For by the same way of reasoning we should deny to men in liberty all rights of self-defence, and hold that they too arise from civil polity.

Under civil government private men should proceed no further in violence against such as are amenable to laws than till the present danger be repelled. All the other rights should be left to the magistrate.

*No infinite right  
from any injury.*

We should always remember on this subject that no injury or wickedness should make the author cease to be the object of our good-will: and that all our rights to violence are limited by these ends, viz. the repelling the injury, obtaining our right, with com-

penfation of damages, and getting fecurity for our-  
 CHAP. 15.  
 felves and the fociety againft like injuries for the fu-  
 ture. What is inflicted on wicked men for thefe be-  
 neficent and neceffary purpofes is juft, as far as it is  
 naturally fubfervient to and requifite for them: what  
 is not requifite for them, is unjuft and cruel, even to-  
 ward the worft of mankind. Such are all private tor-  
 tures, the fating an angry and revengeful fpirit by in-  
 fults, prostitution to any lufts of ours, or forcing the  
 criminal's confcience, if he has any, in matters of re-  
 ligion. 'Tis very cruel and unjuft to create further  
 mifery than is requifite for thefe purpofes: when thefe  
 are answered, and as far as confifts with them, all hu-  
 manity, mercy, and compaffion toward bad men is a-  
 miable and virtuous. The nobleft fpring of punifh-  
 ment is extenfive goodnefs, or a regard to the fafety  
 and happinefs of the community.

VI. From the preceeding reasonings designed duels *Duels unlawful.*  
 in civil fociety muft generally appear criminal. They  
 may be lawful when by confent of two ftates they are  
 appointed to put an end to a war. The method is  
 foolifh, to end a debate by the death of a brave man,  
 which arbitration, or the lot, could have decided bet-  
 ter. But if one ftate infifts on this method, another  
 may juftly accept of it, when they are more diffident  
 of their fafety another way. But fellow-citizens are  
 underftood to have committed the decision of their  
 controverfies to judges.

The injuries which give occafion to duels, in na-  
 tions where they prevail, feldom can be redreffed by

BOOK II. the combat, let the event be what it will; and the e-

vent is as probably unfortunate to the innocent side as to the guilty. The custom indeed was introduced in those ignorant superstitious ages when all sort of fortitude was encouraged by the Popish clergy, after they had by one artifice or other got it employed in extending their dominions, by crusades and holy wars; and the superstitious bravo's had a strange confidence in the interpositions of Providence by miracles in behalf of innocence. The charge of falshood, treachery, dishonesty, or other vices, which often occasions duels, is not disproved even by success. The liar, the cheat, or the knave, the most infamous or faithless wretch, may be successful at the sword, or aim well with a pistol, as well as the worthiest man. The success changes no wise man's opinion of the character, tho' men may be more cautious, on their own account, of expressing their bad opinions. The imputation of cowardice is the only one which duelling can tend to disprove. But some of the vilest of mankind have not been cowards this way; tho' they act the most cowardly part when the most valuable interests of their country require their service and courage either in peace or war.

*It may be objected that the charge is not proved by success.*

When a man is charged with some vices, to attempt the life of the accuser may be an inhuman, and unnecessary revenge, as it will not confute the charge, but often rather confirms it. Proper vindication should be obtained by law. Our characters, even for courage, may be better vindicated with the wiser

men, and even with the weaker too, if our country CHAP. 15. needs any hazardous services in war; nay by our resolution in times of peace in supporting its interests against any insidious designs of men in power; or by a resolute maintaining our own rights, and those of our friends, and expressing on just occasions our indignation at the vices of others. Many a combatant shews a dastardly spirit in such matters. A good man who has done nothing contrary to his duty, is not obliged on account of any unjust resentment of others he may have raised, to confine himself, or quit any publick appearances about business or recreation, unless his regard to his own safety persuades him to it. If he is then attacked, he may shew his courage in just self-defence.

One who has wronged another by false accusation, or by divulging inhumanly his secret faults, adds a terrible guilt to the former, by accepting a challenge, and attempting the life of the man he had wronged. The fullest acknowledgment of his former falshood, rashness, or inhumanity is the only honourable part he can act. When one has done no wrong to the challenger; yet it is generally great folly to expose his own life, and attempt that of another, upon a passionate invitation. What if the world is not persuaded of a man's courage? he may be reputed in other respects an useful and honourable member of society. And to bear such reproach for a good conscience, may sometimes be more honourable than any violent part he could have acted.

## BOOK II.



*Strong pleas for  
duels in corrupt  
states.*

When indeed the laws of a state are so exceedingly defective as to provide no redress for affronts, and very contumelious injuries of our fellow-citizens; or for calumnies, which must deeply affect that natural desire of honour, and aversion to contempt, principles which it is the interest of every state to cherish in its members; and when a prevailing tho' imprudent and wicked custom has supplied a remedy, the only one perhaps remaining against these injuries which are much more grievous, and shew a more wicked and hostile spirit in the injurious, than those violations of property which we may repel by the death of the invader, wherever the magistrate cannot interpose, the plea for duelling may appear more favourable. If declining to embrace this remedy generally received, will give a sanction to the calumny, and further encourage the invader of my reputation, and others of like dispositions, to repeat their insults, and extend them to others; and at the same time betray, in the judgment of all around, such a mean love of animal life in me, and a preference of it to all honour and esteem among my fellows, as must be disapproved by ingenuous minds; I may have as strong plea of necessity in such circumstances: nay some high species of moral obligation, where one could overcome all personal animosity or resentment, may often seem to persuade a good man to hazard his own life in asserting his character, and freeing human society from such insolent and injurious invaders of what is justly of higher estimation than our external property. What-

ever guilt there is in such conduct, it is certainly CHAP. 15.  
chargeable principally on the legislator, for such ne-  
gligence about the defence of the citizens in their  
dearest rights, as forces them upon such measures.

VII. But we should always bear in mind that what *The sole ends of  
all just violence.*  
alone can justify violence must be its reference to the  
grand ends above-mentioned. When the injurious  
have offered reparation, complied with all our just  
demands, and submit to whatever punishment pru-  
dent arbitrators shall judge necessary to deter others,  
we then have obtained all the just ends of violence;  
and to persist further in it, must be cruel and unjust.  
Thus that side which began a war with justice, ceases  
to be in the right, the instant it persists in violence af-  
ter the reasonable terms of peace are offered by the  
other side.

Where injuries cannot be repaired or fully com-  
pensated, yet we ought to do all that we can. If one has *What is due  
where complete  
reparation is im-  
possible.*  
unjustly taken away life, yet not in such a manner as  
exposes him to capital punishment, he is bound to  
the utmost of his power to compensate the loss to the  
family that suffered, by all liberal and friendly offices.  
If one is become bankrupt by his own vices, or ne-  
gligence, and cannot pay his creditor, he is bound to  
apply all his labours to their service; they have a per-  
fect right to them.

The laws of some states are strangely inconsistent. *Imprudent laws  
in these cases.*  
If one by stealth wrongs his neighbour in a trifle, the  
punishment is capital. If another by a course of ex-  
travagance and debauchery, or by the grossest negli-

BOOK II. gence, ruins all who have been so friendly as to trust him ; nay fraudulently takes up loans from friends when he knows himself to be insolvent ; there is no other punishment than a foolish one, which burdens either the state, or the creditor, a constant imprisonment. And no other pretence for this than that some are bankrupts without any fault of theirs. Why should such men be imprisoned ? Is there not an easy method of tryal in this case, to distinguish such as innocently fail, from those who are ruined by their vices ? We commit our lives to juries in other matters : a jury of judicious neighbours could examine into a man's stock when he began ; could inspect his books, and examine witnesses upon his conduct and manner of life ; by which they could find what the calamity was owing to. If to unfortunate accidents, without gross negligence, debauchery, or vanity ; the misfortune should be born patiently by the creditors, and the debtor be at liberty ; only obliged to discharge his debts whenever he was able ; and to apply any profits he could make beyond a moderate maintenance to the discharge of them, if the creditors insisted on it. But as to those who are bankrupt through their own vices, as they are often far worse criminals than thieves, and do greater wrongs, a capital punishment, if it could do any good, would be no more cruel in the one case than the other. To condemn them to perpetual slavery would have a better effect ; in contributing a little to repair the wrongs they had done, and to deter others by the example.

VIII. The originals of these ordinary rights, and the contracts on which they are founded, will shew also how they are abolished. The several ways may be reduced to these three classes. 1. Prestation or fulfilling the claim, either by the person himself, or by any other in his name, by commission from him, or for his behoof. No creditor is bound to transfer his claim upon his debtor to a third person without the debtor desires it, or it be plainly for his interest; this third person may have a malicious intention of distressing him: but upon the debtor's desire he must accept of payment of any common value or service from the person whom the debtor appoints. In homages indeed, or services of honour, the dignity of the person who pays them adds much to the value: and, in works of genius, the ingenuity of the artist is chiefly regarded. In these the person obliged cannot substitute another, without consent of him to whom they are to be performed. Under this head are justly included *compensations*; which are justly made when two persons are mutually creditors to each other in equal values on different accounts.

2. Another way of abolishing rights and obligations is the voluntary remission of the person who had the claim, where the right was wholly constituted for his behoof, and no law prohibits such remissions; and they may either be gratuitous, or for some \* onerous cause.

\* Such as *delegation*: when the debtor transfers to the creditor his equal claim upon a third person; or quits some equivalent claim he had upon his creditor, or some friend of his.

CHAP. 15.  
How rights are  
abolished.

BOOK II. 3. The third way is by the defect of some condition upon which the obligation was suspended; under which we may include the perfidy of one party, which sets the other free if he pleases. Among the conditions the defect of which may make obligations void, the life of either party may be one, or his continuance in the same state or office in some contracts. Such contracts or obligations as presupposed a certain state or office, or respected only the life of the person obliged to any payment or performance, so as not to bind his heirs, expire along with him, or when he loses the station presupposed. Such as regarded only the person who had the claim, and were not constituted for the behoof of his heirs, expire in like manner upon his death. It may always be known from the nature of the contract or promise, or other foundations of the several claims, whether they are extinguished by the death of either party, or not.

## C H A P. XVI.

*Concerning the general RIGHTS of HUMAN SOCIETY,  
or Mankind as a System.*

Rights of mankind as a system. I. **H**itherto we have considered the rights and obligations peculiarly respecting certain individuals, and constituted for their happiness, in consistence with and subserviency to the general interest. But as we not only have the narrower kind affections, and a sense of duty in following their motions by good

offices to individuals, and by abstaining from what CHAP. 16. may hurt them, but more extensive affections toward societies and mankind; and an higher sense of obligation to do nothing contrary to any publick interest, there are many obligations of a more extensive kind upon men to consult the general interest, even where no particular person is more concerned than others; and mankind, as a system, seems to have rights upon each individual, to demand of him such conduct as is necessary for the general good, and to abstain from what may have a contrary tendency, tho' the wrong conduct no more affects one individual than another. Of these rights and obligations some are of the perfect kind, where compulsion may be just; others are of a more delicate obligation, not admitting compulsion, where our duty must be left to our own prudence and sense of virtue. Of the perfect kind are these following.

1. As each individual is a part of this system, the happiness and duration of which depends on that of its part; as every one may be of some service to others in society, were it only by advice and example, if they have such dispositions as they ought to have: as we are formed by nature for the service of each other, and not each one merely for himself; each one is obliged to continue in life as long as he can be serviceable, were it only by an example of patience and resignation to the will of God; when no important interest requires his exposing his life to dangers. Human society has a right by force to prevent attempts of

*To prevent just  
cills.*

BOOK II. *suicide* from any unreasonable dejection, or melancholy, or chagrin ; and these general rights of all, each one as he has opportunity, by what assistance he can obtain, may justly execute. No other bond is requisite to intitle a man to interpose in such cases, but the common tye of humanity. Did such immoderate passions prevail ; were suicide deemed a proper method to escape from the ordinary vexations of life, or from the severe chagrin upon disappointments, and were there no restraining sense of duty ; many of the bravest spirits might rashly throw away those lives, which might have become joyful to themselves, and useful and ornamental to the world. Mankind have a right to interpose against such rash designs.

*To preserve the  
human race.*

II. Another general obligation on the individuals toward the system, respects the continuing the human race. Such as are not hindered from domestick cares by some more important services to mankind, seem obliged to contribute their part to this important purpose, by bearing their shares of the burden of educating human offspring, if they are in such circumstances as enable them to do it. This duty however, must in a great measure be left to the prudence of individuals: it would scarce be wise in any society to compel them to have offspring, whether they desired it or not ; tho' there may be strong reasons for making celibacy burthenfome and dishonourable. In this matter, and that above-mentioned of preserving our own lives, nature by powerful instincts implanted has pretty generally secured the performance of our

duty. Such instincts however are so far from preventing or superseding the notion of moral obligation, CHAP. 16. that they strongly establish it, and are the most direct indications of it.

But as to such as desire offspring, or are the occasions of their coming into being, as they are under And compel parents to support their children. most sacred obligations, indicated abundantly by the parental affection, to give support and education to their offspring, and to form them into proper members of society; so mankind as a system, and every society, have a right to compel them to discharge these offices. They have a like right to prevent such ways of propagation as would make a proper education impracticable, by leaving the fathers uncertain, and thus casting the whole burden of it upon the mothers. 'Tis the interest of mankind to prevent such abuses, even tho' the deluded mothers voluntarily yielded to the ensnaring solicitations. Of this more hereafter.

Mankind as a system have a like right to prevent To prevent all monstrous lusts. any perversions of the natural instinct from its wise purposes, or any defeating of its end. Such are all monstrous lusts, and arts of abortion.

III. There is a like right competent to mankind, To prevent the destruction of any thing useful. and an obligation on each one, that nothing useful to men should be destroyed or spoiled out of levity or ill-nature; tho' no individual, or society, has a more special right in it than another: that nothing useful should be destroyed, even by those who had acquired property in it, without any subserviency to some pleasure or conveniency of theirs. To do so must evidence

BOOK II. an envy or hatred of the rest of mankind. Thus fountains should not be stopped or poisoned; no useful products of the earth, which many stand in need of, should be capriciously destroyed by the owners, because they have abundance other ways for their use: no noxious creatures should be brought in, and turned loose in places formerly free from them.

*The right of re-  
felling all inju-  
ries and punish-  
ing them.*

IV. 'Tis also the right and duty of the system which each one should execute as he has opportunity, to assist the innocent against unjust violence, to repel the invader, to obtain compensation of damage done, and security against like attempts for the future. Without this right all the enjoyments of men would be very precarious, since few could confide in their own strength to repel the combined forces of any cabals of the injurious. As the example of successful injuries tends to invite others to like practices, 'tis requisite for the general good that this bad influence be counteracted as often as possible, by the inflicting of such evils upon the injurious, as by their terror may overbalance in their minds, and those of others who may have like dispositions, all allurements to injustice from the hopes of secrecy and impunity. This is the foundation of the right of punishing, which, as we said above, men have in natural liberty, as well as in civil polity. The mistakes and inconveniences which may more frequently attend the execution of this right in natural liberty, do not take away the right, but shews the great use of civil polity.


*As to the  
idea of civil  
liberty, it is  
a notion of ge-  
neral life.*

V. A like right we may justly assert to mankind

as a system, and to every society of men, even before CHAP. 16.  
 civil government, to compel any person who has fallen upon any fortunate invention, of great necessity or use for the preservation of life, or for a great increase of human happiness, to divulge it upon reasonable terms. The inventor, no doubt, may have a right to make large advantages of what his diligence, ingenuity, or felicity has discovered; and is justly intitled to a compensation for this advantage, in proportion to the good it brings to society, or the labour which the invention may have cost him, or the profit he could have made by it. But if a man is exorbitant in his demands, or so inhuman as not to employ his discoveries where they are wanted, or will always retain the secret to himself, so that it must perish with him; if the matter appears to be of great importance to mankind, a society has a right to compel him to arbitration about the proper compensation to be made for the discovery; and to force him, upon just terms, to make it.

VI. 'Tis justly also reputed a right of human society to compel each person to such labours and industry as he is capable of, that he may not be an unnecessary burden upon the charity or compassion of the industrious: to compel parents so to educate and habituate their children, that they may be able to support themselves, while they continue in health. Enough is allowed to the natural liberty of mankind, and the parental power, that men may chuse occupations as they incline for themselves and their children. But as the universal diligence of all is plainly requi-

*A right of compelling men to some industry.*

BOOK II.  site for the good of mankind, each one is bound to his share of it, and is justly compelled to it, unless he can give sufficient security to the society that he shall be no burden to it. A like right any society has to exercise the parental power over orphans, in educating them to some useful industry, and obliging them to such reasonable services after they are adult, as may defray all prudent expences made upon them, and for their behoof, during their minority.

*The rights of funerals.*

VII. One may justly reckon among these rights of human society that one also of preserving a just veneration toward the dignity of our kind, and preventing any practices which would tend to make it despicable in the judgment of the vulgar; or which would have a tendency to introduce savage and inhuman dispositions. The dead carcases of men can have no rights, and yet 'tis plain men cannot so entirely separate in their thoughts the body from its former inhabitant, as to be unaffected with the treatment of the body. All nations have expressed their affectionate or grateful remembrance of the man, by some rites or other deemed respectful toward the body: and repute some sorts of treatment of dead bodies as inhuman and savage, expressing either hatred and contempt of the man, or a disrespect in general for our fellow-creatures. Every society therefore should prevent such practices as would encourage savage manners, or such as are the usual testimonies of contempt and hatred, toward any who have not by their vices incurred the just abhorrence of all good men.

VIII. These and many of like nature we may count CHAP. 16.  
 the perfect rights of mankind. There are others *Imperfect rights*  
*of mankind.*  
 of the imperfect kind, to be left generally to the prudence and virtue of persons concerned, to which correspond the general duties or offices incumbent on each individual toward mankind in general, previous to any special tie. The same general maxim holds in these rights which we observed about the rights of individuals, viz. “ The fulfilling or not-violating the  
 “ perfect rights, argues rather mere absence of odious vices, than any laudable degree of positive virtue: whereas the matter of praise, and the natural  
 “ evidence of high virtue consists in a strict regard to  
 “ the imperfect rights.”

The offices indefinitely due to mankind are ever incumbent on all while the system remains, however they are subdivided into several distinct states or polities. The duties are not taken away in a civil state, but the exercise of them may be limited as far as the political relation and the interest of the state may require. The more extensive affections, of which we find our nature susceptible, and that high sense of approbation attending them, plainly shew our obligations toward mankind as to the following duties, tho’ no one individual had a more special claim upon us than another; and therefore we may conceive them as answering a general right or claim of the system upon each of its members.

First, each one is obliged to cultivate his own powers of body and mind so as to fit himself for what offices *All obliged to  
improvement of  
their souls and  
bodies.*

BOOK II. of goodness and humanity his station may allow; to store his mind with useful knowledge, and with the grand maxims which conduce to a virtuous life; to acquire virtuous habits, and a power of restraining all the lower appetites and selfish passions, which may oppose them; and to prepare even his body by temperance and exercises for such honourable services as his mind may recommend.

*To give a good  
example in their  
own conduct.*

Again: as men are much influenced by example, and our several affections are naturally contagious, 'tis our duty to the publick in our whole deportment to shew an example of all kindness, courtesy, and inclination to oblige and assist any of our fellows, where no duty of more importance, or special claim of such as we are more nearly attached to, calls us away: we should acquire habits of this social kind; and guard against whatever may irritate our fellows, or alienate their affections from us, or from each other, or cause animosities and ill-natured passions among them. No wonder that courtesy and good-manners are so engaging; they are the natural dress of virtue, the indications of those affections which are truly honourable and lovely. The several duties in consequence of such dispositions may answer to the particular rights of individuals, but the preparing the heart, and acquiring the habit, is an indefinite duty toward all.

*To diffuse prin-  
ciples of virtue.*

'Tis also our duty to our kind to diffuse as far as we can the principles of virtue and piety, which shew that universal goodness is the true interest, dignity, and perfection of each individual; as the universal pre-

valence of such sentiments is the greatest advantage CHAP. 16.  
to human life. We should concur in every wise institution for this purpose: our whole conversation should evidence this persuasion, and shew it to the world that wealth, power, or sensual pleasures, are not the supreme objects of our pursuit for ourselves, or such as are dear to us: that the covetous, ambitious, or voluptuous are not the persons whose state or temper we count happy. And thus on our part we may contribute to prevent or break these groundless associations and false imaginations diffused among men by the vicious.

IX. 'Tis also the duty of each individual toward mankind, as well as toward his peculiar friends or relations, to follow some profession or business subservient to some common good. Men of wealth sufficient for themselves and their families, are not perhaps obliged to any lucrative professions; but they are rather more than others obliged to an active life in some service to mankind. The publick has this claim upon them: the divine providence calls them to extend their views of publick good, in contriving wise forms of polity, or prudent laws; in encouraging the more ingenious and useful arts; in supporting distressed innocence; and employing all their weight and influence in society for some generous purposes; as they are exempted from the lower and less honourable employments. When they are deaf to this voice of God, and give themselves up to sloth and sensuality, they are useless and corrupt members of society, unworthy

*The general obligation to an active life.*

BOOK II. of that external deference they expect: and indeed  
 ~~~~~ 'tis only outward ceremony and baser flattery they receive; for they must be inwardly despised by all wise men.

*How we are to
 choose our business
 or profession.*

In chusing a profession or business for life, regard should be had to these two things, the dignity or use of the business, and the probability of our succeeding in it. Tho' the nobler arts are more desirable in themselves, yet 'tis plainly necessary for mankind that far more hands be employed in the lower; and as a few hands are sufficient for the nobler arts, so there are fewer whose genius and circumstances promise success in them. Nothing is more uneasy to a man of any spirit, or sense of honour, than to be engaged in a charge or office for which he has not sufficient abilities; as he must be continually exposed to envy, and to just censures. 'Tis a man's own interest for his inward peace of mind and his reputation, rather to be placed lower than his merit and abilities, than to be set in a station too high for them. This folly or vanity of aiming at stations or offices too high for us, is also injurious to society; as the office will not be well discharged by us, and worthier men by our means shall be excluded.

*The dignity of
 certain professions
 and arts.*

The dignity of arts or occupations depends on these two jointly, the use they afford to mankind, and the genius requisite for them. The profession designed to inculcate true principles of piety and virtue is always justly ranked among the most honourable on both accounts. The corruptions and depravations of the

best things may become most pernicious. Such is this CHAP. 16. office when it is abused to inculcate pernicious superstitions, to foment hatred and rancour about trifles, or made a step to ambition, avarice, or luxury ; or an engine of tyranny and oppression.

Legillators, magistrates, administrators of justice, or such whose business it is to protect innocence against fraud and oppression, have honourable offices, both as they are exceedingly useful, and require great abilities. The military offices are honourable for the same reasons. But nothing is more detestable than when these employments are perverted to the opposite purposes, and are engines of tyranny, injustice, or cruelty.

On the same accounts the professions of the arts and sciences which afford sublime pleasures in theory, and great use in the practice, are justly honourable ; such as mathematicks, natural philosophy and history, medicine, and others. The arts of sculpture, painting, drawing, musick, and elegant and magnificent architecture ; tho' they are not subservient to the necessities of life, yet have always been reputable in civilized nations for the refined pleasures they afford, and the elegant genius requisite in the artist.

The lower mechanick arts are of great use in life, but they are not so much admired ; because talents sufficient for them are more common. And yet men employed in them may be truly honourable in the highest degree for most eminent virtues. Of these agriculture has been generally most relished by the finest spi-

BOOK II. rits, not only for its * advantages, but also for its delightful contemplations, variety of sweet exercises, and innocent pleasures.

What gives hope of success. The probability of success in any profession or art depends on many circumstances. The advantages of fortune, the constitution of health, the authority of parents or friends, our opportunities, and, above all, the impulse of our genius. Fortune without genius never succeeds well: a genius often surmounts the opposition of fortune. In these conflicts our genius, tho' mortal, seems the victorious divinity, and fortune only a mortal, as Cicero † expresses it.

We should always repute it as our business in the world, the end and purpose of our being, our duty to our kind, the natural use of the powers we enjoy, and the most suitable testimony of our gratitude to our Maker the parent of all good, to contribute something to the general good, to the common fund of happiness to our species.

The more special duties to particular societies in the adventitious states and relations, are the subject of the following book.

* *Cicero de senectute*, c. 15, 16, 17. † *De officiis*, l. i. c. 33.

C H A P. XVII.

The extraordinary RIGHTS arising from some singular
NECESSITY.

I. **WE** have hitherto considered the common laws of nature, and the ordinary duties, partly discovered by some of these narrower affections of the social kind which are the immediate objects of approbation, and partly by the more extensive ones, which we approve in an higher degree. It was often observed above, that the more extensive affections are naturally designed to controll and limit the narrower, and that the heart can fully approve itself in its calmest reflections, when it has counteracted the warm motions of parental affection, pity, gratitude, friendship, in order to gratify some more extensive generous affection; tho' these narrower affections are in their own nature lovely, and the constant object of approbation when they do not interfere with any more venerable extensive affection. Now 'tis manifest to all men of understanding, who are not culpably deficient in the more extensive affections of soul, that many unusual cases may occur in which our counteracting the ordinary dictates of natural affection, pity, gratitude, or friendship may in the whole of its consequences do greater good, and prevent greater evils, than adhering to them in those cases. Nay that adhering to them in those extraordinary cases may sometimes occasion greater evils to our country, or to mankind, than all the virtues

BOOK II. any one mortal can exert will ever repair: all which evils might have been prevented by our receding in those extraordinary cases from the ordinary rule founded on these narrower lovely affections. 'Tis not conceivable then that in such cases any principle in our hearts can justify our sacrificing the most important and extensive interests of mankind to the smaller and narrower; or that upon reflection one could condemn himself for a contrary conduct, in following the most extensive affections, which the heart must more approve than any of the narrower, as they are aiming at a more important good. To suppose such a constitution of soul would be as absurd with a view to the publick system, as it would be in respect of the private system in point of prudence, if one approved himself in gratifying any trifling appetite such as thirst or itching, when this indulgence occasioned certain death, and thus defeated the grand selfish determination toward our own preservation and happiness.

*The narrower
should not be sup-
pressed but over-
balanced.*

To retain every amiable disposition of the soul which can give an entire self-approbation, in our counteracting these narrower generous affections, 'tis enough that we feel all these narrower affections in their just proportion of strength, so that they could excite us to all wise and generous offices of compassion, gratitude, and friendship, tho' attended with great hazards or expences to ourselves, and could surmount our merely selfish passions; while yet they are subjected to the nobler and more extensive affections of the generous kind. To act the part which we are per-

suaded tends to the most extensive good, in oppositi- CHAP. 17.
on to all narrower interests, with an heart quite insen-
sible to these amiable narrower affections, can scarce
gain our entire approbation. Some lovely parts of the
natural structure of the heart are awanting, and the
beneficent office may in such tempers argue no great
strength of the extensive affection: whereas when all
the narrower kind affections are in their due strength,
and yet a more extensive and venerable principle re-
solutely counteracts their motions, the soul seems in
its natural order; and must have an entire compla-
cense with itself, as it feels every disposition within
which it naturally approves, and that too in its pro-
per strength.

II. For the further illustration of this subject let us <sup>How the speci-
al laws are dis-
covered.</sup> recollect how it is that we discover the special laws of
nature. We have no universal precepts enuntiated by
God, in words, binding us in all cases where God does
not by words declare some exceptions. The laws of
nature are inferences we make, by reflecting upon our
inward constitution, and by reasoning upon human af-
fairs, concerning that conduct which our hearts natu-
rally must approve, as tending either to the general
good, or to that of individuals consistently with it.
These inferences we express in general precepts: they
are discovered to us sometimes immediately, some-
times by induction, when we see what conduct ordi-
narily tends to good. Now 'tis impossible for us to
have all possible cases and circumstances in view, so
that we could discern that the inference holds in them

BOOK II. all. We form our general rule or precept from what we see tends to good in all ordinary cases. But should we see that in some rarer cases a different conduct would in the whole of its effects do greater good than the following the ordinary rule in these cases also, we then have as good a law of nature preceptive or permissive to recede from the ordinary rule in those rarer cases, as we have to follow it in ordinary cases. These exceptions are parts of the law, as well as the general rule.

Two general precepts admit no exceptions.

The two general precepts of piety to God, and promoting the general good of all, admit of no exceptions; as they present to the mind the immediate objects of the highest approbation. The second of these is the foundation or ground of all the exceptions from the more special laws. We must not imagine or speak thus, “that a great necessity, or a publick interest, makes it lawful to sin, or to break certain laws of God and nature.” Such propositions contain contradictions in their terms. We say, that “such conduct as in ordinary cases would be vicious, and contrary to law, does in some rarer cases of necessity become good and lawful;” or that “these rarer cases are excepted in the general law.”

Improperly alledged cases of necessity.

III. There are innumerable cases in which if we only consider the immediate effect, it were better to recede from the common rule; and yet the allowing a liberty to recede from it in all like cases would occasion much more evil by its remote effects, than the particular evils in adhering to the ordinary rule. These

are not the cases of necessity here intended. For in-
stance. A man has made an imprudent bargain of CHAP. 17.
greater detriment to himself than of advantage to the
other party, and yet the other party inhumanly in-
sists on it. In the immediate effect, it were better he
did not observe his contract. But such cases happen
so often, so many would use this plea upon trifling
mistakes and inequalities, men would grow so careless
in their dealings trusting to this redress, and so many
vexatious disputes would arise, that all faith in com-
merce would be destroyed; not to mention the in-
ward immediate dislike every man must have of such
breach of promise, and such inconstancy, for every
trifling interest. The performing therefore of what
we contracted, according to the general rule, must be
our duty even in these inconvenient cases, when the
other party insists upon it; because of the greater re-
mote evils which would ensue from violating such
contracts.

Where one asks us improper questions, where it
were better that the truth were concealed from him;
if our silence would discover it, and no true evasive
answer occurs to us; did we only regard the imme-
diate effect, it might appear eligible to speak contra-
ry to our sentiments. But the inward aversion we feel
to falsehood should of itself dissuade us from it upon
such occasions; and the distant effects of allowing such
liberty, for every smaller advantage, or to avoid any
little inconveniences, are so pernicious, that we must
condemn falsehood on such occasions; since were it al-

BOOK II. *lowed*, there would be such frequent use made of it that there would be an universal suspicion of all conversation, and all mutual confidence in it be destroyed. These therefore are not the intended cases of necessity exempting from the obligation of the ordinary rules.

*When the plea
of necessity is
just.*

This plea therefore is then only just, when the whole good effects of receding from the ordinary rule, whether immediate or more remote, are so great, and the evils ensuing upon our adhering to it in those rarer cases so pernicious, as will in all probability overbalance all the evils to be apprehended from our counteracting the rule in this and such like rarer cases. Receding from such rules for every smaller present advantage, or for avoiding smaller inconveniences, must be very faulty. Such liberty, generally taken, would be highly pernicious, destroying all honesty and mutual confidence. But the case is otherways when men claim this liberty only for very great publick advantages, or for prevention of some extraordinary calamities. This liberty allowed or asserted only in cases of the utmost importance, will not be misapplied to every trifling private inconvenience, except through such unfairness and depravity of temper as would make one violate an acknowledged law of nature under such temptation, even without any tenet about these singular rights of necessity.

*The several
rules admit of
exceptions more
easily, as they
are less impor-
tant.*

IV. 'Tis plain here that some of the ordinary rules are of much greater importance than others; so that fewer cases can possibly happen wherein superior ad-

vantages can accrue to mankind from counteracting CHAP. 17 them. The more important any rule is, and the greater the evils are which obedience to it prevents, and which ensue from the counteracting it, the greater also must be those evils to be declined, or advantages to be obtained, which can justify the receding from it. Some rules are made so sacred by the moral feelings of the heart, and by their continual great importance to the publick good, that scarce any cases can happen in which departing from them can occasion in the whole superior advantages to mankind; or, which is the same thing, some laws of nature admit no exceptions. But other laws are only morally universal, holding in all ordinary cases, but admitting some exceptions. To deny all exceptions, upon pleas of necessity, contradicts the sense of mankind. In some laws of less importance to the good of men, pleas of necessity are allowed valid by all. As we ascend to more sacred and important laws, the matter grows more doubtful whether any necessity can found a just exception.

'Tis an ordinary law that "no man should use or destroy any part of another's property without his consent." Suppose a good man flying from a murderer, from whom he cannot escape on foot: he sees a neighbour's horse, but the neighbour is absent, or is so inhuman as to refuse the use of him. The taking his horse in such a case is justifiable, tho' the beast should be spoiled, or killed. A populous city or country is endangered by the failing of a dam or dyke, and

Examples of these cases.

BOOK II. the lives as well as the fortunes of thousands of innocents are at stake. There is store of timber fit to support and repair it, at hand; but the proprietor is absent, or refuses the use of it, and the danger is immediate, allowing no time to obtain materials elsewhere: 'tis no crime to disregard property in such cases. The immediate feelings of our hearts justify it, as well as a compassionate regard to a greater good.

This plea exempts not from obligation to compensate damages.

We must never, indeed, extend this pretence further than the real necessity extends. The *primary right* of the proprietor in the cases above-mentioned, must yield to a great necessity; but his *subsidiary right* to compensation of the loss he has sustained for the sake of others, may remain when the necessity does not extend to it. They are obliged, as far as they can, to make full compensation, who are saved at his expence.

This plea not peculiar to civil liberty.

V. 'Tis vain to justify such steps only by some † eminent rights of civil governors over the goods of subjects. The pleas of necessity have the same just foundation in natural liberty, upon some plain tendency to some important interest of mankind. The right of magistrates is founded only in this, that the execution of the rights of the people in such urgent necessities is committed to them, as is also the violent defence and prosecution of all their other rights: from which none can infer that all right of violent defence or prosecution is derived from civil polity. Were there no justifying pleas of necessity in natural liber-

† *Dominium eminent, or as others more properly call it, Jus imperii eminent.*

ry, there is no accounting for this eminent right of CHAP. 17.
magistrates in civil polity.

Come to higher cases. A ship loadened with provisions and ammunition comes into the port of a city unjustly and cruelly besieged, where a massacre is intended by the besiegers; suppose the citizens almost perishing with famine and wanting military stores, and having neither money nor goods which the merchant would take for his grain or ammunition, whereas he can get an high value from the besiegers. Must the townsmen here regard his property, and expose themselves to perish with their families, either by famine, or a massacre; nay perhaps expose a whole nation to the most cruel slavery? No certainly. They may justly take these goods by force, tho' there be the greatest hazard that they shall not be able to compensate their value; since if the city is taken, they are all ruined.

'Tis a sacred law of nature not to take away the life of an innocent man, or exclude him from any method of self-preservation in his power; suppose I know that a man just landed is infected with the plague; and furious; that he is running into a throng assembly, that I know not their language to warn them. I can preserve the lives of thousands by shooting this man, who yet may possibly recover. Can this be a crime, if there was no other way of preserving thousands of innocent men and their families from the infection that is so generally fatal? Laws prohibit under pain of death any person to come ashore from a

BOOK II. ship that came from an infected place. Some of the crew may be infected, and yet others remain perfectly sound, who might be entirely safe were they allowed to come ashore. Upon the very suspicion of this danger they are often kept aboard, and exposed to perish by the infection. In an overloaded boat not only goods are thrown over board without the consent of the proprietors, but innocent men too, while yet none can demonstrate that the boat with this over-charge could not possibly come safe to shore.

Veracity.

May not a singular necessity supercede the common rule of veracity too. Suppose a Genghiscan, or any such Eastern monster, resolved on the massacre of a whole city if he finds they have given any protection to his enemy, and asking a citizen in whom he confides about this fact, whether his enemy had ever been sheltered by the citizens; and that by deceiving the monster, he can preserve the lives of hundreds of thousands, and of their innocent babes; whereas telling him the truth shall occasion the most horrible slaughter: could a wise man's heart reproach him justly for breaking through the common law of veracity, and conquering the natural impulse toward it, upon such strong motives of humanity? Nay who blames Tullus Hostilius, or Eumenes, for deceiving their own soldiers, when it was the only probable means of their safety, and the safety of their country? Had either of them declined this step when suggested to them by one of their counsellors, they had justly been charged with too high and superstitious an at-

tachment to one species of morality, and that not the CHAP. 17.
supreme one.

Suppose a just prince defeated by an inhuman brutal usurper, and flying with his family and the bravest men, the only hope of the state; and that they get into an house near the sea whence they hope presently to make their escape; and that the usurper, seeing another party fleeing past that house, asks one whom he takes for a friend to his cause, who yet is secretly faithful to his prince and the liberty of his country, whether the prince be fled into that house? To hesitate, or be silent, on such an occasion discovers the whole truth. But his speaking contrary to his knowledge may preserve the only remaining hopes of a nation. Can this too be criminal?

'Tis ordinarily a crime in a subject, or in any private man, to kill his fellow-citizen, tho' a criminal, without a trial. Shall we therefore condemn the glorious action of Timoleon?

'Tis horridly criminal in ordinary cases to tempt any man to perjury, or breach of faith. But how generally do we justify the corrupting the secretaries, or confessors, of hostile princes to betray the secrets of their masters, when the safety of our country requires it; or when we can by such means prevent much effusion of innocent blood?

VI. 'Tis surprizing upon what principles some divines have denied all these extraordinary rights of necessity. The reasons on the contrary side. "The common rules or laws of nature, say they, should always be observed, whatever evil may

BOOK II. "enfue: nor can the highest prospects of advantage
 ~~~~~ "justify our departing from them in our conduct."

They argue as if certain propositions had been ingrav-  
 ed by God on some pillars, telling us what we are to  
 do in all possible cases, with strict prohibitions of de-  
 viating from them in any case, unless where God, by  
 some verbal propositions, had made exceptions; and  
 ordering us to commit the event to God without rea-  
 soning about it, while we keep to the letter of the law.  
 Nay some tell us that "we know not all the remote  
 "effects of actions: such as appear to us of good ten-  
 "dency may in the whole have pernicious effects; and  
 "those may have good effects in the whole which ap-  
 "pear to us of the most hurtful tendency."

*These examined.*

But they should either shew us these verbal propo-  
 sitions thus revealed; or if they cannot, they should  
 consider how we come to know these ordinary rules  
 or laws of nature. 'Tis no other way but by the feel-  
 ings of our hearts and judging about the tendencies  
 of actions. If our incapacity of judging about the dis-  
 tant effects of actions should preclude all pleas of ne-  
 cessity; it will also preclude all our ordinary reasonings  
 about the tendency of actions, by which we discover  
 the ordinary laws. We should not take upon us, an-  
 tecedently to revelation, to form any conclusions as  
 laws of nature; but follow every particular affection  
 or kind passion, which we naturally approve, such as  
 pity, gratitude, friendship, at all hazards; without con-  
 sidering its distant effects, about which, they argue,  
 we are not competent judges. The truth is, we must

follow such probabilities as the constitution of our nature and our closest attention can suggest to us, both in settling the ordinary rules of life, and in determining the exceptions in some rarer cases. For 'tis only by our reasonings about the tendencies of actions, and these sometimes pretty remote, that we arrive at these conclusions which we call the ordinary laws of nature. CHAP. 17.

VII. Revelation cannot exclude these pleas of necessity, as we have no collection of precise rules with orders always to adhere to them contrary to all appearances of publick interest. Its precepts, except a few which relate to positive institutions, and some points not knowable by the light of nature, presuppose the law of nature, and the rights and duties of men to be known, or to be discoverable by other means, with all the limitations and exceptions. The origin, nature, and extent of the several rights are not explained in revelation; nor does it tell us when such a right or duty takes place of another. It presents the warmest recommendations, and the strongest motives to the several virtues, and the most powerful dehortations from vice: but the several virtues and vices are only denoted in general by their common names, presupposed to be previously known in their true nature and extent. *These pleas are excluded by revelation.*

The case is plainly thus. Our reason shews what actions tend to the publick good; these we judge lawful; and when they flow from the kind affections of the soul we approve them and call them virtues, by certain settled honourable names. Contrary actions, *Revelation presupposes the law of nature as known.*

BOOK II. or some of the same general class with the former, but in different circumstances, tend to the publick detriment, and shew a bad temper in the agent; we disapprove them, and give them the odious names of vices. 'Tis the proper office of that reason God has given us, to observe these tendencies of our dispositions and actions, and to reduce them to their proper classes. Thus we can settle the meaning and the extent of these terms, *justice, mercy, charity, liberality, temperance, fortitude, succour, self-defence, execution of justice on criminals, defence of our country in war.* These are names of virtuous or innocent dispositions and actions. *Cheats, frauds, avarice, cruelty, drunkenness, gluttony, cowardice, treachery, robbery, stealing, murder,* are well known names of vicious dispositions or actions. The Scripture presupposes these names as known or knowable in their just extent and meaning; and by the strongest motives exhorts to all the virtues, and deters from all vices, without descending to any explications of them in their extent and restrictions, which are otherways discoverable.

Abstract from this previous knowledge by reason and reflection, the Scripture-precepts would be of no use to us, as they are of none to idiots. *Thou shalt not kill.* All killing is not prohibited, 'tis only *murder.* Now where is the Scripture-definition of *murder*? 'Tis our reason must shew what is the lawful, and what the unlawful killing; the lawful, is in self-defence, in just war, in the execution of criminals: and the same reason will shew some extraordinary cases

wherein it may be just, for the defence or recovery of CHAP. 17. all the valuable rights or liberties of a nation. *Thou shalt not steal* is another precept. It does not prohibit all taking either by violence, or secret means, what was sometime possessed by another; 'tis only taking away what another has a right or property in. 'Tis our reason again must teach us the origin, the nature, and extent of property; and it will shew us too that property must often give place to some great publick interests. *Lye not to each other*, is another precept. But what is a lye? how defined? 'Tis not every speech which the speaker foresees will lead the hearer into a false opinion; not every sentence which is false in its most obvious meaning. Our Saviour often spake in this manner. 'Tis our reason again that must shew us what sort of speech hurts society and what not; and when it is that some extraordinary cases may justify receding from the common rule. Without having previously fixed the notion of these duties, and their proper limits, the above-mentioned precepts amount to no more than these vague undetermined sentences, "Take not away the life of another when you should not take it away. Take nothing out of the possession of another, when he should still possess it, or has a right to it. Do not deceive by speech when it is wrong to deceive." What are these precepts, without the aid of moral reasonings?

Revelation was given to rational agents previously made capable of knowing the rights of men, and the tendencies of actions to the good or hurt of their fel-

BOOK II. lows, or of society, and determined to approve what was beneficent, and to condemn the contrary. It was enough, as to our social duties, that every thing virtuous and kind should be enforced in general by revelation with the strongest motives, and with the divine authority; and some such special laws given, the use of which to a social life the common reason of honest men would not soon have discovered. \* It was not proper that our sloth in cultivating the powers God had given us should be encouraged by a revelation, or that we should be treated as children or idiots, who could discover nothing by themselves.

*A vague maxim  
examined.*

These pleas of necessity some would exclude by a maxim of late received, *We must not do evil that good may come of it.* The author of this maxim is not well known. It seems, by a passage in St. Paul, that Christians were reviled as teaching that since the mercy and veracity of God were displayed by the obstinate wickedness of the Jews, they should continue in sin that this good might ensue from it. He rejects the imputation upon his doctrine, and hence some take up the contradictory proposition as a general maxim of great importance in morality. Perhaps it has been a maxim among St. Paul's enemies, since they upbraid him with counteracting it. Be the author who they please; the sentence is of no use in morals, as it is quite vague and undetermined. Must one do nothing for a good purpose, which would have been evil without this refe-

\* The enemies of revelation have triumphed foolishly on this subject; and some of its friends have defended it injudiciously, by ascribing to it what is not its business.

rence? 'Tis evil to hazard life without a view to some good; but when 'tis necessary for a publick interest, 'tis very lovely and honourable. 'Tis criminal to expose a good man to danger for nothing; but 'tis just even to force him into the greatest dangers for his country. 'Tis criminal to occasion any pains to innocent persons without a view to some good: but for restoring of health we reward chirurgeons for scarifyings, burnings, and amputations. But, say they, "such actions done for these ends are not evil. The maxim only determines that we must not do for a good end such actions as are evil even when done for a good end." But this proposition is identick and useless, for who will tell us next, what these actions sometimes evil are which may be done for a good end? and what actions are so evil, that they must not be done even for a good end? The maxim will not answer this question; and truly it amounts only to this trifle; "you ought not for any good end to do what is evil, or what you ought not to do, even for a good end."

VIII. The main difficulty is how far can this plea be extended? It cannot be refused in many ordinary laws about property and our common labours. Nay it may found exceptions to some of the general laws of nature about the preservation of life. But what are these laws which admit of no such exceptions? This is one of the *desiderata* in morals, and must probably remain so till our knowledge grows more perfect in some higher state.

BOOK II. Many moralists allow speaking against our sentiments in some extraordinary cases. What if a bare false assertion will not attain the end, suppose the preservation of our country, may we employ perjury also? Men of any sense of piety abhor perjury upon any pretence of the highest necessity. The statesman allows it lawful to bribe the secretary of an hostile prince to violate his oath of fidelity by betraying his master's secrets; what if we cannot otherways save our country than by bribing him to poison or assassinate his master? Even the statesman cannot defend this practice. A manifest tyrant or usurper may be cut off by any private man: here killing is no murder. But may he accomplish this design by oaths of fidelity, by all professions of friendship, by the dark arts of poison amidst the unsuspecting pleasantries and friendship of an hospitable table? This must shock the greatest lovers of liberty. We may deceive a dangerous enemy by false narration, say many; may we not, when the safety of our country absolutely requires it, deceive also by a treaty, or truce? The laws or customs of all civilized nations deny it.

It may be impossible to determine precisely how far we may extend this plea in all the possible cases. Men no doubt may often mistake, and upon smaller necessities may violate laws too sacred to admit exceptions in such cases. But this does not prove that the plea is never just. Men often make like mistakes about the rights of violent defence and prosecution, and that of punishing criminals: but we do not thence deny

these rights altogether. There is no fixing minutely CHAP. 17.  
the degrees of force requisite in defence, or the de-  
grees of pain to be inflicted on criminals. 'Tis still an  
useful rule for health to live temperately and use ex-  
ercise; and yet no man can determine to an ounce, the  
quantity of food he should take, or to a perch, the  
length of the road he should walk or ride for his  
health. Nay some deviations from this regularity are  
sometimes consistent with health, or may even im-  
prove it.

If one departs from the ordinary law for trifling  
causes, abusing this plea of necessity, his own heart  
must condemn him upon reflection, and all men dis-  
trust his integrity. This plainly shews that the evils  
to be declined, or the advantages in view, must be  
very great, in proportion to the importance of the  
law, which can found any exception to it. But when  
one departs from the ordinary law only in great and  
manifest exigences, and is known to adhere religious-  
ly to the law in all ordinary cases, even contrary to  
some considerable interests of his own, men will have  
as full confidence and trust in his integrity in all the  
ordinary affairs of life, as in those who have stricter  
tenets in theory. A man of the strictest tenets in op-  
inion, unless he is also known to adhere religiously to  
them in practice, may incur this suspicion that he will  
counteract them upon any great temptation: and if  
he who allows the plea of necessity in cases of singu-  
lar importance, shews a strict regard to the ordinary  
law by his practice in all ordinary cases, even when at-

BOOK II. tended with many private inconveniences to himself, he will obtain the confidence of mankind notwithstanding this tenet. We know that men of sincere virtue will be cautious of abusing this plea for any little private advantages; and we can trust their candour in this matter. And men of little virtue will counteract the strictest tenets upon any prospects of advantage. So that we do not confide in men according to the strictness of their opinions, but according to our experience of their honesty.

The allowing some pleas of necessity does not shake loose all morality, as some have alledged. All agree that that conduct is right which tends to the greatest good. 'Tis also agreed what conduct tends to the general good in all ordinary cases; and thus the several laws of nature are undisputed. In some rarer cases, 'tis also generally allowed there are some just exceptions, in which receding from the common laws will do more good than adhering to them. There are some more sacred laws, from which, we doubt if any necessity can justify our departing. This uncertainty does not make the other points uncertain. Geometry is not made uncertain, because the learned know not how to square a circle geometrically. The rules of medicine are not all uncertain, because some singular diseases occur for which there is no cure. Nor is navigation a vain art, because we cannot find out the longitude with that accuracy we desire.

*General remarks  
to prevent abuses.*

IX. Take the following remarks to prevent abuses of this plea. 1. The more virtuous any man is, and the

higher his sense is of all moral excellence, the less apt CHAP. 17. he will be to abuse this plea in matters of too small importance, or for any interest of his own. In such men there are not only the more extensive affections to mankind, or to large societies, but all the tender social feelings and affections of the heart of a narrower kind, and these also are objects of their inward approbation. They have a just relish of all virtuous affection and action; of compassion, mercy, gratitude, veracity, friendship, and cannot counteract them without great reluctance. From these feelings they will be sufficiently cautioned and restrained from using any contrary pleas, unless some interest of the greatest and most extensive kind rouse the more extensive affections to controul the narrower, by their superior beauty and dignity.

2. In computing the advantages and disadvantages of receding from any ordinary rule, we must consider not only the immediate effects, but even the most remote, of allowing this liberty in all like cases; and even the dangers from the mistakes of others in using the like plea in unlike cases. Not that every practice, or tenet in morals, is wrong or dangerous which men may readily imitate, or misapply, in improper and unlike cases. This may be the fate of the very best actions, and tenets. But a good man, as he weighs all the advantages expected from an unusual step, must also weigh all the disadvantages probably to ensue even by the mistakes of others, especially of such as have some sense of virtue: and he will decline to take

BOOK II. not only such liberties as would be pernicious to the publick if all men took them in like cases, but also such as would have the like bad effects by the misapplication of others in unlike cases, unless the advantages expected from them overballance even these evils ensuing upon the misapplication of them by others. Men often abuse the doctrines of violent defence and prosecution. A good man would decline practising according to them, were not the advantages ensuing from the use of these rights, and the evils prevented by it, so great as to overballance the evils arising from the abuses of these doctrines in common life. When the plea of necessity is only allowed in cases of very great importance, there is little danger that men of virtue will frequently misapply them. And the gross misapplications by vicious men are not to be computed; as the same effects had happened tho' this tenet had never been known. Such men would have acted the same part under temptation, tho' they had held the strictest opinions, and had no such unfair pretext of necessity.

3. The more important any law is for the internal or external happiness of mankind, the greater must that utility or necessity be which in any singular cases can justify an exception from it.

4. A publick advantage in view, or the prevention of some publick evil, is a more favourable plea than any private advantage of the agent. It shews a noble disposition to adhere to the ordinary rules under private losses, or in opposition to private interests, even

when receding from the rule could scarcely have been reputed criminal. But where a publick interest is at stake, and founds a just exception, a good man is not at liberty to sacrifice it to any false notions of his own honour or character. He must be deficient in his extensive affections, or mistaken in his moral notions, if he follows in such cases some lower species of goodness in opposition to the publick interest. CHAP. 17.

5. Tho' in cases of necessity men may intermit external worship at the usual times, yet no necessity can justify such actions as evidence impiety, or contempt of the Deity; such as blasphemy, perjury, or abjuring the true God, or that worship we believe acceptable to him; or † the omitting any duty he has specially enjoined upon us at all hazards; or the doing, or omitting, any thing required as a symbol of our renouncing our duty to him.

6. As the foundation of all just pleas of necessity is some great publick interest requiring our departing from the common rule, no necessity pressing me can justify my voluntarily occasioning as great evils to an equally innocent man; as the publick reaps no advantage by such conduct. But the publick interest is really promoted, when an innocent man saves himself from some great evil by some small damage done to another. In like manner; no society or state can be justified by these pleas in occasioning equal evils to another without any demerit. In these cases indeed the pro-

† Thus the apostles or primitive martyrs could not plead necessity, had they omitted the publishing the gospel for fear of persecution.

BOOK II. babilities on both sides must be computed, both as to  
 ~~~~~ the impending evils, and the future compensations to  
 be obtained. To avoid a very certain evil on one side;
 it may sometimes be lawful to do what may possibly
 occasion an equal evil to another, when there is little
 probability that the other shall suffer at all by it. But
 all such damages done to others for our preservation
 from greater, oblige us to make full compensation
 when we are able. The great probability or certainty of
 our making future compensation justifies many steps
 which otherways would have been unwarrantable.

*The sense of a
 good and wise
 man must be the
 last resort*

But after all we can suggest on this head, unless
 something more precise and accurate be discovered,
 we must have recourse to the inward feelings of an
 honest heart. A sense, which Aristotle often tells us,
 must make the application of general principles to
 particular cases; and thus the truly good man, and his
 sentiments, must be the last resort in some of these intricate
 cases. Men truly virtuous will seldom be in danger
 of abusing these pleas. And no rules or rigid tenets
 and opinions will bind the unjust, the covetous,
 the ambitious, or selfish, or bigots in false religions.
 If they allow the pleas of necessity in important cases,
 they will misapply them. If they do not allow them
 in opinion, they will counteract in practice those very
 laws which they deem strictly universal without any
 exceptions.

C H A P. XVIII.

How CONTRAVERSIES should be decided in
NATURAL LIBERTY.

BEFORE we pass to the duties of the adventitious states, we may consider how contraversies should be decided, and peace maintained, in natural liberty, when men disagree about the point of right; and this will shew the main use of civil polity, and the first step toward it.

'Tis well known that self-interest often byass'es the judgment even of good men, whose fixed purpose it is to observe all rules of justice and humanity, and to abstain from all known injuries; and violent passions have often the same effect. 'Thus men, in the main good, may be disposed, from different opinions of right, to do what is injurious to each other; nor are they capable, when their passions are once kindled, of receiving conviction from those against whom they are provoked: they grow mutually suspicious, and are unfit monitors to each other. When therefore no friendly conferences of theirs can make them agree; the next natural recourse is to one or more *arbitrators*; persons of whose wisdom and integrity both sides are satisfied, and who have no peculiar interest in the success of either side, nor are attached to either by any very strong ties. Such men, tho' but of equal prudence with that of the contending parties, will more

BOOK II. easily discern what is just and equitable between them; and therefore all good men in natural liberty, nay in civil polity too, should be ever ready to take this easy expeditious method of obtaining justice in any debated point. And all good men, when they are disengaged from more urgent affairs, should be ready to do this good office, in promoting peace and justice as arbitrators, when they are invited by the parties.

Two sorts of arbitrators.

II. Two sorts of debates may arise: one about the *strict point of right*, where neither party professes to shew any liberality or gratuitous favour, nor claims it; but each insisting on their perfect or external rights, and embarrassed by some intricacies, want the assistance of wise impartial men. The other sort is, where the parties wave their external rights, and are willing to act the humane and equitable part as far as their affairs can allow; and leave this to be determined by arbitrators. In cases of this latter sort, arbitrators will find much less difficulty: but in both 'tis necessary that they know the perfect rights and claims of both sides, and all exceptions against them; that in the former sort they may fix the perfect or external right; and that in the latter they may discern what equitable indulgence or abatement is to be made to either party. In the debates of strict right they are much more confined in their determinations, and obliged to insist on stricter proof; since a defect of full proof may reasonably defeat a claim not founded in humanity and equity. But in the other sort of submissions, the arbitrators have full room to consider every equitable

circumstance, and every reason of humanity. A truly good man who confides in the integrity of the arbitrators will ever agree to submissions of this equitable sort. CHAP. 18.

The submission of the parties should always be absolute as to the matters submitted. A man is not obliged to submit all his rights, even such against which there is no shew of a claim. But over such as he submits he should give full power to the arbitrators. A compromise of this kind, that "the parties shall stand to the award provided it be just," answers little purpose; as the parties reserve to themselves to judge of the justice of the award, the matter remains as before, only that they know the opinion of unbiassed men about it, which modest men may sometimes regard. But to end a debate effectually, the compromise should be absolute as to all matter submitted. And yet after the most absolute submission, either party may justly refuse to acquiesce in the award, if either a fraudulent compact with the other be discovered, or any bribe received; or if the iniquity of the award be so gross as of itself to be an evidence of corruption in the arbitrators to any honest observer. These circumstances may free one from the obligation of a compromise, as a case of necessity supercedes the obligation of the ordinary rules of life.

III. Arbitrators in their proceedings, when other proofs and documents fail, such as the acknowledgments of the parties, deeds, or contracts signed by them, must have recourse to witnesses testifying upon

The compromise should be absolute.

Why one witness never sufficient, and more than two not requisite.

BOOK II. oath. The characters of witnesses, and their disinterestedness in the present cause, must be observed by arbitrators as they are by civil judges. What is now received by almost all civilized nations about witnesses must hold in natural liberty, that 'tis dangerous to trust any point of importance to the testimony of one witness; and yet the credibility of testimony requires not great numbers. Two unexceptionable witnesses can give sufficient confirmation of any fact, when they shew such sagacity, and had such opportunities of knowledge, that they could not be deceived themselves; and when from their circumstances we are well assured that they have no disposition to deceive others. The knowledge of such witnesses as were invited to the transaction by the parties, or who were present during certain actions, may easily be ascertained. Their fidelity or having no inclination to deceive must often be collected from many circumstances, and chiefly this, that they can have no interest in deceiving, or no prospect of success in such a design.

Now two witnesses to the same fact may give very high security as to this last point. One man of sagacity and presence of mind may forge a story so artfully and consistently that no examination can detect him, or make him contradict himself. But when two witnesses are separately examined, and hear not each others testimony, about every circumstance which would probably be observed by one present at any transaction, 'tis highly probable that some such circumstances will occur to the judge or arbitrator to question

them about, which did not occur to the witnesses in CHAP. 18. their forging any concerted falshood. If the witnesses answer several such questions separately about these circumstances, there is a fair hazard that they will contradict each other in every one of them, and so detect their falshood. If they both frequently declare that they are ignorant about many such circumstances, or both profess that they forgot the same circumstances, they give great cause of suspecting a forgery. But when upon the most minute separate examination of them about all these circumstances their testimonies wholly agree, or are perfectly consistent, there arises a very high evidence. The addition of one or two more witnesses could give little more credibility to the fact. Nor do human courts ordinarily require more: it is certainly a right maxim not to judge upon smaller evidence where greater is provided or attainable; and yet it might be a great burthen upon the parties to be obliged to produce many witnesses. They therefore require, except in some specified cases, only two as necessary to found their judgment, nor require that more should be called by the parties as witnesses in their transactions. The testimony of one man of veracity may make any matter highly credible to those who know his character, and yet to admit this as full proof would be a dangerous rule, considering how often men who have long obtained a fair character have at last been discovered to have no steady integrity. And if the single testimony of one is admitted in one case, it cannot be refused in others,

BOOK II. without proof made of something very infamous in the witness whose testimony is refused. And frequently such proof cannot be found against men of very little worth or integrity.

*The last resort
in natural liber-
ty, is force.*

IV. When neither the conferences of the parties, or the interposal of common friends can end the debate, or persuade both to a submission to arbitrators, there remains, in natural liberty, no other method of redressing wrongs but by violence. As this is always attended with dangers, and may have most pernicious consequences; all other means of obtaining justice, where the nature of the case will admit, should first be tried. When these prove ineffectual, one should not only procure the assistance of his friends, or such whom indignation at the wrong done may rouse to his aid, but he should consult the calmest and wisest of his neighbours, not under any special attachment to himself, as to the methods of defence, or prosecution of his right, or the punishment to be inflicted on the invader of it for the deterring of others from like attempts; that thus all unnecessary severity may be prevented, and no more demanded or inflicted than is justly due to the injured, or requisite for the general safety.

*The danger of
violent defence
and prosecution
shows the necessity
of civil polity.*

The dangerous consequences to be apprehended from the immoderate passions of men in the defence and prosecution of their rights by violence in natural liberty, where the unjust will rouse all their forces, and engage all their friends to their assistance in support of their injuries, as well as those who have

the just cause, have probably been among the first motives which excited men to contrive civil government, and arm magistrates and judges with sufficient power to enforce all their sentences about the contraversies of the subjects, and to inflict proper punishments upon the injurious, to deter them and all others from like attempts for the future *. Of this we treat in the next book. CHAP. 18.

* As some rules of interpretation may be of use in determining the true intent and meaning of contracts, as well as of laws, many authors on moral philosophy subjoin some dissertations on that subject. But as there are no rules of interpretation peculiar to contracts, or laws, which do not hold equally about any other sorts of speech or writing, it seems better to leave them entirely to the art of criticism, which may have laws and contracts as a part of its object. Nor can much be suggested on these matters which would not of itself occur to any man of sound understanding who knew the language and customs of the country where the laws or contracts are made, and the common principles of criticism.

THE END OF THE SECOND BOOK.

B O O K III.
OF CIVIL POLITY.


C H A P. I.

*Concerning the ADVENTITIOUS STATES or per-
manent Relations: and first MARRIAGE.*


I. **T**HE rights and duties founded in nature pre-
vious to any adventitious states or lasting Duties in ad-
ventitious states.
relations introduced by some institution, contract, or
deed of men, were considered in the former book.
The most part of these rights and duties must still re-
main in all adventitious states; but they are so limi-
ted as the nature of the new relations may require for
the publick good; and many new obligations are con-
stituted by our entring into these relations. We pro-
ceed to consider the principal of these adventitious
states, and the special rights and duties arising from
them.

These states and relations are either *domestick* or
civil. The domestick are these three, of *married per-* These domestick
or civil.
sons, of parents and children, of masters and servants.
The civil or political relations are either the general
one of all citizens or subjects toward the state, and its
governors; or the more special relations of men in cer-
tain political offices.

BOOK III. II. The first relation in order of nature is marriage.


 The several tribes of animals must soon have been extinct if nature had not providently implanted in them all the instinct and power of propagation. The nature of the several instincts in brutes is various, according to their several circumstances. As in most species their young need but little care of their parents for their preservation, and that of but short continuance, and but little instruction for the simple purposes of their lives, both which the dams can sufficiently afford them, little more was requisite than the mere instincts to propagate and to provide proper food, and nests or dens for their young where it was requisite, till they attained sufficient strength to support themselves. In some few species we discern something more, a sort of partnership of the two parent-animals, with some appearances of a lasting affection and fidelity. But the preservation of human offspring, and the giving it the education necessary for the higher purposes of a rational life, require a long, a constant, and troublesome attendance of many years, for which the mother without the aid of the father is not at all sufficient: (we speak of the general condition of mankind, to which the natural instincts must be accommodated, and not of the state of a few artificially raised to higher wealth;) and on the proper education of offspring the happiness of mankind exceedingly depends. No part of nature displays the goodness and wisdom of its author more fully, than the contrivance of the several instincts and passions in mankind subservient to this

*The necessity of
a marriage con-
tract.*

grand purpose. A careful attention to the frame of CHAP. I.
our nature in this respect, will clearly shew our duties 
in this relation of marriage.

We have all attained to the knowledge of what is intended by nature in this instinct of propagation, before those years in which it arises: and a natural modesty or shame generally restrains us from gratifying it for some time further. We must also have observed that a long series of careful and troublesome attendance is absolutely necessary for preserving and educating the offspring; and that for this purpose nature has implanted that tenderest and most lasting parental affection in both parents, as their joint assistance is highly necessary. As this affection sweetens this labour to both, so it shews the strong obligation upon both to bear it. And thus all such as regard the voice of nature, and the obligation it imposes, or have any sense of humanity and virtue, must see that, if they gratify this inclination to procreate offspring, they must, both by sense of duty and by a strong affection toward the same objects, be united in intention, and in a long course of labour and common care with the partner they chuse for procreation. This joint counsel, care, and labour, can scarce be tolerable without a mutual affection and esteem between the parents; and to create this, we find that nature has wisely formed us in such a manner, that in all those who are under the restraints of the natural modesty, and of any sense of virtue, the inclination to procreate is excited, or at least generally regulated in its choice of a partner, by many delicate

*From natural
dispositions.*

BOOK III.  sentiments, and finer passions of the heart of the sweetest kind. The sense of beauty prepossesses in favour of a moral character, or acquaintance gives better assurance of it. The esteem of virtue and wisdom, the desire and love of innocence of manners, complacency, confidence, and the tenderest good-will, are the natural incitements and concomitants of the amorous desire ; and almost obscure the brutal impulse toward the sensual gratification, which might be had with persons of any character. As we thus previously know the natural design of this impulse, and the obligations toward offspring thence to ensue, as we are endued with reason, we are obliged to restrain this impulse till we have obtained assurance of such harmony of minds as will make the long joint charge of education tolerable to both parents, and till we are in circumstances capable of supporting such offspring as may arise. For the intimacy contracted in this joint lasting charge, and the recurring impulses to procreation, may naturally produce a numerous offspring: and we may easily foresee that the rearing and educating such offspring must fully require the constant joint attention of both parents: nay, that, where there has not been some wretched corruption of heart, destroying the parental affection, all their joint cares come far short of their affectionate and ardent wishes for their children: these instincts and strong natural affections, along with the lasting infirmity and dependent state of human offspring, plainly declare the intention of nature, that they should be propagated by parents first united in

mutual love and esteem, in an affectionate and lasting partnership, to assist each other in this most important duty toward our kind, of producing, rearing, and educating the rising generation. CHAP. I.

This moral machinery of these instincts we find has appeared in all ages and nations, and generally prevailed; tho', no doubt, vicious customs and habits can often weaken or almost extinguish many natural dispositions in some individuals. It will plainly shew us almost all our obligations as to marriage and offspring, all the reasonable terms which should be stipulated in the marriage-contract, and the happy effects upon society, from following the intention of nature, and the mischiefs naturally ensuing from counteracting it, will further confirm our obligations. *These point out all our duties in this state.*

III. And first, indulging the brutal impulse without entering into any social or friendly bond, without any regard to these tender and generous passions which naturally accompany this desire, beside its counteracting this beautiful contrivance of nature, must have many pernicious effects upon our bodies, our minds, and human society. To follow the brutal impulse, in opposition to the natural restraints of modesty, as early and as frequently as it appeared, would be pernicious to the bodies of the parents, as well as those of their posterity; especially among such as are in more easy circumstances, and freed from constant bodily labour. The weakness of mind, and the dissolute habit, would still be worse effects. Nature indulgent in this matter to mankind, has made them capable of more frequent

An unlimited indulgence pernicious.

BOOK III. gratifications than most other animals, as a compensation for the superior toils of educating their offspring. But by a sense of shame, and the many moral passions naturally attending this instinct, as well as by our reason which can discern the distant effects, and the obligations we are under, nature has pointed out the method of gratification which is consistent with all the moral sentiments of the heart, with all the concomitant generous passions, and with the interest of society.

Destroying parental affection.

Again, unlimited indulgences in promiscuous fornication would have this effect, that the fathers would generally be uncertain about their own offspring, and have no other incitement to any cares about them than the general tie of humanity, which we know is not sufficient. They must want one of the most natural satisfactions in the knowledge and love of their offspring, and one of the chief incitements to labour and industry. The mothers, upon whom the whole burthen of education would be cast, must find it intolerable. They would grow negligent, and give themselves up to brutal indulgences as well as the fathers. The natural purpose of this instinct would thus be in a great measure defeated, partly by the barrenness of women, and partly by their neglect of their offspring. The mischiefs of a dissolute state, where all followed the brutal instinct without restraint, are but very imperfectly represented to us by the evil effects we see ensuing upon a few irregular indulgences, in a nation where the generality are under the wise re-

straints of laws, and of modesty confirmed by educa-
 tion. And yet 'tis easy from them to discern what ge-
 neral misery must ensue, if all restraints were removed,
 and if all gratified the brutal impulse without any
 controul.

Many instincts of the most useful sort may be mon-
 strously perverted, and this one among others; either
 by being turned toward a different species, or the same
 sex. These indignities to the wise and venerable con-
 stitution of our nature, and to God its author, must
 evidence a brutal stupidity, and an insensibility of
 what becomes rational beings constituted in such a
 system by a wise Providence. The horrid evils to be
 apprehended from such perversions, if they frequently
 prevailed, are obvious; tho' the effects of a few rare
 instances, in a nation generally educated with an ab-
 horrence of such lusts, be not considerable. Were the
 restraints of laws removed, and multitudes depraved
 by bad example, satisfying the worse than brutal in-
 clination, without involving themselves in the toil-
 some education of offspring, monstrous and unnatu-
 ral passions would arise, (as we see both by some histo-
 rians and poets hath happened) which nations unac-
 quainted with such vices can scarce well imagine. Were
 these passions frequent, a country would soon cease to
 be populous; and be infested with wretches as abject
 and depraved in the other faculties and relishes of the
 soul, as they are in this appetite. Such monstrous
 lusts are therefore to be severely restrained in every
 society.

BOOK III. IV. As from the preceding observations it appears
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*The obligation to marriage.* that mankind ought to be propagated by parents united in a friendly partnership for their education; we proceed to consider the reasonable terms of this partnership or contract; since 'tis plain there is a general duty incumbent on all with respect to our kind, which also is strongly recommended by our natural desires, that each one should contribute his part toward the continuance and good education of our race, unless he is engaged in such important services to the publick as are inconsistent with domestick cares, or in such circumstances that he cannot support a family. And without such just excuses it must be unnatural selfishness to decline our part of this necessary trouble.

*The articles of the contract.*  
 1. *Fidelity of the wives.*

I. The first and most necessary article is that the fathers should have their offspring ascertained, and therefore the woman who professes to bear children to any man must give the strongest assurances that she will not at the same time cohabit with other men. The violation of this engagement is the greatest wrong imaginable, as it robs men of what is dearest to them, and the end of all their worldly cares, a certain offspring. In the marriage-contract therefore this is the first article.

*Necessity of modesty in both sexes.*

'Tis necessary that women from their childhood should be so educated as shall best prevent such distressing injuries. 'Tis well known that their fornication before marriage, beside the dissolute habit it may occasion, founds such an intimacy with these persons they have gratified, and subjects their characters so

much to them, and causes such proneness to future indulgences, or takes away their power of resisting their solicitations, that one is not well secured in having his own genuine posterity by marrying women of such conduct. When such previous indulgences are discovered, their character for chastity is lost; nor will men confide in their fidelity after marriage. Thus they are made despicable, excluded from hopes of obtaining any conjugal esteem and affection, and from all reputable condition in life. The guilt therefore of fornication on the part of the man must also be very great, as he for a mean sensual gratification exposes his fellow-creature to a state of infamy, ruins the natural modesty and ingenuity of her mind, and makes her unworthy of that conjugal love and confidence upon which the greatest satisfaction of her life depends, nor can she obtain it but by falsehood and dissimulation, in which she cannot be assured of success.

We are all sensible how grievous this injury is, whether done by violence or fraudulent solicitations, to a sister or child of our own; the guilt is equal when others suffer by it. It must therefore be incumbent on all who have the charge of educating the young of either sex, to habituate them as much as possible to all modesty in speech and action, and restrain every contrary appearance. 'Tis a strange corruption of manners and sentiments in any nation which boasts of maintaining liberty and equality in rights to all their people, that such cruel injuries to any, even of the lowest condition should escape without severe punishment. The

CHAP. I.


*The injury done  
by inducements.*

BOOK III. lowest orders of men feel the joys of conjugal love and of a certain offspring; they have the same natural desires and senses with the highest. The crime therefore of depriving any of them of these satisfactions, and of a decent condition in life, and that for gratifying a mean appetite, must be greater than many of those which subject to capital punishments. 'Tis strange that the party less criminal should generally suffer so much, and no punishment abide the chief criminal, the seducer, and that by the basest arts of falshood and perjury!

Where more dissolute manners prevail, this infamy may be less felt by the women. Some abject creatures, whose lust has obliterated all modesty, and suppressed all the finer sentiments and passions naturally accompanying the amorous impulse, may chuse a dissolute course of life for its mean pleasures and gains. But, where-ever there is any regard to moral virtue, such courses should be severely restrained: as those who follow them always prey upon the weakness of youth, corrupt their manners every way, and create the most ungovernable habits inconsistent with all valuable business in life; and pervert the wise contrivance of nature in our instincts from their natural purposes.

x. Like fidelity  
of husbands.

V. The second essential article in the marriage-contract, is that the husband should confine himself to one wife. 'Tis true the injury by the husband's infidelity is not so great as that by the wife's; he cannot deceive her by imposing on her a spurious brood. But in all other respects the moral turpitude is the

same, and there are the same just reasons why a wife CHAP. I. should demand this engagement from the husband.  The natural passions of the woman as much require a friendly society, and unity of interest in the joint-education of the common offspring as those of the man.

'Tis the plainest injustice and inequality in this partnership, which all the finer sentiments of the heart The iniquity in the contrary practice declare should be an equal friendship, that a man and his offspring should be the sole objects of the woman's affections and tenderest cares, and all her worldly sollicitudes, while his affections and cares are allowed to be divided among other women and their children, and probably wholly alienated from her. Without security for the fidelity of the husband, all her satisfactions in a friendly society, and the preservation and support of her and her offspring, must be very precarious. And thus by the lusts of the husband, leading them either to dissolute enjoyments, or to simultaneous polygamy, for a mean sensual indulgence, one half of the species, which is equally intitled to all social enjoyments and satisfactions with the other, is most injuriously deprived of many of the chief enjoyments of life. All the tender and generous passions attending the amorous instinct in men, declare against such liberty; and point out to them that nature has designed the conjugal state to be a constant reciprocal friendship of two; as these passions are founded on esteem and love of virtue, and where they are heartily raised toward one, cannot admit of any like passions

BOOK III. toward others at the same time. The affections of the husband must be turned away from the former wife and her offspring either by adultery or simultaneous polygamy; the later wife and her children will probably engross them altogether, and the former be unjustly despised.

*The mischiefs  
of polygamy.*

The effects upon the rising generation and upon society will be pernicious even from polygamy, as well as from the dissolute indulgences of husbands. The number of one man's children may be so great, that neither his care can suffice for their education, nor his stock or industry for their support. Many must be neglected, and all the care employed on a few favourites. As providence declares against this polygamy by preserving pretty nearly an equality in the numbers of the sexes, nay rather a surplus of the males; by allowing polygamy, many men must be excluded from all enjoyments of marriage and offspring; and thus disengaged from the natural bonds with mankind, and their natural cares, turn abandoned to all unfociable dispositions. Polygamy obstructs rather than promotes the increase of mankind. A nation is made populous when all the women are kept bearing and nursing of children while they are capable of it. This is done most effectually when every woman has her own husband. When one man has many wives, he will readily neglect the greater part of them, and decline being burthened by their having children. Women in this case too are under the strongest temptations to violate the unequal and most oppressive engagement on their part; and to

take all opportunities of adultery. And hence we see CHAP. I.  
in fact that where this practice \* prevails, the women  
are every way treated as slaves: no friendly regards had  
to their satisfactions; chains, and prisons, and guards  
must confine them, and not the bonds of love or  
friendship.

VI. As the joint charge of educating the common *The contract  
should be perpe-  
tual.*  
offspring requires that the marriage-contract should  
be for a long duration, since women are fruitful for  
one third of life and more, and generally the educati-  
on of their younger children may require the joint  
attention of the parents for many years after the mo-  
ther ceases to bear children: this bond must be into-  
lerable without a mutual friendship. Now there can  
be no real friendship in a partnership merely entered  
into for propagation and the rearing of children, and  
that only for a certain term, and to expire with that  
term; or in one made dependent on contingencies or  
conditions not in the power of the parties. Both par-  
ties are allured into this contract, as into a society  
of love, by the tenderest sentiments of mutual esteem:  
the aim of all sincere friendship is perpetuity. And  
there can be none in contracts only for a term of years,

\* 'Tis true, that in some civilized na-  
tions this polygamy has been allowed to  
the men; but this takes not away its ini-  
quity. Some good men have practised it,  
and perhaps not attended sufficiently to  
the guilt of it, blinded by custom and their  
own passions. But in like manner good  
men in civilized nations have practised the  
slave-trade, or concurred in the custom of  
making one half of their people slaves

without any demerit. Nay some from a  
mistaken piety or love of their country,  
finer principles by far than those which ex-  
cite to polygamy, have practised human  
sacrifices, and even sacrificed their own  
children. No man should therefore con-  
ceive these practices just, even tho' people  
enured to them, or those who even suffer  
by them, do not complain of them as in  
general unlawful.

BOOK III. or such as may be made void by accidents without any fault of the parties. The marriage-contract therefore must be for life, otherwise all true friendship and love must be banished, and that relation of marriage turned into a mere servile bargain for procreation and joint labour.

*Divorces, without crimes, are reasonable.*

Again, how cruel is it on either side to divorce a person full of the fondest affection, on account of a bodily infirmity? How much more barbarous to divorce upon the death of children a fond partner who suffers equally in that misfortune? There is seldom any loss to the publick by the perpetuity of the bond in these cases. If the husband could have children by another woman, that other woman may bear them to another man, for as good purpose to the publick. The view of increasing of mankind would plead more for allowing a divorce on account of any defect in the husband. But there is such barbarity in casting off a dear friend without any demerit, that while there is no danger of a defect of offspring in a state, the allowance of divorces for this reason is not justifiable.

Upon defect of offspring, either by barrenness or the death of children, some sort of \* concubinage would appear more tolerable; but under such restric-

\* The concubinage allowed in the Roman Law, even after the Emperors were Christian, must not be imagined as an allowance to married men to keep other women. It was an allowance only to men who had no wives, both before and after the empire became Christian, to enter into a sort of marriage perfectly just according

to the law of nature, and Christianity too; but such, that the wife and children wanted the honours and civil privileges conferred by the *justæ nuptiæ*. See *Heineccii Antiqu. tit. de nupt.* The like marriages are now in use in some Christian countries.


tions that the concubine's children should not succeed CHAP. I.  
to the wife's portion, or to above a certain share of the  
common stock acquired; and that when the husband  
takes this liberty, the wife might insist on a divorce if  
she pleased, and have a large share of the common  
stock: and this she might more justly insist on if she  
suspected that the want of offspring was not occa-  
sioned by any indisposition of hers. But when one  
considers the difficulty of determining this point, and  
the cruel use which might be made of the licence of  
divorcing for such causes, or taking such concubines,  
the general prohibition of both seems wise, humane,  
and honourable to our species; and no general laws  
can be made free from all inconvenience.

VII. The tender sentiments and affections which *Marriage an  
equal partner-  
ship.*  
engage the parties into this relation of marriage, plain-  
ly declare it to be a state of equal partnership or friend-  
ship, and not such a one wherein the one party stipu-  
lates to himself a right of governing in all domestick  
affairs, and the other promises subjection. Grant that  
there were generally superior strength both of body  
and mind in the males, this does not give any perfect  
right of government in any society. It could at best  
only oblige the other party to pay a greater respect  
or honour to the superior abilities. And this su-  
periority of the males in the endowments of mind  
does not at all hold universally. If the males more  
generally excel in fortitude, or strength of genius;  
there are other as amiable dispositions in which they  
are as generally surpassed by the females.

## BOOK III.

*Nature founds  
no proper power.*

The truth is, nature shews no foundation for any proper jurisdiction or right of commanding in this relation; and, previous to some positive laws and customs, there is no presumption that the parties would stipulate about any. Where positive laws and customs have long obtained, and settled forms of contracting are received, no doubt there is an external right of superiority constituted to the husbands. But this shadow of right is no better than those which any insolent conqueror may extort from the vanquished; or any unjust sharper may obtain by some imperfection or iniquity of civil laws; or by the weakness, or ignorance, or inadvertence of one he is contracting with. To take advantage of such laws or forms, without regard to equity and humanity, must be entirely inconsistent with an honest character. Where husband and wife disagree in points of management; in smaller matters, this deference may be due to the one who has the greatest abilities, and manages the most important affairs, that the other should courteously yield, tho' against his or her private opinion. If ordinarily these superior abilities are in the husband, and his greater strength, and other circumstances of body, fit him to be employed in the more momentuous affairs, it may more generally be the duty of the wife to submit. But in matters of great importance to the happiness of a family, if they cannot agree, nature suggests no other method of deciding such controversies, but a submission to common friends as arbitrators. Domestick matters indeed seem to be divided into two pro-

vinces, one fitted for the management of each sex, in CHAP. I. which the other should seldom interfere, except by  advising.

The powers vested in husbands by the civil laws of Many civil laws very unjust. many nations are monstrous, such as that of life and death. To exercise any such power, or even that of any corporal punishment, must be tyrannical and unmanly. Committing to the husband the whole power over the whole stock of the family, including the wife's portion, is unjust and imprudent, as well as contrary to nature. A wise woman, or any good trustee, retaining a power over a large share of it, would have rescued from beggary the issue of many an unhappy marriage. Affairs of importance should rather be committed to both jointly, so that neither separately could transact validly about them; and a civil judge, or a prudent umpire be appointed to determine important matters of debate between them: or each should retain the power of managing their own shares. In other partnerships no such absolute powers are vested in any one of the partners, nor are they claimed upon any alledged superiority of genius or fortune; nor is there any occasion for them: nor do we see in them frequent instances of capricious injurious treatment given by one partner to another upon any such alledged superiority, as some saucy, imperious, unmanly wretches afford, as the only recompence to their wives for too much credulity, and an incautious imprudent affection to them: nor does the inferior partner in other societies run into such disingenuous and ungrateful con-


BOOK III. duct toward the superior, as some wives who have got the ascendant over their husbands practise; as it were in resentment of the unequal condition in which the laws have placed them, and out of ostentation of their art and spirit, by which they have broke through them.

*Articles which are contrary to nature are invalid.*

The articles above-mentioned are the most essential. Any contracts of marriage upon other terms, such as contracts for a certain term of years, or those suspended upon the event of children surviving; or upon other conditions not in the power of the parties; or polygamy, even in nations where no positive law has prohibited it, are truly contrary to nature and justice. A good man would not think himself free upon the expiration of the term or the death of all the children, tho' he had expressly stipulated these conditions, if upon reflection he observed the iniquity or cruelty in such conduct. And he would upon like reflection think all subsequent marriages while the former wife lived, to be void; unless she consented to his observing these contracts, upon some reasonable security to her and her issue. The subsequent wives thus disappointed would have a right to such compensations as these cases could admit by some provision for the children they had before separation, tho' they were equally in the fault with the husband, in entering into such a contract.

*Impediments of marriage natural and moral.*

VIII. We proceed to further observations on these circumstances which may either make any contract of marriage null and void from the beginning, or free

either party from the bond of a contract formerly CHAP. I.  
valid. 

In the first class is a natural incapacity for marriage through an original bodily defect or other accidental causes. To which one may add perpetual incurable madness or idiotism: nay, some other incurable grievous diseases which are ordinarily transmitted to posterity. Some disorders are so calamitous that it were the interest of society to prevent intermarriages with persons afflicted with them, even though the other party knew them, and consented to run the hazard. When both parties are well advanced in years, and there is no prospect of offspring, there is nothing faulty in the desire of mutual cohabitation and domestic society, where no reasons of prudence or duty toward any children by former marriages prohibit it. But since marriages in a great disparity of years are manifestly contrary to nature, and ought to be altogether prevented or made void by civil law, 'tis an affront to that honourable natural relation, that the name of marriage should be given to any contract between a covetous or a dissolute youth and an old dotting woman, who is courted only for her wealth: or between an old dotard and a lascivious young girl, influenced by the same or worse reasons. The solemn forms and benedictions used on such occasions are full of profanity, and impious mockery of every thing sacred.

Another just impediment making void a contract, Minors incapable of contracting. is the want of sufficient knowledge in minors. 'Tis

BOOK III. surprizing that while all civilized nations, because of the imprudence of youth, have made minors incapable of obliging themselves in any matter of commerce, and annull all such deeds of theirs, or contracts entered into without the consent of parents or guardians, yet in an affair of incomparably greater consequence, the disposal of their persons, and choice of a partner in all important affairs for life, a joint-proprietor of their fortunes, and parent of their children, every boy past fourteen years of age, and girl past twelve, can bind themselves irrevocably without any such consent; nay, contrary to the express commands of parents. This doctrine sprung from that fruitful source of all corruption and superstition, the church of Rome; and for securing it she has taken care to blind men's eyes so as not to use the resources and exceptions justly allowed in other foolish or iniquitous contracts, by cloathing this one with a cloud of the mystical nonsense of a sacrament.

*Their contracts  
are void.*

Common sense would teach that \* all the marriages of such as had not attained to wisdom fit for other commerce should be annulled, where the consent of parents or guardians was not interposed, even tho' consummation had ensued. This law, in appearance severe, is yet the most merciful, preventing the crime rather than punishing it. A woman of chastity not willing to prostitute herself would then listen to no solicitations of minors, nor study to enveigle them. If

\* This was the Jewish law, and the Roman law too, as may be seen *Instit. tit. de nuptiis. et Papius Comment.*

a young man enticed a rash incautious girl with oaths or vows that he would confirm the marriage when he came to maturity, it might be left to the election of the girl's parents or guardians, either to compel him to fulfil them, or to annul the contract, and obtain capital punishment upon the seducer. Such punishment none can call too severe upon such injuries done to families, when we think them just for much smaller ones, which deprive us only of a trifling part of our goods.

IX. The moral impediments or incapacities are these. 1. A prior contract makes void any subsequent one of the like nature with a different person. The law of nature requires that marriages should be publicly known, that no married persons may deny them, or impose upon others, as if they were not married. There is some ground here of distinguishing between an *imperfect contract*, obliging to a future marriage, and a *complete marriage*; as in commerce † we distinguish between a contract founding only a *personal right*, and the full translation of property or of a *real right*. A prior contract about a future marriage should make void a subsequent one of the same kind with a third person; even where the third person knew nothing of the prior contract. The persons guilty of such frauds deserve severe punishment: but an imperfect contract without consummation, should not make void a subsequent consummated marriage with a third person who was not apprized of the prior contract.

*Moral impediments. 1. A prior contract.*

† See book ii. c. 8. § 1.

BOOK III. For in this case one of the two innocent persons who contracted with the fraudulent party, must be disappointed, the defeating of the imperfect contract, upon which no cohabitation ensued, is a much less misfortune than annulling the perfect marriage. If the third party knew of the prior contract, this is a just reason why the marriage should be annulled; the punishment is too light for the fraud. The evils occasioned by such frauds are much more grievous, and more deeply resented than those injuries which subject to capital punishment, and the severest laws against them would be merciful, as they would prevent the crimes.

*Near degrees  
of consanguinity  
or affinity*

X. The nearer degrees of consanguinity and affinity, Christians, and many Heathen nations too, have always looked upon as moral impediments of marriage. The natural reasons commonly alledged scarce seem to have force proportioned to the great infamy and the notions of impiety attending such marriages. The most abhorred kind is that between the ascending and descending degrees. Not only the inequality of years, but the natural reverence in these relations are very opposite to the equality produced by marriage. But greater inequalities of years sometimes do not make marriages either immoral, or even imprudent. And it is not every sort of reverence, due to higher merit or authority, or gratitude due for the greatest benefits, which would be inconsistent with this relation, tho' that of parents seems inconsistent. 'Tis scarce accountable without some natural instinct of aversion to such mixtures, how they have been so

universally abhorred. A monstrous practice received CHAP. I. by one sect in Persia, is no objection to this supposition, which is confirmed by the sentiments of all the world besides.

'Tis argued that brothers and sisters by living together from their infancy would fall too early into such passions, and be less capable of resisting sollicitation, through their great intimacy, were there not a severe prohibition, making such commerce matter of abhorrence. But it often happens that cousin-germans, and remoter relations, are educated together in the same intimacy, and we see no dismal effects from the permission of intermarriages among them. And were these marriages with sisters lawful, one would think the early passions would do no more harm than they must frequently do on other occasions, where young people contract early acquaintance. If there be any natural aversion in this case too, as well as between parents and children, checking the general impulse, it seems not so strong: and we find that such marriages of brothers with sisters have been more received in Heathen nations. There is more of equality in this relation; whereas the long habitual authority exercised by parents, and the reverence and subjection to which children are enured, may possibly without other principles restrain all these amorous inclinations so naturally requiring an equality.

Whatever natural causes there may be for the very general aversions to marriages among the nearer relations by consanguinity and even affinity, 'tis certain Some traditions of a divine law.

BOOK III. there have been such averfions in many nations little civilized, and where we can fcarce imagine that either very artful confiderations of general intereft, or very delicate fentiments of decency have occafioned them. And the abhorrence of fuch marriages was every where much higher than any reafons of expediency or prudence could have occafioned. Hence fome ingenious men conclude that there has been fome\* early divine prohibition, the memory or tradition of which has been preferved among moft nations, in fome more diftinctly, and in others lefs, as there was greater or lefs attention to the purity of manners.

*A plain reafon  
of prudence for  
the prohibition.*

There is one manifef and important reafon of prudence why a wife legiflator fhould prohibit fuch marriages, that were they not reftained and abhorred, the early opportunities would make them exceedingly frequent, and by this means the facred bonds of affection would be too much confined, each family would be a little fyftem by itfelf, detached from others; at leaft as to all the ftronger bonds of affection. Whereas now, in confequence of the prohibition, and the general abhorrence enfuing upon it, or upon any other caufes which may probably concur in this matter, multitudes of families are beautifully interwoven with each other in affection and intereft, and friendly ties are much further diffufed. There may be other reafons in nature not known to us, or not yet fully obferved. A mixture of different families may be ne-

\* This feems one of the beft evidences for the Jewifh tradition of the *Peruſta Nachidamur*.

cessary to prevent a degeneracy of the human race; CHAP. I.  
as some pretend that such intermixtures, or crossing  
the strain by cattle of a different breed, is necessary  
to prevent their degenerating; if we can decently  
make such comparisons.

We see plainly the above-mentioned advantage in The advantage from it.  
the restriction, and scarce any thing grievous can en-  
sue from it. Nature has provided other sorts of af-  
fections among kindred, which are great sources of  
joy, and sufficient incitements to the duties of those  
relations. These considerations justify any legislator  
in prohibiting such marriages: and after the prohibi-  
tion, and the consequent infamy which will attend  
them, nothing but a dissolute lust, with an insensibi-  
lity to all honour, and great inhumanity toward the  
other party whom one must involve in this infamy  
with himself, can move one to break through such  
prudent laws. But that there is not a necessary in-  
variable turpitude or moral impurity in all these mar-  
riages ordinarily called incestuous, antecedently to the  
prohibition of them, must be owned by such as con-  
sider that God laid the immediate children of Adam  
under a necessity of inter-marrying, and for some po-  
litical reasons ordered such marriages on certain con-  
tingencies as were ordinarily prohibited.

Christian states † have in this matter followed the The practice of Christians.  
Jewish laws, prohibiting all marriages in the ascend-

† How far the New Testament confirms and adopts the Jewish laws may be seen in  
the Divines and Canonists. Grotius, Puffendorf, and Barbeyraque have omitted  
little of consequence in this question.

BOOK III. ing and descending lines; and all in the transverse line between such as stand in a relation like to that of parents and children, such as between uncle and niece, aunt and nephew, or grand-uncle and grand-niece; or any of their descendents; and all marriages among collaterals within the fourth degree. And prohibiting persons to marry any one in such relation of affinity by a former marriage, as they could not marry in the like relation of consanguinity to themselves. Marriages in the fourth and all further degrees are allowed.

*Degrees how  
computed in the  
civil and canon  
laws.*

The degrees of consanguinity among collaterals were thus computed, as we see by the civil law. All kinsmen come from one stock: now, “as many generations as have been from the stock in both lines, “so many are the degrees.” Brothers and sisters are in the second; uncle and niece, in the third; cousin-germans in the fourth, and their children are to each other in the sixth. Among the other frauds of Popery, their canonists, to draw more money to their courts for dispensations, encreased the prohibition exceedingly. They preserved the words of the old rule, but changed their meaning by a new method of computing the degrees, according to the persons or generations from the common stock upon one side only, taking indeed the longer line of the two. Thus brother and sister are in the first degree: uncle and niece in the second, and cousin-germans too in the second; and the children of cousin-germans are only in the third; and so cannot marry without dispensation; the chil-

dren of second cousins are in the fourth degree, and these are the nearest who may marry without it. CHAP. I.

XI. These are the impediments which make marriages from the first null and void, according to the Christian and civil law. We next consider the causes of divorce, which frees one or both parties from a bond once valid. These are, as in all other contracts, the violation of any of the essential terms, either by the crime of one party, or by any such event as makes the party utterly incapable of the duties of that relation, when the other did not consent to be bound upon such events. 'Tis manifest that adultery in the wife is a just cause of divorce; so is also that of the husband, since he engages to fidelity to the wife, as he naturally ought to do, for reasons above-mentioned. Nor ought the contract to be suspended upon the condition of offspring surviving.

The adultery of women makes offspring uncertain, and thus does the greatest possible injury; beside its perfidy; that of men is manifest perfidy, and naturally alienates the affections of the husband from his wife and lawful children. It generally diverts him from all domestick cares and honest industry for his family, and contributes to the ruin and infamy of other women. By this practice an uncertain offspring may arise to infamy and misery, without proper education; or if the offspring be sufficiently known to the adulterous father, his proper care of provision for it must be injurious to his lawful children; and may provoke their injured mother to a worse revenge, as she sees such

*The just causes  
of divorce, &c. Adultery.*

BOOK III. perfidy in her husband. Indulgences of this kind with  
 ~~~~~ prostitutes where there is no prospect of offspring, must on other accounts be criminal, as they alienate the affections from the wife, and contribute to that infamous course of life, in which the prostitutes make it their business to divert from marriage, and all sober industry, and cares of a family, and inveigle youth into such vicious habits as are inconsistent with any honourable pursuits. As to that adultery which corrupts the wife of another, no crime can be more horrid, for reasons already mentioned. How much more grievous are such injuries, which cheat men's tenderest affections by a spurious brood, alienate the affections of the partner they have chosen for life, and impose on them a false offspring to inherit all their labours, than any injuries in our goods by stealth or robbery? Sure no punishment can be too severe for them, † and death was justly inflicted by the Jewish laws.

2. *Obstinate desertion, and some settled enmities.*

Another cause of divorce is the obstinate and unreasonable desertion, or refusal of cohabitation, by one party; upon which indeed the other may justly compel to cohabitation by force: but if all hope of satis-

† See Levit. xx. 10. Deut. xxii. 22. The penalties in the old Roman and Grecian laws for adultery, and debauching free citizens unmarried, even without violence, were very high. We find death might be inflicted in the fact. And we see that castration was an ordinary punishment. The old form of prosecuting is not very clear. The *Lex Julia de Adulteriis* allowed the *actio publica* or prosecution by any who in-

clined in the name of the state, and the penalty to the man was *relegation*, or a sort of banishment, and confiscation of the criminal's estate. Constantine made adultery capital. Cod. l. 9. tit. 9. l. 30. The following Emperors abated this severity. Nov. 134. 10. Justinian confined the adulterers for life in a monastery; and continued the capital punishment on the adulterer.


faction that way fails, the innocent party is free from the bond. A friendly society for life is an essential article stipulated on both sides, and the violation of it by one party must set the other free. And for the very same reasons, an implacable hatred or enmity, sufficiently declared on one side, without just provocation given by the other, sets the innocent party free. Thus, attempts upon life by poison or assassination, or false accusation in capital actions, or barbarous assaults often repeated, were deemed in the civil law causes sufficient for a divorce: as was also perpetual madness, as thus the essential articles are violated, or made impossible to be performed, as well as by adultery.*

Marriage indeed differs from many other contracts in this, that other innocent persons, the common offspring, are deeply concerned in the continuance of the contract. It should not therefore be left to the pleasure of the parties to break off the contract as they please. But when through the fault of either side the essential ends of this relation are defeated, viz. the procreating and educating of offspring, and a friendly society for life; the innocent party may be free, if this is more eligible than compelling the other to the duties of this relation; and has a right, which the society should maintain, of making the guilty party by labour or goods contribute in another manner the proper share of charge toward the maintenance and education of the common offspring.

*How divorces
should be made.*

* To deny obstinate desertion to be a cause of divorce or *repudium*, because the innocent party does not put away, but is left by the guilty, is only cavilling about words.

BOOK III.



*by courts of
justice or equity.*

Courts of justice should take cognisance of the violations of this contract in civil society, and that in a more severe manner than in other matters of contract, and redress the innocent at the expence of the guilty. Nay, as in most states, an equitable power is lodged in some court for redressing oppressive contracts, and rescinding them either in part or in whole; it might be equally convenient to lodge in proper hands a power of dissolving such marriages as prove miserable to both parties, either by the fault of both, or by some singular disagreement of their tempers, when upon a considerable trial 'tis found that there can be no hopes of any ease or peace while they cohabit; and both are willing to submit to any terms for a divorce; taking also sufficient precaution for the common offspring, when there is any, out of the goods or labours of both. Such separations indeed should not be lightly allowed upon any smaller contentions, or transient animosities: nay, such penalties and inconveniences should attend them, as would restrain both parties from seeking them for smaller causes; and restrain both from any ill-natured conduct, with design to tempt the other to concur in suing for a separation. If a large share, suppose two-thirds, or an half of the goods of both, or a like proportion of the profits of their labours, were immediately to be adjudged into the hands of some proper trustees for the benefit of their offspring, when they had any; or, if they had none, some large sum, in proportion to their wealth, imposed as a tax to the state, this might prevent the

suing for divorces on trifling causes, or provoking each other designedly by ill usage to concur in such a suit. And new marriages might be prohibited to both for a considerable time, to try if they could return into a mutual affection. If under these inconveniences, they chose to be divorced, to avoid the superior miseries they suffered from this relation†, it would be cruel to deny them this liberty. Where the fault lies chiefly on one side, the penalties or hardships upon a divorce should chiefly be inflicted on the guilty party.

† The passages of scripture upon which divorces have been universally prohibited in all cases except that of adultery, are Matth. v. 32. Mark x. 5—12. Luke xvi. 18. But some prohibitions equally universal are allowed to be elliptical expressions, or to admit more exceptions. Thus, Matth. v. 34, &c. and James v. xii. are allowed to be elliptick, and would have been thus apprehended by those to whom they were addressed, viz. “Your doctors teach that some forms of swearing are obligatory, and others not obligatory; that such and such are obligatory, and others not. (See Matth. xxiii. 16—22.) But I say unto you, swear not at all [without intending to be bound] neither by Heaven, &c.” And then our Saviour shews that all these forms, even those which their doctors denied to be obligatory, are metonymical forms of swearing by God. See *Grotius D. J. B. et P. l. 2. c. 13*. In like manner, we may judge the prohibitions of divorce elliptical, without violating the rule *Exceptio confirmat regulam in non exceptis*. The Jewish doctors allowed many trifling causes of divorce, some one or other of which must have been specified in the bills of divorce, as these bills were often credentials to the women, that it was not for the more infamous causes that they

were divorced. Among the causes allowed, no doubt, adultery would be one. The full sentence then may be this. “Whoever puts away his wife for any of the reasons [allowed by your doctors] except that one of adultery, and marries another, commits adultery.” This does not exclude other just causes, as appears by 1 Corinth. vii. 15. which declares the Christian party to be free from the marriage-bond upon the obstinate desertion of the infidel. The Jews would not make this a cause: they treated their wives like slaves: it was only husbands who divorced. Upon desertion they would recover their wives as they would their cattle, and might be as little solicitous about their affections as those of their slaves. From the figurative stile of the scriptures one may perhaps also extend the meaning of adultery to other faults; to the alienation of heart by obdurate hatred or ill-nature. Such dispositions defeat one great end expressed by God in the first institution, and expressly stipulated and promised mutually by the parties, that of being *mutual helpers* in this partnership for life. Genes. ii. 18, and 24. many other crimes, and much insolent treatment are as direct violations of the essential articles of this contract as adultery.

BOOK III.

XII. Were the corruptions of such as profess the best institutions chargeable upon the institutions themselves, or their author, nothing could be more opprobrious to Christianity than the laws received in many Christian states, about fornication, adultery, and divorces. The Scriptures indeed recommend all purity of manners, and represent all contrary vices in their odious colours, without any disguise: but in many Christian states, fornication of the worst sort, the debauching free citizens formerly innocent, by all frauds and perjuries, is no civil crime, unless force has also been used; as if the laws allowed all who pleased to practise all manner of lewdness. The ecclesiastick punishment is a jest to those who have made tolerable advances in impudence. Nor has adultery any proper civil penalties on either party. In some countries a pecuniary fine is sometimes given as a compensation of damages: no person is incapacitated by such crimes, for any honours or offices civil or military, or worse received in his pretensions to any station. And yet God and the world sees how certain trifling ceremonies and modes are enjoined by ecclesiastick laws, and adopted by the civil, the non-compliance with which, tho' from a principle of conscience, or some opinion that they are offensive to God, shall exclude a man from all hopes of preferment, or any reputable offices in his country.

Again, tho' adultery is allowed a just cause of divorce, such proofs of it are required, as it is impossible generally to obtain. Whereas, since the mutual satisfaction of the parties in this relation, if they are


faithful in it, must be of more importance than the cultivating any other friendship; other intimacies should certainly yield to it, as far as they are inconsistent with it, which however they seldom are to people of virtuous intentions. If therefore either party suspects the other of too great intimacy with any third person, and intimates this suspicion before witnesses, all future voluntary conversation of the party thus admonished with the third person suspected, in any retired place without witnesses, should be deemed a proof of adultery. The most friendly conversation with one we honourably love may be obtained sufficiently in publick places, or in such where we are in the view of others.

Again, when the canon law allows a divorce for adultery, which is the only cause it sustains, neither are the guilty punished as they ought, nor justice done to the innocent. Both are alike restrained from marriage, against all common sense. If the guilty are allowed to live in the state, they are perhaps justly hindered from marrying the partner of their guilt; lest people should commit adulteries with this view. But they should not be left more exposed to that vice to which they already appeared too prone. Other punishments should be inflicted: and it would be more proper to compell them to marriages with persons formerly infamous, and of sufficient lust for them, to prevent their corrupting others. Restraining the innocent party from the satisfaction of marriage and offspring is a manifest iniquity, a new and monstrous injury.

CHAP. I.

Adulteries, in the canon-law.

BOOK III. The original of these laws is easily found in history.

 *The causes of them in history.* During the early persecutions, some melancholy notions of sanctity in all sufferings, and of impurity in many of our most innocent enjoyments generally prevailed. Worldly business was thought inconsistent with the heights of piety, tho' piety is never more sincere and lively than when it engages men in all social and kind offices to others, out of a sense of duty to God: and * just philosophy, as well as religion, could teach that true devotion, tranquillity, resignation, and recollection too, may be practised even in a court or camp, as well as in a wilderness. But celibacy was early admired as sacred, and the chastest marriage was reputed at best a state incapable of the highest purity. The ecclesiasticks affecting to be examples of perfection, both generally practised celibacy, and recommended it. When by the establishment of Christianity they got access to wealth and power, they grew as corrupt as the layety; and yet, not to renounce their old known maxims, and to retain their authority and veneration with the layety, they must keep up this shew of sanctity, and of disengagement from the world, tho' contrary to the express doctrine of the apostles. Celibacy was enjoined on the clergy in some early councils, and these injunctions often repeated in corrupt ages, while they were generally framing one canon after another to prevent their infamy by keeping concubines and whores, and with little success. Under such restraints from lawful en-

* See Marc. Antonin. in a variety of passages.

joyments, no doubt, much debauchery was secretly CHAP. I.
practised by a corrupt generation, supported in ease and luxury: and by their artifices, in the eleventh and twelfth centuries, the ages of ignorance and superstition, the cognisance of matrimonial causes, and of all venereal crimes, was wrested from the secular judges, and assumed by the spiritual. The punishments they appointed were some useless and often trifling penances, and donations to ecclesiasticks. The former laws were too severe for their purposes. Adultery was the most convenient crime for such clergy, with less danger of discovery, and free from the charge of maintenance to the spurious offspring. The proof requisite for conviction must be made difficult, or almost impossible; and all prosecutions must be discouraged. The injured prosecutor must be restrained from marriage, after divorce obtained upon the fullest proof. It must have been monstrous, and even shocking to a Popish nation, to have relaxed all penalties upon adulteresses and their gallants, without a like lenity to the adulteries of husbands. Thus the punishments were made light to all. And the clergy well knew their own superior advantages, by their reputation for sanctity, and their access to great intimacies by confession, and other religious artifices.

XIII. The general duties of this relation may be abundantly known from the ends of it. As this state *The general duties in this relation.*
should be a constant friendship for life, it must require the greatest previous caution in chusing partners, who by their virtue, good-nature, prudence, and suitable

BOOK III. tempers, will make this relation an inward friendship
 founded on sincere esteem. 'Tis incumbent on all who enter into it, to acquire an habit of good-nature and self-command, as well as knowledge of the affairs of life. In chusing a proper person, the advice of friends should have the greatest weight. The affections of the young are often engaged without deliberation, and, when they are so, they cannot judge calmly and impartially.

'Tis of great use to be previously well apprized of the infirmities and imperfections of the very best of mankind, and not to let our imaginations swell with airy hopes of every thing calm, and serene, and prudent, in the whole deportment of each other. The tempers of the young often appear such to each other, while the strong mutual passion possesses them, and they are put to no trial by the troubles and disappointments of domestick affairs: and then every little ruffle or opposition is matter of surprize and offence. But if we are well apprized of the weakneses and sudden passions incident to the best tempers, we shall bear them patiently from one of prevalent goodness, and have far less vexation or disgust from the common occurrences of life: and every good and lovely disposition, every act of self-government and condescension, will be mutually the more esteemed, and the more endearing.

*The scheme of
 Plato considered.*

XIV. The refinements of * Plato on this subject cannot be passed in silence. He observes the many in-

* De Repub. l. 5.

conveniences arising from the narrow bonds of wed-
lock and parental affection: that men confine their
views and affections to a few objects, and grow negli-
gent of more extensive interests, while they are warm
in pursuit of those of their children and kinsmen; that
vices are overlooked in them, and the severity of dis-
cipline relaxed: innumerable contentions are raised
by jealousy, and the clashing interests of families.
Wealth is often heaped up for the most worthless
members of society, and men are promoted to honour
and power from these narrow motives, and not in con-
sequence of virtue and merit. He proposes therefore
a scheme for the *supreme order in his state, by which,
as all property is excluded, so are all these narrower
ties of affection. By his plan, no man was allowed
a wife to himself, nor could father or mother know
their own offspring, and scarcely know each other.
All children were immediately after birth removed to
publick nurseries, and thus made children of the state.
Whoever reads this plan, will find many of the as-
persions cast upon it to be unjust. Never was there in
any plan less provision made for sensual gratification.

The grand fault of it seems to be, that it is not
adapted to human nature, and to the affections which
God has implanted in it. We shewed † already, the
superior evils to be dreaded from community of
goods, and this community of offspring would occa-
sion much more. And first: That necessary care and
labour in the rearing and education of children, now

*The just objec-
tions against it.*

* The θυλακες, or guards.

† *P. conjugibus et liberis, pro aris et fœcis.*

BOOK III. born by the parents with pleasure, through their fond affection, would be an unsupportable toil to others, and would seldom be faithfully executed. Again, life would be robbed of its sweetest enjoyments in the tender conjugal and parental affections, which could never be compensated either by loving a nation at large, or by particular friendships. And for particular friendships, which no scheme can exclude, even tho' no ties of blood were known, while our hearts continue as God made them, they must produce many of those dreaded evils, unless mankind were generally much wiser in their choice of friends, than in the marriage choice, or in parental cares. Do not we all see that these factions which often tear states asunder are very little influenced by ties of blood, and frequently make men counteract them? they arise from ambition and the different opinions about the proper administration of affairs, and from admiration and zeal for favourite characters upon whose fidelity and wisdom the several parties depend. Why then exclude the highest satisfactions of life, those of mutual love in such tender relations, which have always been found the chiefest springs of industry, and an incitement to * zeal for our country's defence, and to all honourable services?

Higher knowledge and virtue must be introduced, and our natural affections suppressed, before industry, activity, labour, and dangers can become agreeable from a calm extensive affection alone, without any of

these tender bonds; and without the hopes of exercising, according to our own judgment, liberality, generosity, and munificence, and contributing to the happiness of such as are peculiarly dear to us. And yet a lower degree of wisdom and virtue in the legislators of any state might contrive * such laws about education, a censorial power, elections to offices and honours, and successions to the fortunes of parents, as would generally prevent the worst of those evils Plato dreaded; and that at a much less expence than that of banishing all the tenderest joys of life in the natural relations of marriage and families. The end of civil polity, as † Aristotle observes, among his just censures upon this scheme, is not mere unity and safety, but the general happiness of a people.

C H A P. II.

The RIGHTS and DUTIES of PARENTS and CHILDREN.

THE desire of posterity is natural to mankind, The natural instincts show the rights. tho' in some instances it is restrained and overpowered by other desires. Such is the constitution of nature, that human offspring long continues in a very infirm state, needing the continual assistance and care of others, both on account of its weakness, and its want of all knowledge of the dangers it is surrounded with. A great deal of information and instruction,

* For this see *Xenoph. Cyropædia. More's Utopia. Telemachus, and Harrington's Oceana.* † See *Aristot. Polit. l. 2.*

BOOK III and many restraints upon their appetites, are necessary for preserving children to maturity, and fitting them for acting their part tolerably in human society. For all this indigence nature has provided a supply by implanting the tenderest affection in the breasts of the parents, exciting to and sweetening this long laborious attention. And as we are a rational species capable of fore-thought, and gathering prudence by time and observation, this affection is made as lasting as our lives; since children during the life of their parents may need their advice and counsel, and be exceedingly profited by them in many other respects. And the parents during life may reap new pleasures; by means of this strong and constant affection, from the prosperity of their children. Thus nature has constituted an amiable society, a permanent relation, by these lasting affections in the parents, and by the strongest motives of gratitude presented to the minds of the children to confirm the natural affection on their parts.

*The Love of
Children and the
parental affection
is found in the
lower.*

The intention of God in this matter, is manifest by this whole contrivance. The parental affection suggests the permanent obligation, on parents to preserve their children and consult their happiness to the utmost of their power. The weakly and ignorant state in which children long continue, suggests the parents right to an unlimited power of directing their actions for their safety and right education, and yet makes this power easy and safe to the children, by restraining all unnecessary severity. The parental af-

fection itself, when the children come to mature CHAP. 2. strength and knowledge, must procure the satisfaction of liberty to them, when they are thus capable of enjoying it, and exerting their own wisdom in the business of life; and yet will continue to them all the advantages of the counsel and other kind offices of parents. The children, on the other hand, as soon as they can know any thing of moral obligation, must see their duty of subjection and obedience in their early years, their duty of gratitude, and of making all returns they can to such tender benefactors; particularly, of complying with their inclinations, as far as they can consistently with their own natural satisfactions in life, nay, sacrificing, in their turn, to their parents, much of their own inclinations or pleasures not absolutely necessary to their happiness. They must discern the sacred duty of supporting their aged parents, in their second infirmity or childhood, and bearing with their weakly humours and peevishness; as parents from a fond disinterested affection long bore with such manners of theirs in their childhood; without which they never could have attained to maturity; nor could any human laws or vigilance of civil governors have ensured their preservation, or compelled their parents to that faithful and laborious attendance to it.

II. The manifestly disinterested nature of this affection shews at once the nature and duration of the parental power. The foundation of the right is the weakness and ignorance of childhood, which makes it absolutely necessary that they should be governed a long

*The nature
of parental
power.*

BOOK III. time by others: and the natural affection points out the parents as the proper governors, where no prudent civil institution has provided more effectually for their education. The generous nature of this affection shews that the power committed by nature is primarily intended for the good of the children, and, in consequence of their happiness, for the satisfaction also, and joy of the affectionate parent. The right therefore cannot extend * so far as to destroy the children, or keep them in a miserable state of slavery. When they attain to mature years, and the use of reason, they must obtain that liberty which is necessary to any rational enjoyment of life. The parental affection naturally secures to them this emancipation, as the reason God has given them intitles them to it.

*Tis common to both parents.

This foundation of the parental power plainly shews that it equally belongs to both parents; and that the mother is wronged when she is deprived of her equal share, unless where she has voluntarily consented, in dependance on the superior wisdom of her husband, to submit all domestick matters to his last determination. But whenever the father does not interpose, or is absent, or dead, the whole right is in the mother. This whole power, as it is intended for the preserva-

* The doctrine of Hobbs on this subject must move the indignation of any one who has the common feelings of humanity, tho' some parts of his reasonings are used by others inadvertently in establishing some favourite schemes. Hobbs makes children a piece of goods or chattels, first occupied by the mother, and absolutely in

her right, because she could have provoked abortion, or strangled them in the birth. But in marriage, she and all her rights are subject to the husband as the stronger, or in virtue of her consent. And thus the absolute *patria potestas* is constituted for life, so that the father may kill, sell, or enslave his posterity for their whole lives.

tion and good education of children, can only extend CHAP. 2.
 to moderate chastisements, such as are not dangerous
 to life: and its highest punishment must be abdicati-
 on or expulsion from the family. 'Tis manifest too,
 that its nature, intention, and duration are quite dif-
 ferent from that of civil power, to which large num-
 bers of adult persons must be subjected continually,
 for a common interest of the whole society; which too
 must extend to all punishments and violence that may
 be requisite for the common defence and security;
 as it is not founded on any particular affections im-
 planted by nature toward a few, but upon the gene-
 ral affection; and contrived by men for the common
 interest of a large society.

To found this parental power on mere procreati-
 on, is a foolish extending of some maxims received
 about property to the most foreign subject imagina-
 ble. The bodies of children were formed in their first
 state out of some parts of the parents bodies; but not
 by any wisdom or art of the parent; nay sometimes
 contrary to their desire and intention. God who gave
 parents these dispositions subservient to procreation,
 formed both the bodies of the children and the pa-
 rents, and so destined this order of procreation, as to
 shew the rights and duties of both parents and chil-
 dren; and the soul, the principal part, is his own im-
 mediate workmanship. So that children cannot be
 deemed accessions or fruits going along with the pro-
 perty of their parents bodies. They commence rati-
 onal beings, parts of this great system, with the same

*'Tis not found-
 ed on mere pro-
 creation.*

BOOK III. natural rights which their parents enjoy, as soon as they have reason to use them. Generation no more makes them a piece of property to their parents, than sucking makes them the property of their nurses, out of whose bodies more of the matter of a child's body is sometimes derived, than was from both parents. On this footing the proprietor of any cattle by whose milk and wool they are fed and cloathed for any number of years would still have a stronger claim. The parent who exposes his child, or neglects his education, has no right of power; and whoever voluntarily undertakes the necessary office of rearing and educating, obtains the parental power without generation. Generation points out the persons on whom this duty is incumbent, by the natural affection accompanying it; and these should not be excluded from discharging it, and enjoying the power requisite for it, except for a superior benefit to the child by some finer contrivance for education. But when the parents are dead, or wickedly decline this charge, whoever undertakes it, has the whole parental power.

The rights contained in it.

This grand end of the parental power shews that it includes few of those rights contained in the *patria potestas* of the Romans. The child is a rational agent, with rights valid against the parents; tho' they are the natural tutors or curators, and have a right to direct the actions, and manage the goods of the child, for its benefit, during its want of proper knowledge. If goods are conveyed to a child, by donation, legacy, or inheritance, the parents are not the proprietors;

nor have they a right to more of the annual profits CHAP. 2.
 than compensates all charges and labours usefully employed in the child's maintenance and education. The
 same may be said of any acquisitions which a child
 of singular ingenuity and dexterity might make before
 it came to the full use of reason, which sometimes
 might far surpass all the prudent charges of its
 education.

III. So far concerning the proper parental power, ^{The right of}
 which naturally expires when children come to the ^{the head of a family.}
 full use of their reason. There are two other sorts of
 power generally succeeding to it, but of a very different
 nature, and upon different foundations; the one,
 that of the *head of a family*; the other, that authority
 or *influence*, rather than power, which a parent
 should enjoy during life over children when they are
 adult, and live not in the parents family. As to the
 former, while one supports in his family adult children,
 or any friends, 'tis ever expected that they should
 conform themselves to the order of the family, or
 that rule which the master of it ordinarily claims: and
 while they voluntarily chuse to stay in it, they are
 justly presumed to have consented to this subjection.
 If they did not consent, they should not have taken
 this support or these conveniences. This power is
 solely founded on the consent of such as are subject
 to it, declared by their voluntary continuance in the
 family. This power cannot be of great extent: little
 severity is requisite for the order of a virtuous family:
 the last punishment seems to be exclusion from

BOOK III. *it.* If crimes are committed which deserve severer punishment, the master of the family, or others, have the same right of punishing as they would have had tho' the criminal had never lived in this family. No right to inflict the severer punishments arises from this state or relation. If the custom prevail'd in any age that masters of families assumed higher power over their domesticks; and if adult persons who knew this, voluntarily remained in these families, thus consenting to the power assumed; they might, no doubt, thus constitute as high a power over themselves as that ordinarily assumed by civil magistrates, and thus make a family a little monarchy.

*The filial duty
is perpetual.*

IV. The other power, or weight and influence rather, is that which parents should always retain over children, even when they are supporting themselves in separate families. This is still more remote from any civil authority or proper right of coercion, or of annulling or invalidating any deeds of the children. It is no more than a claim founded on strong bonds of gratitude, and all the generous sentiments of children, and the deference due to the sacred order of nature; which must incline them to gratify, as far as they can, and comply with the inclinations of such kind benefactors, who with such patience and lasting tenderness supported them in their infancy, and still pursue them with the sincerest affections. It must be highly ungrateful in children, not to consult their satisfaction in their old age, or to add to the usual distresses of that state of life; or to decline sacrificing

their smaller or less necessary interests or pleasures to those of such kind benefactors and faithful friends. CHAP. 2.

In particular, children are sacredly bound to consult the inclinations of parents in such matters as are of high importance to the parents as well as to themselves; such is their marriage, from which those are to issue who must represent their parents, as well as themselves, and are often as dear to the remote as to the immediate parents. Marriage indeed is of more importance to the happiness of the parties than to that of their parents; and consequently parents can have no right of compelling the parties contrary to their inclinations, to the destroying of all the satisfaction of their lives. And yet, on the other hand, a child's marrying with one unalterably disagreeable to his parents, must prevent almost all agreeable society with the parents. An high deference therefore to the parents in this matter must be due from the child even in mature years and judgment. It would be a cruel return for all the care and constant affection of the parents, by a precipitant marriage to cut off all their satisfaction in those who should be dearest to them. If the child judges the parents aversion to be unreasonable, all proper representations should first be made, and arbitrators called in, that wise friends may conquer the prejudice. Without first trying such methods, it is cruel and ungrateful in a child, to take this important step against the parents consent. If these means are tried, and the aversion judged unreasonable by arbitrators, and the child's affections

BOOK III. so engaged that a disappointment must make life miserable, the child may use its liberty for its own happiness; and must by all future dutiful conduct study to conquer the parents prejudice.

*Duty toward
the weak or froward.*

As the sacred bonds of parental affection are seldom removed or broken altogether by the undutiful conduct of children; so a good man would make the bonds of nature on the other side so strong in his heart, that no provocation should break them. This deference or reverence a good man would pay to the order of nature, that he would retain a stronger goodwill to the very worst parent, one who had ruined the stock of the family, or even exposed himself in his infancy, than toward a stranger of like character. A child come to maturity, as far as the laws of society will allow, may justly stop a parent in those ruinous courses. And yet it is still amiable to shew a dutiful affectionate disposition in such a relation, as far as the safety of our family or our country will admit: to be obliging even toward the evil and the froward, out of respect to the venerable order of nature, where there's no merit in the immediate object. If there be nothing desirable in the conversation of parents, nor hopes of making any amendment of their tempers, yet it is still lovely in a child to give them support, and consult their ease, as far as he can without encouraging them in their vices, or pernicious follies.

*Pl. for pa-
rental power ex-
tends.*

V. As the parental power naturally extends to all the means requisite for the rearing and education of children, it must contain several rights over them of an

unusual kind, in cases of great exigence. Whatever a parent in tolerable circumstances expends in the education of his own children, when nothing is declared to the contrary, is indeed justly deemed a donation, without a right to demand any restitution, except he falls into great distress; and only under this condition, that he shall receive support from them, if he needs it in old age. Nay, from the common intention of parents in their acquisitions, the children are a sort of joint proprietors, tho' the parent has the administration of the whole. Where children indeed have fortunes left them by others, there is no iniquity in a parent's charging the prudent expences made on such children, as a debt on their fortunes; when his own reasonable ease, or the condition of his other children requires such conduct. A parent must have a right also to commit the care of the education of his children to persons of better abilities than himself, or of more leisure for it: or of giving them in adoption to others who can make better provision for them. These are ordinary parental rights. But in cases of great straits a parent has a further right of transferring to another his claim of compensation for the past charges he has been at, and of binding the child into any humane state of servitude for such a term of years, that his labours may compensate these charges, and those of his annual support during his service; but ever with a right of redemption by himself or any friend who would defray these charges. This contract is sometimes necessary for the parents support, and

BOOK III. sometimes a prudent office for the child, by which he is bound, as any minor is, by a prudent deed of his tutor; and his obligation is one of these called *quasi ex contractu*, of which formerly. But as no parent can transfer a greater right over his child than he has himself, this can be no foundation for perpetual or hereditary slavery. Such a contract is so far from an useful office, or a *negotium utile gestum*, that it is manifestly iniquitous, and produces no obligation.

Civil Power is
on a quite different
foundation

The power of a state over its members is upon a quite different foundation, when numbers are once associated for a common interest, where each one is secured at a publick expence in the possession of all his rights, and enjoys for himself and posterity protection of laws and magistrates, is defended by armies, and obtains the innumerable advantages of a civilized life: for these extensive interests of multitudes, it may be just to compel them to undergo the greatest dangers, nay to run upon certain death. Minors enjoy the same advantages with the aged, and thus are in justice subjected to the state, previously to their own express or tacit consent; as they have shared from their birth of these advantages, and in consideration of them are bound to contribute any reasonable services they are capable of, toward the preserving and continuing such beneficent associations: of this, more hereafter. It is however scarce just or prudent to enlarge the parental powers by civil laws. The powers constituted by nature are sufficient for the purposes of education. The parent is but an improper deputy magistrate, for the

execution of justice over his children, for many obvious reasons: and granting him a power to kill, expose, or sell his child into perpetual slavery, without any demerit of the child's, is a monstrous iniquity. CHAP. 3.

C H A P. III.

The DUTIES and RIGHTS of MASTERS and SERVANTS.

I. **A**S soon as mankind were considerably increased in numbers, and the more fertile clear lands occupied, many accidents would occasion that a great many would have no property, nor any opportunity of employing their labours on goods of their own for their support: and many on the other hand who had much property would need the labours of others, be willing to support them on this account, and give them further compensation: this would introduce the relation of master and servant. Whether in the earliest ages men entered into such contracts for life, or only for a certain term of years, is not of much consequence. The rights and duties in this relation, will better appear from the following considerations.

1. The labours of any person of tolerable strength and sagacity are of much more value than his bare maintenance. We see that the generality of healthy people can afford a good share of the profits of their labours for the support of a young family, and even for pleasure and gayety. If a servant obliged himself

The occasion of this relation.

The chief maxims of natural justice about this relation.

BOOK III. by contract to perpetual labours for no other compensation than his bare maintenance, the contract is plainly unequal and unjust; and being of the onerous kind, where equality is professed on both sides, he has a perfect right to a further compensation, either in some *peculium*, or little stock for him and his family, or in a humane maintenance for his family.

2. Such a servant, whether for life or a term of years, is to retain all the rights of mankind, valid against his master, as well as all others, excepting only *that* to his labours, which he has transferred to his master: and in lieu of this he has a right to the maintenance as above mentioned, or to the wages agreed on. If by custom masters assume any reasonable jurisdiction over their domesticks, not inconsistent with their safety and happiness, the servant, by voluntarily entering into the family, is deemed to have subjected himself to this jurisdiction; even as a foreigner who resides in a state, subjects himself to the laws of it as far as they relate to foreigners.

3. Where one has not transferred a right to all his labours, but only engaged for work of a certain kind; he is obliged to that work only; and in other respects is as free as his master. In none of these cases can the master transfer his right, or oblige the servant to serve another, unless this was expressly agreed on in the contract. 'Tis of high consequence to the servant, what sort of master he serves. One who consented to serve a person of humanity, or who had less severe work to employ him in, must not be deemed

consenting to serve any other person of a different temper, or who may require severer labours. CHAP. 3.

4. Men may justly be placed in a much worse condition of servitude, in consequence of damages injuriously done, or of debts incurred, which they have by their gross vices made themselves incapable of discharging. The person whom they have thus injured has a perfect right to compensation by their labours during their lives, if they cannot sooner discharge the claim. A criminal too, by way of punishment, may justly be adjudged to perpetual labours of the severest sort. In these cases, a power is founded solely for the behoof of others, to make all the profit by their labours which they can yield. Whatever humanity may be due to such unhappy servants, as they are still our fellow-creatures, yet the master's power and right being constituted only for his behoof, it is naturally alienable without their consent. But, still, in this worst condition of servitude, neither the criminal, after he has endured any publick punishment which the common safety may require, nor much less the debtor, have lost any of the natural rights of mankind beside that one to their own labours. If they labour as far as they can, they have a right to obtain support. Nay, they have a right to defend themselves by violence against any savage useless tortures, any attempts of maiming them or prostituting them to the lusts of their masters, or forcing them in any worship against their consciences. They can acquire rights by contract or by any legal deed of conveyance by others,

*The foundation
of slavery.*

BOOK III. which may be profitable to them in extinguishing the debt, or compensating part or whole of the value of their labours, where the labours are not enjoined as a part of the exemplary punishment. In particular, they acquire rights by any deed of the masters remitting to them any part of their labours.

*Liberty too much
favoured in some
nations.*

As this sort of slavery has a just foundation, some nations favour liberty immoderately by never admitting the perpetual servitude of any citizen. And yet perhaps no law could be more effectual to promote a general industry, and restrain sloth and idleness in the lower conditions, than making perpetual slavery of this sort the ordinary punishment of such idle vagrants as, after proper admonitions and tryals of temporary servitude, cannot be engaged to support themselves and their families by any useful labours. Slavery would also be a proper punishment for such as by intemperance or other vices ruined themselves and families, and made them a publick burden. There might be a trial first made, according to the Jewish custom of servitude for seven years; and then they might be allowed their liberty, in case they had acquired an habit of diligence; but if not, they should be adjudged to slavery for life. It might also be a more useful punishment for many other crimes than those commonly appointed.

*The Grecian
and Roman cus-
toms are quite in-
defensible.*

II. As to the notions of slavery which obtained among the Grecians and Romans, and other nations of old, they are horridly unjust. No damage done or crime committed can change a rational creature

into a piece of goods void of all right, and incapable of acquiring any, or of receiving any injury from the proprietor; unless one should maintain that doing useless mischief, and creating excessive misery unnecessarily, can tend to the general good; and occasion no diminution of the happiness in the system, which is contradictory in the very terms. CHAP. 3.

Captivity in war was almost the only occasion of introducing this slavery; and we shall inquire how far any right of the conqueror can entitle him to make captives and their descendants perpetual slaves, or to detain them perpetually to labour at the pleasure of others. For as to other miseries of slavery, according to the Grecian and Roman customs and laws, nothing can justify them. *Captivity in war the only occasion.*


Here, first, it is amazing, that wise and civilized nations, abounding with sentiments of humanity and virtue on other occasions, and no strangers to the inconstant fortune of war, should ever have introduced such cruel custom, which upon many accidents may bear as hard upon their own citizens as upon their enemies, upon those who fought for the just cause, as well as upon those on the injurious side, and may as severely affect the publick-spirited and the brave, as the selfish and the cowardly: Nay, these latter generally keep themselves out of such dangers. Must not all the sentiments of compassion and humanity, as well as reflection upon the general interest of mankind, dissuade from such usage of captives, even tho' it could be vindicated by some plea of external right? *The system very cruel and imprudent.*

BOOK III. Again, By violent occupation no man can acquire any right unless he had a just cause. Without a just cause, whatever he takes, he is bound in conscience to restore. An agreement of nations seems indeed to have introduced an external right in favour of neutral states and their subjects, who by any plausible title have obtained any of the spoils or captives in war, from either of the hostile parties, so that the old proprietors cannot claim them from the neutral state, upon any pretence of the justice of their cause. But while the captures remain in possession of the captor or his countrymen, if their cause was unjust, the old proprietors may justly retake them; until by some treaty or consent of theirs, or of their governors, by whose deeds they are bound, they relinquish their claim.

*Not justifiable
even in a just
war.*

III. But suppose captives are taken by those who have a just cause: nothing can be demanded of them in ordinary cases, but either by way of punishment, and security against like offences for the future, or of compensation of damage. Now perpetual slavery cannot be justly inflicted on the generality of the subjects of a state which engaged in the most injurious wars on either of these accounts.

First. One fifth of the subjects never can be guilty when a state makes an unjust war. In a pure democracy, where all heads of families vote equally, yet the women, the minors, and the servants, have no share in publick counsels; and they are more than four fifths of any people. And how seldom are democratick assemblies unanimous? in most other forms,

not one in an hundred contributes to the injustice CHAP. 3.
by any counsel or deed of theirs, or could prevent it. 
The subjects pay taxes, which are exacted by law, not knowing to what uses they are applied. To refuse them, would occasion their being extorted by violence, to their own loss, and would not prevent the war. Grant they knew the war to be unjust, their dissent, or their refusal of taxes would not prevent it; and if they falsely imagine it just, their errors about political matters are often invincible; they follow such specious reasons as their governors represent: and the bare approving an unjust action upon false information can be no fault in him who has no opportunity of better information. No political union can subject a people to punishment for that guilt of their rulers which they did not advise them to, nor occasioned by any action or omission contrary to their duty.

Again. The main end of punishment, viz. the deterring unjust men from like injuries for the future, is Not fit for the ends of punishing.
not naturally obtained by punishing innocent subjects. This has very little effect upon wicked princes or governors. The effectual and natural punishments would be such as were inflicted on the unjust governors themselves, who are the causes of the injuries complained of. No punishment is just without some antecedent guilt in the sufferer: other evils justly inflicted sometimes on the innocent, come under another notion.

As to security against like offences for the future; Or of future security.

BOOK III. those alone are bound to give it in all ordinary cases, who have been criminal, or contributed to the injury by acting or omitting contrary to their duty. And all the security obtained by enslaving the captives and their posterity, can be generally obtained in a much more humane method. They and their goods taken may be detained with the captors, till a just peace is obtained, they may be obliged by their moderate labours for some time to increase the wealth of the injured state, and if they can be convinced of the justice of our cause, they may be settled with us as subjects, enjoying all the natural rights of mankind; nay, be naturalized, by which the same diminution is made of the enemy, and as great accession made to that of our nation, as by their slavery.

Captives seldom bound to compensate damages.

2. As to the second plea, the compensation of damages; none are naturally bound to this, who did not contribute to them, by acting or omitting contrary to their duty, nor received profit by them. Now, this is the case of subjects for the most part, when their rulers are making the most injurious attempts upon their neighbours.

As to that plea, that “ he who by any contrivance, “ or any goods acquired for his own benefit, or by “ any office constituted for that end, does some detriment to others, * should either compensate the “ damages, or, on the other hand, give up the contrivance or goods, and surrender the person who by

* This is the natural foundation of the *actiones noxales et de pauperie* in the civil law ff. 9. t. 1. *Si quadrupes pauperiem &c.*

“ abuse of his office did the damage.” This may hold CHAP. 3.
 against the original citizens who chose the unjust go-
 vernors, or constituted such a plan as naturally excites
 to injuries, or against any citizens who can either re-
 strain or turn out their magistrates. But even in those
 cases, it should be left to the option of the citizens
 now taken captive or conquered, whether they will
 quit supporting their unjust governors, and deliver
 them up if they can, and enjoy their old liberty; or
 compensate all damages, and give proper security,
 such as wise arbitrators shall appoint, against future
 injuries, and retain their governors.†


IV. If conquerors had any regard to justice, we *Whom conquerors should punish.*
 should oftener see them insisting on such delivery of
 the unjust governors, and their counsellors, and mi-
 nisters, to those they had wronged, and the innocent
 people left to chuse either a new form of polity, or
 better administrators of the old one. But this plea of
 compensation must be a vain pretence when 'tis used
 after full compensation is taken by force, or offered by
 the party distressed; as it would generally be offered by
 any state, rather than the innocent subjects should uni-
 versally lose their personal liberty, or the state become
 a province to the conqueror. Without any of this cru-
 elty full compensation of damages, and sufficient se-
 curity against like injuries, such as prudent arbitrators
 would appoint, might always be obtained by the vic-
 torious. These considerations abundantly shew how
 injurious and cruel it must be to enslave the common

† See c. 6. of this book.

BOOK III. subjects of any state, with their posterity, on account
 of any unjust war their governors had been engaged in.

*What equitable
 pleas for such as
 bore arms in an
 unjust war.*

As to those who bore arms, whether as common soldiers or inferior officers, but had no share in the publick counsels; they are generally invincibly ignorant of the injustice of their cause. In some states they are compelled by force to enlist; and when they do so voluntarily, 'tis upon a general presumption of being employed only in just causes; and after enlisting it becomes a capital crime to disobey their superiors. When this is the case, it is barbarous to talk of punishing such captives. We have a right to defend ourselves, or prosecute any right of ours which they are obstructing, by any fatal violence against them while they oppose us. But when they are captives, and can hurt us no more, we should remember that they were generally innocent, and that even such as knew the injustice on their own side, and were criminal in bearing arms against us, yet did so, under the strongest temptations, since it was capital not to have obeyed the commands of their superiors. We should consider the common variable fate of war, and that our example in any severity may presently provoke our enemies to give the bravest of our subjects the like treatment; and that such precedents will be followed by unjust conquerors, as well as the just. We may indeed detain such captives, and oblige them to humane temporary labours, to increase our own strength, and weaken the enemy's, 'till just terms of peace be obtained. Or we may settle them as subjects in our own

country: but any more severe treatment seems con- CHAP. 3.
trary to humanity, and the regard we should have to 
the general good.

V. These seem the general rules or laws of nature Some extraor-
dinary cases.
as to captives. There may possibly happen some singular cases or pleas of necessity, to justify some extraordinary steps, beyond these above-mentioned. Thus, if there be no other way to prevent or deter a barbarous enemy from the most cruel treatment of our fellow-citizens who have fallen into their hands, than by making reprisals on such captives as we have taken: if we can avoid great effusion of the blood of our fellow-citizens, and bring an unjust enemy to reason, or deter him from persisting in his injurious designs, by exercising some extraordinary severities towards some captives, whose safety the enemy may have much at heart, and continuing these severities, till the enemy be brought to reasonable terms of peace. If we are so weakened by the war we have been engaged in, by the injuries of the enemy, that we cannot be preserved in our independent state, without a considerable accession made to our strength, at the expence of the injurious state, such as the labours of many captives, or their transplantation into our country, even without their consent, may make to us: in these cases, such severe conduct may be justified, when gentler measures would be ineffectual.

But without such manifest necessity, the detaining Hereditary slavery always unjust.
of captives, especially women and children, in perpetual slavery, must be most unjust and inhuman. For,

BOOK III as we shewed formerly *, the children of such as were justly enslaved should be looked upon as free-born, only perhaps as persons indebted to the value of their necessary maintenance. "Had the conqueror, say some authors, used the utmost rights of war, by killing the parents, the children had not come to life: they owe therefore their lives and all to the conqueror." But this proves nothing. Conquerors have no right to murder captives in cold blood. And tho' they might with impunity have done so, their abstaining from such wickedness gives no right to theirs or their childrens service. At this rate, one would be obliged to become a slave to any powerful pyrate or robber who had spared his life; or to any generous man who rescued him from such dangers. Princes may thus owe their lives to midwives, surgeons, or physicians, who might have murdered them with impunity. Are they therefore, with their posterity, subjected to slavery? Grant that the parents might have been put to death justly, yet their children come into life innocent, they are rational beings of our species, the workmanship of the same God in their bodies and their souls, of the same materials with ourselves and our children, and endued with like faculties. They incur an early debt for their maintenance; but, as soon as that can be discharged by their labours, or by the generous interposal of any friend, they are as free as any of human race.

*On whom the
debt is incurred
as to the
child*

VI. He who detains another by force in slavery, is.

* See above, book II. c. 13. art. 2.

always bound to prove his title. The slave sold or carried into a distant country must not be obliged to prove a negative, that "he never forfeited his liberty." The violent possessor must in all cases shew his title, especially where the old proprietor is well known. In this case, each man is the original proprietor of his own liberty. The proof of his losing it must be incumbent on those who deprive him of it by force. The Jewish laws had great regard to justice about the servitude of Hebrews, founding it only on consent, or some crime or damage, allowing them always a proper redress upon any cruel treatment; and fixing a limited time for it, unless upon trial the servant inclined to prolong it. The laws about foreign slaves had also many merciful provisions against immoderate severity of the masters. But under Christianity, whatever lenity was due from an Hebrew toward his countrymen, must be due toward all, since the distinctions of nations are removed as to the point of humanity and mercy, as well as natural right. Nay, some of these rights granted over foreign slaves may justly be deemed only such indulgences as those of polygamy and divorces, granting only external impunity in such practices, and not sufficient vindication of them in conscience.

The duties of this relation in its several kinds may easily appear from the nature and causes of it. The servant is bound to fidelity, and willing service, as in the sight of God, by whose providence this lot is appointed to him; and the master to mercy and lenity.

BOOK III. as toward a fellow-creature in less fortunate circumstances, who yet has the like affections, and is capable of the like virtues, and happiness or misery with himself; and to pay faithfully his wages, and perform any other promises he has made to him.

C H A P. IV.

The MOTIVES to constitute CIVIL GOVERNMENT.

Civil power from the imperfection and depravity of men. I. IF all mankind were perfectly wise and good, discerning all the proper means of promoting the general happiness of their race, and inclined to concur in them, nothing further would be wanting; no other obligations or bonds than those of their own virtue and wisdom. The necessity of civil power therefore must arise either from the imperfection or depravity of men or both.

How men are naturally sociable and political. When many of the ancients speak of man as a species * naturally fit for civil society, they do not mean that men as immediately desire a political union, or a state of civil subjection to laws, as they desire the free society of others in natural liberty, or as they desire marriage and offspring, from immediate instincts. 'Tis never for itself agreeable to any one to have his actions subject to the direction of others, or that they should have any power over his goods or his life. Men must have first observed some dangers or miseries at-

* Thus Aristotle and Plato often call man ζῷον πολιτικόν, but Aristotle owns that he is συνδυαστικόν μᾶλλον ἢ πολιτικόν. *Nicom.* l. viii. c. 12.

tending a state of anarchy to be much greater, than CHAP. 4.
 any inconveniencies to be feared from submitting their
 affairs along with others to the direction of certain
 governors or councils concerned in the safety of all;
 and then they would begin to desire a political con-
 stitution for their own safety and advantage, as well as
 for the general good. As men are naturally endued
 with reason, caution, and sagacity; and civil govern-
 ment, or some sort of political union must appear, in
 the present state of our nature, the necessary means of
 safety and prosperity to themselves and others, they
 must naturally desire it in this view; and nature has
 endued them with active powers and understanding
 for performing all political offices.

'Tis also natural to men to esteem and admire any
 singular abilities discerned in others; such as courage,
 wisdom, humanity, justice, publick spirit. They na-
 turally confide in persons possessed of such dispositi-
 ons and love them. They are willing to commit their
 important interests to their direction, and have a zeal
 to promote them to honourable offices and powers of
 managing the common concerns of society.

II. The evils to be feared in anarchy result plainly
 from the weakness of men, even of those who have
 no unjust intentions, and partly from the unjust and
 corrupt dispositions which may arise in many. 'Tis
 wrong to assert that there is no occasion for civil po-
 lity except from human wickedness. The imperfec-
 tions of those who in the main are just and good may
 require it.

*The evils in a-
 narchy partly
 from weakness,
 partly from vice.*

BOOK III.

Contentions from different opinions of right. 1. Among good men there may be different opinions about the point of right. Those who intend no injustice, nay, who resolve to act the just part on all occasions, yet may be mistaken and too positive under the secret influence of self-interest, and may be suspicious of the artifices of others to influence any arbitrators they could choose, and confident of their own strength may decline arbitration and venture upon the hazards of violence.

Wise rulers can better promote the good of all. Again the more ingenious may invent many useful contrivances for a common interest, and yet cannot satisfy the more stupid or such as are prejudiced, about the expediency of their designs; by reason of their weakness, or suspicions of the hurtful artifices of the contrivers. 'Tis well known how hard it is to make the vulgar quit their own customs for such as are far better in agriculture or mechanick arts. And how much more difficult must it be to obtain their concurrence in any great and noble designs of distant advantage to whole nations, when they cost much present labour and expence. As there are in our species men of superior genius and penetration, and of more extensive views, nature points them out as fit to direct the actions of the multitude for the general good, upon proper security given by them for their using faithfully the powers committed to them.

Dangers from the vices of men require civil power.

2. But the corruption of mankind makes civil polity appear more necessary. As many are covetous, or ambitious, and unjust and oppressive when they have power; and are more moved by present prospects of

gain, than deterred by any moral principles or any distant prospects of future evils to redound to them from their injuries; a remedy must be provided against the evil dispositions of such men; a remedy that is present and sensible, and no other can occur so effectual as a civil power with force sufficient to maintain justice and inflict present punishment on such as are injurious. Tho' a majority or even each individual in a great multitude were corrupt and unjust, yet such men united will seldom enact unjust laws. There's a sense of right and wrong in all, with a natural indignation against injustice. I may, for my own pleasure or gain or at the instigation of some passion, counteract my sense of justice; but I shall be abhorred for this injustice by others who gain nothing by it. Another may for his gain in like manner counteract the rules of justice, but I and all the rest shall abhor him for it. The like shall be the dispositions of all, and thus they never will concur to enact unjust laws, tho' not one of them had such a stable principle of justice as would make him adhere to it in opposition to any high interest or passion of his own. Each one too may dread mischief to himself from the injustice of others; and may fear their high resentment on account of the injuries he may attempt against his neighbours. A counsel therefore of many will never agree to allow the injustice of any of its members against others of them. As none approve injustice but they who gain by it, no avowed injustice toward any of the members will be allowed by publick authority, except

BOOK III. where the whole power is committed to one, who may possibly allow himself in injustice toward his subjects, or where it is committed to a few, who may form themselves into a separate cabal from the people, and oppress the people avowedly, while they maintain justice among themselves. Against these two dangers precaution must be taken by the plan of power that is to be settled.

No such security in anarchy.

'Tis true that in a state of anarchy there is the same natural indignation against injustice; and that even in bad men, when they do not gain by it; and they sometimes as well as good men, are prone to assist the injured. But in all dangerous efforts, whether in prosecution of right, or in repelling injuries, through human imperfection, there can seldom be good success without government and an union of wills. Some honest men from cowardice may decline their part in such dangerous services: others of sufficient courage may differ about the measures which are most prudent; and through opiniatry, pride, or mistake, may stand obstinate against measures proposed by others. Wise men by considering or experiencing these dangers, and representing them fully to others, have probably engaged great numbers to concur in the only remedy against them, viz. the constituting some men of approved wisdom and justice the arbitrators of all their differences, and the directors in all measures necessary for the safety and prosperity of the whole; arming these rulers also with sufficient power to enforce their decisions and orders upon such as are refractory, by

engaging to employ each one his own force according to their direction. CHAP. 4.

III. Great mischiefs no doubt may often arise from plans of polity rashly and incautiously constituted when power is intrusted in bad hands. And yet an imperfect form of polity, and much more a very wise one, has innumerable advantages above anarchy. The general happiness must be more effectually promoted, and justice better administered, by the arbitration and council of wise unbiassed men, who can enforce their desires upon the refractory, and make them concur in any good design; than if all men, good or bad, wise or foolish, followed their own separate councils. And in all forms of polity this is ever professed as the intention of the institutors that the power should be lodged with the wise and just; tho' the precaution taken for it is often very improper and insufficient. Where this intention is obtained, nothing can be wanting for the greatest happiness in this world which human means can procure; as a people shall be wisely defended from external dangers; injuries among themselves shall be restrained; justice prudently administered; and all arts cultivated for the improvement of life; and all orders, the weak and imprudent as well as the wise, the selfish as well as the generous, engaged or compelled to contribute toward the general interest: and wise laws will civilize the manners and even improve the tempers of a people to virtue. How imperfectly these ends can be obtained in the most to-

*Bad plans of
power are also
dangerous.*

BOOK III. lerable state of anarchy we can suppose, must at the
 ~~~~~ first view be manifest.

*Bad polity may  
 be as pernicious  
 as anarchy, this  
 no reproach to  
 civil polity.*

But we must not hence conclude, as some have rashly done, that the very worst sort of polity is better than the best condition of anarchy. 'Tis true that in the very worst polities there are some good laws, and justice is often well administered in cases where the interests of the governors or their favourites are not concerned, and the whole body is often protected from external invasions by united force and council: which are advantages not to be hoped for indeed in the worst condition of anarchy. But in a state of anarchy, where the manners of a neighbourhood are not yet corrupted by ease, wealth, and luxury, there might be much happiness, and simplicity, and innocence of manners, much zeal for mutual defence, and for preserving justice toward each other, and even some considerable improvements in arts. And in bad plans of polity, by the tyranny, ambition, and lusts of the governors, the great powers committed for the publick good may be employed in a general oppression of the people in rapine and violence, and the bearing down every thing free and generous in their sentiments. 'Tis enough on this subject that all the advantages desirable, or that could be hoped for in a state of anarchy, shall be much more effectually obtained and secured by a good plan of polity. That corrupt forms of polity may do great mischief, is no objection against a civil state in general, but rather recommends it; as the corruptions of the best things may be most pernicious.

'Tis the business of rational agents therefore to CHAP. 4. exercise their sagacity in contriving the best plans of civil power, and such amendments of those already constituted as are requisite for obtaining the ends of it; and not to reject the most effectual means of promoting the general good, because they may be perverted by the folly of men into engines of mischief. A state of anarchy has not of late been experienced for any considerable time. Those who tried it of old, found it perhaps tolerable while simplicity of manners continued, but when corruptions encreased they found it necessary to contrive civil polity. And in the worst plans of it, many evils are prevented, and justice often maintained, and the people protected from injuries. Instances of this kind, where the civil power is useful, are far more numerous than those in which it is abused; which would make one hesitate in allowing that the imperfect and foolish plans of power which have appeared in the world have in the whole done more mischief than good, occasioned more evils than would have ensued from as long a continuance of anarchy.

The natural worth of civil power is often overlooked; we are not much struck with the good it does in a general protection and administration of justice. This is only what we ordinarily expect from it. But every perversion of it, in any flagrant acts of tyranny and oppression, deeply affects our minds, and is long remembered with indignation. Even as in the administration of nature, and in the general condition of human life,

*The causes of mistakes in this point.*

BOOK III. many imagine a superiority of evil from their being  
 much moved with the several calamities of men thro' their natural compassion; while they overlook the constant and ordinarily expected train of enjoyments and blessings conferred on mankind. 'This however should not hinder men, when opportunities offer, and there is any hope of success, to attempt, even by such violence as may occasion some temporary anarchy, to obtain such amendments of any foolish concerted plans of polity as may be necessary to prevent the perversion of it, and may procure greater good than what overballances these temporary inconveniencies in the violent change.

*What sort of  
 union necessary in  
 a State.*

IV. As the grand inducements to constitute civil power were "the obtaining defence against the injuries to be feared from men, and the promoting the general happiness by the concurring force of multitudes." These ends cannot be obtained unless great numbers are either brought to agree or unite in their inward sentiments and inclinations, or, if that be impossible, are brought to act as if they thus agreed: for otherways the force of the whole body cannot be employed for these purposes. Now the latter sort of agreement or union may be obtained if a "multitude engages to submit their actions and force to be directed by one person or council, for the general interest, and particularly for compelling any who may thereafter prove disobedient, to return to his obedience to this person or council." When thus a large body of men are united under one government:

they make one body politick where the will of the CHAP. 4.  
ruling person or council is, as to external effect, de-  
cerned to be the will of the whole.

The natural end and sole purpose of all civil power, The sole end of civil power; 'tis naturally opposite to that of despotick.  
as it is acknowledged on all sides, where men retain any remembrance of their dignity as rational creatures, is the general good of the whole body, in which the governors themselves are included as a part, and that a more or less important part according to their abilities, and inclination to promote the general good. All *civil* government in this differs essentially from the *despotism* of a master over slaves, that this latter is understood to be a power for the advantage of the governor. Despotick, and civil or political, are contrary terms.

That civil power alone can be justly assumed or claimed by any governor which is necessary or conducive to the prosperity of the whole body united; what No civil power is just which tends not to the good of the state.  
is not so is unjust upon whatever pretence it is assumed: as 'tis plain, from the general principles of morality, that the pleasures or interests of one, or of a few, must always be subordinated to the more extensive interests of great numbers. Any contract or consent conveying useless or pernicious powers is invalid, as being founded on an error about the nature of the thing conveyed, and its tendency to the end professed and acknowledged on both sides. The subject professes to convey powers only as they are conceived useful to the whole body; and the governor professes

BOOK III. to demand no other. As to other claims of power  
 they shall be considered hereafter.

*There are al-  
ways just mo-  
tives to a civil  
union & thertha  
a state of anar-  
chy.*

V. Whatever love men have to full liberty, what-  
 ever contingent inconveniencies they may foresee from  
 subjection to civil power, they may still have sufficient  
 motives to submit to any tolerably contrived plan of  
 polity. Some authors have given an unnatural account  
 of the burdens imposed by a political state; represent-  
 ing only the casual dangers men are exposed to some-  
 times in civil polity, as if these were some constant  
 misfortunes in that state, and peculiar to it, without  
 considering that people are less exposed to them in  
 polity than in anarchy.\* But then, to engage men to  
 submit to these hardships, they aggravate as much as  
 possible the mischiefs of anarchy even far beyond the  
 truth. In polity, governors have a power of life and  
 death, say they, over such as they judge to be guilty  
 of crimes. But this is no more power than any of our  
 fellows will assume over us in natural liberty; and our  
 prospect of a fair tryal and justice is much greater  
 under a civil judge. The magistrate claims another  
 power over life, in compelling men into the most dan-  
 gerous services for the common defence. But such  
 dangers we must have as frequently been exposed to  
 alone, with voluntary assistants such as we could find,  
 in defending ourselves in a state of anarchy. The ma-  
 gistrate claims a power over our goods, and exacts  
 some part of them in tributes, for some general inte-  
 rests of the whole body. But then a good magistrate

\* There is too much of this in Puffendorf as well as in Hobbs.

employs these tributes for increas<sup>ing</sup> and defend<sup>ing</sup> CHAP. 4.  
 the acquisitions of the whole body; and in anarchy  
 each one must have been at greater expences for the  
 like purposes, and not with such prospects of success.  
 If each one in polity is obliged to a great many pec-  
 uliar expensive or laborious duties for the benefit of  
 the whole body or of particular fellow-citizens, each  
 one shares in the advantages of like services perform-  
 ed by others. And thus any tolerable state of civil  
 polity must appear inviting and eligible to all, even-  
 from self-interest, as well as from our more generous  
 dispositions; as 'tis plain that an eminently wise and  
 good man, or a council of a few of like character, di-  
 recting the conduct of a large body of men, will much  
 more effectually promote the interest of all, than the  
 same number could do while each one followed his  
 own measures. These considerations fully represented  
 may have engaged multitudes to unite voluntarily in-  
 to one body, and to be directed by one council.

VI. Nor is there any opposition to this doctrine in  
 what some ingenious men alledge that “ the first po-  
 “ litical unions have been formed with the most un-  
 “ just designs; that bad men have first thus united and  
 “ founded cities, with a view to plunder and oppress  
 “ their neighbours.” Grant that this were true, tho’  
 ’tis not certain even about the first states, and much  
 less so about the original of all states in succeeding  
 ages; it only proves that bad men at first fell upon  
 this contrivance, or first discovered that a political uni-  
 on was of great consequence to the defence and security

*’Tis little mat-  
 ter what views  
 first made men  
 unite.*

BOOK III. of a large body, and to the increase of all their advantages. The apprehension such men might have been under of the just resentments of their fellow-creatures, incurred by their injuries, may have first roused their invention. Whereas good men, who had no just causes of fear, might not think so soon of exercising their inventions in the arts of defence. But as soon as any political bodies were formed; all the separate families in the adjacent country must soon see the necessity of like associations, and that from the motives already mentioned.

*Men not at first compelled to unite without rational motives.*

To alledge that men were first compelled by force to submit to civil power, must be very incredible; as no one man could be supposed to have strength or force sufficient to compel considerable numbers into such submission: and if he had the assistance of others in this compulsion, these others must have been previously subjected to his civil power: and thus a political union must have been subsisting before any considerable force could have been used to compel men into subjection. 'Tis true we find that in earlier ages some heads of families had very numerous trains of domesticks of one sort or other. But we are not to regard names in this matter, but the real powers. Such heads of families have had the powers of civil governors. And men have been invited into their families, or little states, by such motives as are already alledged. But, what may supersede many of these debates as to our present design; we are inquiring into the just and wise motives to enter into civil polity, and the ways

it can be justly constituted; and not into points of CHAP. 5. history about facts. If in fact the originals of many governments have been very infamous and unjust; this may abate the pride of those poor mortals, who having got into possession of power first founded by the villanous acts of their ancestors preying upon the weakness, the credulity, the mutual contentions, or the superstitions of their fellows, have their imaginations swelled with notions of some sacred dignity or divinity in their station, and rights of government, and would impose the same notions upon others, who are far superior to them in every worthy quality.

## C H A P. V.

*The natural METHOD of constituting CIVIL GOVERNMENT, and the essential Parts of it.*

I. **T**HE extent and ends of civil power shew it to be quite different from the parental, tho' the affections of good magistrates should resemble those of parents, in pursuing constantly the good of the subjects; and hence such governors obtain the most honourable name of *fathers of their people*. But parental power is founded on a peculiar natural affection, and the want of reason in their children; it gradually diminishes as their reason advances, and ceases when it is come to maturity. The civil power is over the adult, and is destined to perpetuity, nor is any prince the natural parent of his people. Mere violence, or

Civil power: founded on some consent or convention.

BOOK III. superior strength, can give no right. When therefore  
 ~~~~~ God has not by supernatural revelation named governors, and specially appointed the quantity of power to be committed to them, (which never was the case in any nation) the extent of their rights, and of the obligations of subjects, must be determined by the ends of the political union; or by some original contract. The only natural method of constituting or continuing of civil power must be some deed or convention of men. And as no rational beings, who have any fore-thought or attention to their own interests, or those of persons dear to them, can be happy while their important rights are not tolerably secured to them, but depend on the variable, or capricious, or insolent wills of others; and as the general happiness is the supreme end of all political union; and some tendency to it necessary to the justice of any institution; no government or power claimed can be just which is not either settled upon the consent of the people, or so calculated, that upon a little experience of it, they shall heartily consent to it, as sufficiently securing to them all their valuable interests. If through stupidity, levity of genius, or an abject spirit and long custom many acquiesce in other sorts of politicks, where there is no such security; this will not prove the justice of the powers assumed; since they seem already to have had the very worst effects upon the publick, by debasing the spirits of a people, and excluding every thing wise and manly, and all the most rational satisfactions of life.

II. Civil power is most naturally founded by these CHAP. 5.
three different acts of a whole people. 1. An agree-
ment or contract of each one with all the rest, that Three regular
deeds in forming
a state.
they will unite into one society or body, to be govern-
ed in all their common interests by one council. 2. A
decree or designation, made by the whole people, of
the form or plan of power, and of the persons to be
intrusted with it. 3. A mutual agreement or contract
between the governors thus constituted and the peo-
ple, the former obliging themselves to a faithful ad-
ministration of the powers vested in them for the com-
mon interest, and the later obliging themselves to o-
bedience.

Tho' 'tis not probable that in the constitution of
the several states men have generally taken these three Where power
is just there is
something equi-
valent to these
deeds.
regular steps; yet 'tis plain that in every just consti-
tution of power there is some such transaction as im-
plicitly contains the whole force of all the three. If
a people dreading injuries from each other, or from
some foreign force, agree by one deed to constitute
some wise, just, and brave man for their monarch;
they certainly also agree with each other to unite into
one body to be governed by him. And he by accept-
ing this office, which all know is designed for the good
of the whole body, and is conferred only for this pur-
pose, implicitly engages for a faithful execution of it
for this purpose: and the people expressly engage for
obedience. The same is the case in constituting a se-
nate. And even in the founding a democracy there
is always some deed equivalent to all these three. The

BOOK III. first contract is expressed, and so is the intermediate decree; as all agree to be governed by what is determined in the popular assembly or by the majority. And the third step is obviously implied; as they all profess to unite for the common safety and interest. Each one therefore binds himself to consult the general safety and interest in the suffrages he gives in the popular assembly, and thus promises on his part to govern well; and each one is understood to bind himself to obedience to the decrees of this assembly. The same deeds are either evidently expressed or implied when any persons voluntarily join themselves to a state already constituted, and are received as citizens. They agree to unite into the body, they implicitly consent to the decree about the form, and receiving protection and all political advantages, they promise obedience.

*Here political
are bound by the
deeds.*

III. These transactions shew abundantly how this political relation and the ensuing obligations may naturally arise. But the manner in which they bind posterity is not so obvious. And yet all states look upon the descendants of subjects to be in the same political relation, and under the same obligations with their parents; tho' minors are not deemed capable of consenting, and therefore no tacit consent to be presumed: nor would one be free from these obligations, tho' his first act, when he came to maturity, were declaring his dissent, or entering into a conspiracy with a foreign power against the state in which he was born. To explain this point let us observe.

1. First, that as to any hostile attempts unjustly CHAP. 5.
made by any persons, immediately upon their attain-
ing to maturity, the state has undoubted right both
of defending itself against them, and punishing the
authors of them, be they its subjects or not. Indeed
all states treat minors on such occasions as their sub-
jects, and that justly; for

2. The parent in uniting with others in this political body stipulates protection, and the advantages of a civilized life, not only for himself but for his family, and this in any tolerably constituted states is a *negotium utile gestum*, or a transaction most beneficial for them. And as during minority they have enjoyed these valuable and necessary advantages, they are naturally bound to all those terms, which could reasonably have been demanded in consideration of their sharing such advantages. Now no terms are more reasonable than these, that they should continue to strengthen and preserve this association to which they are so much indebted, and not desert it in time of danger, or at any time without reasonable compensation for the advantages they enjoyed. Nor could any such associations be safe if it were left entirely free to all as they came to maturity, upon any caprice, to disunite themselves from them, without any compensation.

3. And further. All such as derive any inheritances, especially lands, from their ancestors, may be under a further bond; as the ancestor may have justly subjected these lands to any wisely constituted civil

BOOK III. power, so that no person should have a right to hold them unless he also subjected himself to this power, and became a member of this political body. 'Tis abundantly obvious, that no society could be safe unless its whole territory were under this burden; so that no person disunited from the state could hold lands within it, into which he might introduce foreign force, or which he might make a refuge to all criminals and conspirators. Such therefore as claim these lands from their ancestors must take them under that bond of civil subjection constituted by their ancestors; unless the civil polity be so contrary to nature, and the interest of mankind, that the iniquity of the contract, made by the ancestor, would have afforded to him a just exception to its obligation, as well as to his descendants.

4. But when a state is in no present danger, it seems contrary to humanity and justice to make it a trap to its subjects, so as not to allow them, upon any rational prospect of advantage to themselves, to leave it, and unite themselves to any other body politick, provided that they sell their lands to some remaining subject, and make compensation for any advantages they derived from the state at its expence. As to this compensation, it is indeed generally made by all subjects who have not enjoyed some special favours, by their contributing annually during their residence in it toward the publick expence; as all men do, even minors, who either pay taxes on lands or other goods; or consume goods upon which customs or duties are

paid. Compulsory methods of detaining subjects, CHAP. 5.
 where there is no publick danger, are seldom just, and
 never thought necessary, except in some wretched and
 iniquitous political constitutions. But such as continue after they are adult, and share the protection, and
 other advantages of subjects, are indeed * justly deemed
 to have consented, and to be under the same obligations
 with the old citizens who first formed the polity. But they have also the same just exceptions against
 any thing fraudulent in the original contract, and the exception arising from error in the essential
 purpose of it. Of which more hereafter.

IV. From the supreme notion of justice or right it must appear that however consent is the natural method
 of forming bodies politick or of conveying civil power; yet if any prudent legislator, armed with sufficient
 power, can settle a plan of polity, truly effectual for the general good, among a stupid prejudiced
 people, at present unwilling to receive it; when yet there is all rational ground of concluding, that upon
 a short tryal they will heartily consent to it; he acts with perfect justice, tho' in an extraordinary manner;
 since this conduct must in the whole tend to greater good than leaving a people to be made miserable by
 their own stupid and pernicious prejudices. But common sense at once shews that absolute hereditary monarchy
 cannot be settled upon this pretence. As it can never tend to good to have all the interests of

*States may be
 justly formed
 without previous
 consent.*

* This is rather an obligation *quasi ex contractu* than a tacit, tho' both may often be pleaded against them.

BOOK III. thousands or millions subjected to the will or humour of one of their fellows, as subject to vice and folly as any of them, nay more exposed to it by the unbounded power committed to him, and the pride, and flattery which always attends that elevation.

Consent not always obligatory.

And on the other hand; if the majority of a rash multitude have consented to a pernicious plan; and afterwards find its destructive tendency; as they now see that they erred in the essential subject of the contract; taking that plan to tend to their good, which they find has the most opposite tendency; they certainly have a just exception against the contract, and are free from its obligation. They may insist upon a new model of polity: nor can their former governors have any plea for compensation of damages; as the error was as faulty in them as it was in the people. They are not indeed generally damaged by the change. They may insist to be placed in as good circumstances of fortune as their families were before they were raised to this civil power; and a people may be bound to comply with this demand, when it is consistent with their safety; but if it is not, they are not bound to suffer any immoderate or dangerous power, which may be employed for enslaving them, to remain in any one's hands; much less in those who had, by an abuse of power in oppressing them, forfeited their right. Where a people is in no such danger, it may be the humane part to restore to their deposed rulers their whole ancient fortunes, or even to enlarge them, that they may subsist in a station some way near to that dignity to

which the rash deed of the people had raised them, and enured their minds. CHAP. 5.

V. When numbers of men are thus united into societies under one government for a common interest, these societies are naturally conceived as one person, having their several rights and obligations, distinct from those of the individual members of them. Thus a society may have property in goods, and other rights, about which no individual member has any right to transact, without commission from the whole, or those whom the whole have entrusted with the management of them. The society may incur debts, and other obligations, to be discharged out of the publick stock or goods, and not out of the private fortunes of the members. The society as one person may be bound by contracts, and by almost all these causes of obligation which bind individuals, such as these *quasi ex contractu* and from damage or injury done. And in general, the common laws of nature, which bind individuals, bind also societies, as to abstaining from injuries, either to individuals not in the society, or to other societies, as to faith in contracts, as to the rights of violent defence and prosecution, and as to cases of extraordinary necessity. For as the persons who unite in the several societies were antecedently in natural liberty and equality; the several societies formed by such persons are with respect to each other in the same state of natural liberty; and almost all the same general rules shewing what conduct is humane and conducive to the general good from individuals toward

A people becomes as one moral person with rights and obligations.

BOOK III. individuals, hold also as to the conduct of one society toward another. So that the law of nations, as *These distinctions agree with the law of nature.* far as this term denotes a system of obligatory rules, is very much the same with the laws of nature in respect of individuals. As to smaller societies formed within a greater, by men previously subject to the greater, they are also deemed as moral persons, but not in natural liberty; having all their actions cognisable by the common power which presides in the greater society, and limited by its laws. There are indeed some rules distinct from the law of nature, or the necessary and universally obligatory laws of nations, founded on frequent custom and tacit convention, of which we shall treat hereafter.

The necessary civil powers.

V. The several powers which must be conveyed to governors in civil polity are commonly divided into the * *greater civil powers*, which are also called the *essential parts* of supreme power; and the † *lesser powers*, such as are not essential to civil polity.

The essential parts are sometimes subdivided into the ‡ *internal*, or such as are to be exercised among the subjects within the society itself; and the *transient* or *external*, such as are exercised toward foreign nations, or different and independent states. As the design of civil power is both to promote peace and happiness, with an undisturbed enjoyment of all their rights, to the subjects, by a good order at home, and to defend the whole body and all its members from


* *Jura majestatis majora.* † *Jura majestatis minora.* ‡ *Jura imperii immanentia, et transientia.*

any foreign injuries; and to procure them any advantages that may be obtained by a prudent conduct toward foreigners. CHAP. 5.

The powers to be exercised within the society are these, *The legislative.* 1. That of directing the actions of the subjects for the common good by laws requiring and rewarding whatever is requisite for this end, and prohibiting the contrary by penalties; determining and limiting more precisely the several rights of men, appointing proper methods for transferring or conveying them, as the general interest may require, and even limiting their use of them for the same general purpose.

2. Another power of the same class is that of appointing in what manner and what proportion each one shall contribute toward the publick expences out of his private fortune by paying taxes, tribute, or customs, as the state of the people will admit. These two branches of power are commonly called the legislative. *The levying of taxes.*

3. The power of jurisdiction civil and criminal in deciding all controversies among subjects about their rights by applying the general laws to them, and executing the penalties of the laws upon such as are guilty of crimes which disturb the peace of the state. And for this purpose appointing proper courts of justice, and judges civil and criminal, and inferior magistrates and officers to take care of the proper execution both of the ordinary laws and of the special *The executive and creating of magistrates.*

BOOK III. orders of state given by the supreme governors: this  is ordinarily called the executive power.

The right of making war, and treaties for peace or commerce.

4. The powers to be exercised toward foreigners are these two; the first, that of making war for defence of the state, and for this purpose arming and training the subjects to military service, and appointing proper officers to conduct them. And the second, that of making treaties, whether such as fix the terms of peace after a war, or such as may procure allies and confederates to assist in it, or such as without any view to war may procure or confirm to a state and its subjects any other advantages, by commerce, hospitality, or improvement in arts: and for this purpose the power and right of sending ambassadors or deputies to concert such treaties with those of other nations. All these powers some authors include under one general name, though scarce expressive enough of them, the * *federative*, including the power of war as well as peace.

Some extraordinary powers are added.

VI. These powers must necessarily be committed to governors in every civil state, and they hold them in that extent which the original constitution or the fundamental laws have appointed. But, as we shewed that some extraordinary cases of necessity give sometimes to private persons in natural liberty a right to recede from these laws which bind them in all ordinary cases: 'tis the same way with the governors of states, that in extraordinary cases they must have some

* As Mr. Locke explains these three terms the legislative, executive, and federative, all the powers mentioned by Aristotle, Grotius, Puffendorf, and others, may be included under them. These divisions are of no great importance.

extraordinary powers, beyond the common limits of CHAP. 5.
the law, when these powers are necessary for the general safety, or for some very important advantage to the publick. * Such powers are in every state, even in those where the laws most rigidly secure to each subject his liberty and property, and extend over the labours and goods of the subjects in great exigences, especially in those of war. Thus the lands of any subject may justly be taken by the state when they are necessary for fortifying some important harbour, or city, or narrow pafs. The ships of subjects may be taken for transporting of forces, so may their provisions too or military stores whether they agree to part with them or not. And, as we shewed in the cases of necessity, which may justify some singular steps taken by private persons, that one who uses this plea for his own behoof is always obliged to compensate damages done to others; much more is a state obliged to compensate, out of the publick stock, to any of its subjects whatever loss he sustains, beyond the share he should have borne along with the rest of his fellow-subjects, by any such extraordinary steps necessary for the publick good. Such extraordinary rights extend over life as well as property.

VII. The smaller civil powers commonly vested in the supreme governors are not of such necessity to civil polity; some of them may be wanting altogether in a state, or may remain in the whole body, and not

The smaller civil powers.

* These powers some call *dominium eminens*; others more properly the *jus imperii eminens*, as they are not confined to the matters of property only.

BOOK III. be committed to any magistrate or council, without any great detriment. Such as those of claiming all fines and forfeitures for the support of persons in supreme power; the right to all wrecks or valuable goods found when the proprietor is unknown, and to certain sorts of mines. The rights or powers of conferring dignity or honours, of coining money, of legitimating children, of pardoning persons condemned, or changing the punishment; of giving protections to debtors, and such like. These are generally vested in the prince in all monarchick governments, and in the senate, or in some president of it, in the aristocratical; and by them deputed to others.

All independent states are in natural liberty in respect of others.

VIII. Political bodies, whether great or small, if they are constituted by a people formerly independent and under no civil subjection, or by those who justly claim independency from any civil power they were formerly subject to, have the civil supremacy in themselves; and are in a state of equal right and liberty with respect to all other states whether great or small. No regard is to be had in this matter to names; whether the politick body be called a kingdom, an empire, a principality, a dukedom, a country, a republick, or free town. If it can exercise justly all the essential parts of civil power within itself, independently of any other person or body politick; and neither of them has any right to rescind or make void its actions; it has the civil supremacy how small soever its territory be, or the number of its people; and has all the rights of an independent state.

This independency of states, and their being distinct politick bodies from each other, is not obstructed by any alliances or confederacies whatsoever about exercising jointly any parts of the supreme power, such as those of peace and war, in leagues offensive and defensive. Two states, notwithstanding such treaties, are separate bodies and independent.

CHAP. 5.

*Independency
not destroyed by
confederacies.*

They are then alone deemed politically united, when some one person or council is constituted with a right to exercise some essential parts of the supreme power for both, and to hinder either from exercising them separately. If any person or council is impowered to exercise all these essential powers for both; they are then one state, and an entire coalition is made, tho' the several parts of this state may retain their ancient laws and customs as to all private rights; since these are all authorised for the several parts by the power which is supreme over the whole. But when only a small share of the supreme civil power is vested in one person or council for both, such as that of peace and war, or of deciding controversies between two subjects of different states, while each of the two states within itself exercises independently all the other parts: in this case they are called a system of states. And in these systems greater numbers of small states are sometimes united. Such systems arise when the king of one kingdom succeeds also to another, having in both some parts of the supreme power which he can exercise alone: or when there is a mutual agreement of several states to constitute a common council, such as

Systems of states.

BOOK III. was among the Achaian states; whence these systems
 ~~~~~ are called by some authors Achaick confederacies.

## C H A P. VI.

*The several FORMS of POLITY, with their principal  
 Advantages or Disadvantages.*

*Three simple forms.* I. ACCORDING as these essential parts of civil power are committed either to one person, or to some council or assembly, there are different forms of polity: of which some are wisely adapted to the interest of society, and are thence to be called regular; others are ill contrived for this purpose, and are irregular.


When all the parts of the supreme power are committed to one person, 'tis called Monarchy; when they are committed to a council, if the council consist of a few persons of eminence, 'tis called an Aristocracy; if to an assembly of the people, or of some deputies chosen by them, it is called a Democracy, and these are the three general classes of simple forms.

*How matters  
 are determined  
 by a council or  
 assembly.*

In those forms where power is committed to a council, 'tis always understood, where there is no special limitation in the constitution, that the majority of the council have the right of determining all matters proposed. And that that is the will or deed of the council which has the plurality of votes. 'Tis however exceedingly convenient that a certain number or *quorum* be determined who must be present to make this council the proper representative of the

whole body; otherwise different small cabals at different times may make the most contrary decrees. There is another limitation highly prudent, that in affairs of great importance more than a bare majority should be requisite; such as two-thirds, or three-fifths: particularly in altering any of the antient laws, or in condemning any person impeached. Precaution should also be taken against an obvious fallacy in all questions or states of votes with three members; in which there may be more votes for one side of the question, than for either of the other two, and yet those for the other two sides may together be almost double the number of that majority. Thus in a council of an hundred, there may be thirty-four for one side and thirty-three for each of the other two, and yet without some precaution in the constitution, thirty-four may determine a point against the inclination of sixty-six. Such questions may generally be reduced first into a simple question of two parts, and when one of these is determined it may be sub-divided again into another question of two parts if necessary. In like manner in elections to offices, where there are three candidates, there should always be a vote previous to the decisive one; to try first what two of the three candidates have the greatest number of votes; and he who has the fewest should be left out in the decisive vote to be put between the other two candidates.

II. Each of the three general classes of forms have many inferior species with most important differences. Each class of simple forms has many species. Monarchy is either *absolute*, when the whole admini- Monarchy.

BOOK III. stration is committed to the prudence and integrity of the prince, without any other restrictions than those always to be understood in civil power from the very end of it: or limited, where by some original laws in the very constitution or conveyance of the power the quantity of it is determined, and limits set to it, with reservations of certain publick rights of the people not intrusted to him; and yet no court or council constituted which does not derive its power from him. Again, Monarchy may be either *hereditary* or *elective*; *during life*, or for a *certain term*.

*The species of  
oligarchy.*

Aristocracy, or the power of a senate, admits like variety: it is either *absolute* or *limited*; or *temporary*, where the senators sit only for a certain term in the senate, and then return to a private condition, or *perpetual* during life. It may be either *hereditary*, where the representatives of certain families are senators; or *elective*, where either at certain periods the whole senate is chosen, or vacancies supplied, as they happen, by election; and this is done either by \* *creation* or a popular election, or by *co-optation* of the senators; and these in many different ways. Sometimes a certain fortune, or the possessing certain lands entitles to a seat in the supreme council; † and this Aristotle calls an Oligarchy.

*Democracies of  
different kinds.*

Democracies too are of very different kinds. Sometimes all the free men of the state with equal right of

\* These are the terms used by the Romans, *creation* for popular election, and *co-optations* for election to an office by the colleagues in that office. † This Aristotle and Plato call a Timocracy, or Oligarchy.

suffrage make the supreme assembly. Sometimes a CHAP. 6. few deputies are chosen annually, or at certain periods, either by a whole people at once; or each of the several small districts into which a people is divided have a right of returning a certain number of deputies to the assembly. Sometimes a certain fortune or estate is requisite to entitle to a vote in the assembly, or to a vote in choosing deputies or representatives. Sometimes a part chosen by lot constitutes the supreme assembly: sometimes where all have votes yet their votes are not of equal effect, but \*being divided into certain classes, and these sub-divided into centuries, or smaller classes, not according to their numbers, but rather their wealth, matters are determined not by plurality of single votes, but by the plurality of concurring centuries; tho' in one century there be far greater numbers than in others. These are the principal models of the simple forms.

The complex forms are innumerable according as Complex forms innumerable. Monarchy of any of the above-mentioned kinds is combined with some of the several sorts of Aristocracies, or Democracies, or with both. And further diversities may arise according as the several essential parts of supreme power are entrusted differently with the prince, the senate, or the popular assembly. And thus the variety is endless, as one may see in Aristotle's politics and Harrington.

III. To enable one to compare the several forms, The most important general maxims. and judge of the most convenient, we shall premise

\* The *Comitia Centuriata* of *Servius Tullius*.

BOOK III. some general maxims of great importance, and then  
 ~~~~~ make some special remarks upon the conveniencies  
 and inconveniencies of the several simpler forms which
 must be parts in every complex one.

*Four grand ad-
 vantages to be
 secured.*

I. 'Tis obvious that when by any plan of polity these four advantages can be obtained, *wisdom* in discerning the fittest measures for the general interest; *fidelity*, with *expedition* and *secrecy* in the determination and execution of them, and *concord* or *unity*; a nation must have all that happiness which any plan of polity can give it; as sufficient *wisdom* in the governors will discover the most effectual means, and *fidelity* will chuse them, by *expedition* and *secrecy* they will be most effectually executed, and *unity* will prevent one of the greatest evils, civil wars and seditions. The great necessity of taking sufficient precaution against these mischiefs of factions and civil war leads most writers in politicks into another obvious maxim, viz.

*The form of
 supreme power
 should be united.*

2. That the several parts of supreme power if they are lodged by any complex plan in different subjects, some granted to a prince, others to a senate, and others to a popular assembly, there must in such case be some *nexus imperii*, or some political bond upon them, that they may not be able or incline to act separately and in opposition to each other. Without this, two supreme powers may be constituted in the same state, which may give frequent occasions to civil wars. This would be the case if at once both the senate and popular assembly claimed the legislative

power; as it happened in Rome after the tribunes held CHAP. 6.
assemblies of the plebeians without authority of the
senate, and obtained that the decree of the plebeians
should have the force of laws, while the senate insi-
sted upon the like force to their decrees. The like was
the case in many nations of Europe, while the ecclesia-
stical state pretended to make obligatory laws, and exer-
cise certain jurisdictions, independently of the civil. If
therefore the several essential parts of supreme power
are distributed among different persons or courts, they
must have some strong bond of union. If a prince has
the executive, and the power of peace and war, while
another body has the legislative, the power of raising
tributes must be at least necessarily shared with the
legislative council, that it may never be the prince's
interest to make war without their concurrence: and
the prince must have a share in the legislative. With-
out such bonds laws might be enacted which the prince
would not execute, or wars entered into which the
nation would not support.

But there is no such necessity that all the parts of
the supreme power should be committed either to one
person or one council. Unity may be preserved other-
ways. And other interests of the state may require
that they should be divided.

3. Another maxim is equally certain from reason
and the experience of all nations, "That property,
" and that chiefly in lands, is the natural foundation
" upon which power must rest; tho' it gives not any
" just right to power." Where there is property there

*No necessity
that they should
be all in one per-
son or in one coun-
cil.*

*Property the
sole bottom for
civil power,
1. In Monarchy.*

BOOK III. numbers of men can be supported, and their assistance obtained as they can be rewarded for it: and where they cannot be supported and rewarded, their assistance is not to be expected. When power wants this foundation, the state must always be restless, fluctuating, and full of sedition, until either the power draws property to itself, or property obtains power. Men who have property, and can therefore obtain force, will not be excluded from some share of power. And men in power will exert it one way or other in obtaining property to support themselves; which must occasion convulsions in a state. Pure Monarchy will never continue long without crown-lands, or hereditary provinces, where the lands are either the property of the prince, or he has a power over them equivalent to property. 'Tis true, that to support Monarchy, or the power of a few, it is not necessary that the monarch or the cabal should have near one half of the property. A much smaller share will be sufficient where the counsels are united as they are under a prince or a cabal of a few; and may be an over-match for double or treble the property dispersed among such multitudes as seldom can unite in their designs, or in the measures subservient to them. But still the maxim holds, that without a large share of property such power cannot be stable.

2. *Aristocracy.* An hereditary Aristocracy in like manner shall be exposed to constant seditions and fluctuation, unless a very large share of the lands are the property of the senators. As the senators themselves are often of dif-

ferent sentiments and designs, there is not such unity CHAP. 6. of council as in Monarchy; and therefore a larger share of property in their hands is necessary for the stability of that form, than is necessary to be in the monarch for the stability of the Monarchy. If they have not near an half of the property, there may be an interest and a force sufficient to controul them, and change the form of polity.

A Democracy cannot remain stable unless the property be so diffused among the people that no such cabal of a few as could probably unite in any design, shall have a fund of wealth sufficient to support a force superior to that of the rest. And in the several complex forms of polity there must some suitable division of property be observed, otherways they shall always be instable and full of sedition; when power has its natural foundation of property it will be lasting, but may, in some forms, be very pernicious and oppressive to the whole body of the people; and it must be the more pernicious that it will be very permanent, there being no sufficient force to overturn or controul it. And this shews the great care requisite in settling a just plan, and a suitable division of property, and in taking precautions against any such change in property as may destroy a good plan: this should be the view of Agrarian laws.

4. As 'tis manifest that in Democracies, and in all Democratick assemblies truly chosen by the people, and united in interest with them, there must ever be a faithful intention of the general interest, which is the

*A Democratick
part requisite in
every plan.*

BOOK III interest of the whole assembly; no constitution can be
 ~~~~~ good where some of the most important parts of the  
 civil power are not committed in whole or in part to  
 such an assembly, which ever must be faithful to that  
 interest for which all civil polity is destined. And con-  
 sequently when the situation of the people, their man-  
 ners and customs, their trade or arts, do not suffi-  
 ciently of themselves cause such a diffusion of pro-  
 perty among many as is requisite for the continuance  
 of the Democrattick part in the constitution; there  
 should be such Agrarian laws as will prevent any im-  
 moderate increase of wealth in the hands of a few,  
 which could support a force superior to the whole bo-  
 dy. 'Tis in vain to talk of invading the liberty of the  
 rich, or the injury of stopping their progress in just  
 acquisitions. No publick interest hinders their acqui-  
 ring as much as is requisite for any innocent enjoy-  
 ments and pleasures of life. And yet if it did, the li-  
 berty and safety of thousands or millions is never to  
 be put in the ballance with even the innocent plea-  
 sures of a few families; much less with their vain am-  
 bition, or their unjust pleasures, from their usurped  
 powers or external pomp and grandeur.

*No oppressive  
 privileges should  
 be allowed to any  
 orders of men.*

For the same reason, all those groundless partition-  
 walls among citizens, confining places of power and  
 profit to certain families or certain orders, ought to  
 be prevented or broke down; as they are both the oc-  
 casions of immoderate and dangerous wealth in these  
 orders; and give the justest causes of indignation, re-  
 sentment, and setting up of a separate interest, to all

those who are thus unjustly excluded. Thus we see CHAP. 6. that Rome was never at rest till the brave and popular among the plebeians obtained access to the highest offices in the state, contrary to their old unreasonable laws. The general good of all is the end of associating, and not the grandeur of a few. If certain orders must reap all advantages, they should make a state by themselves, without other orders united with them.

5. Tho' 'tis not possible to fix upon any one number of persons or families as the very best for a political union, yet we may see plain reasons why certain numbers are too small, and others too great. For it is plain on one hand, first, that the greater the numbers united are, the greater must be the danger that the vigilance of magistrates shall not extend to them all for protection and improvement of their condition; and that many arising disorders shall not be remedied. And then the tumults and convulsions of such great bodies shall be more terrible and calamitous, as greater multitudes are involved in them. The numbers fittest for a state.

Again, 2. The greater the multitudes are which thus unite into one state, the number of states into which mankind are cantoned must be so much the fewer, and consequently a smaller number of mankind can arise to eminence, or have opportunities of exerting their abilities and political virtues, or of improving them for the benefit of mankind. In some vast states consisting of many millions, there is but a small number who are admitted to the supreme councils, or have any considerable share in the administration.

BOOK III. on. The rest are either wholly excluded, or have no  
 ~~~~~ other share than blindly obeying the orders of their superiors. If the same multitude had been divided into many smaller states, there had been room for many men of finer genius and capacity, to exert their abilities, and improve them by exercise in the service of mankind; whether by forming men to virtue, cultivating in them all social dispositions, and training them in publick offices civil or military; or in improving the ingenious arts. Accordingly we find that all virtues and ingenious arts flourished more in the little states of Greece than in any of the great empires.

Others too small. But on the other hand, 1. The numbers must be so great as to be easily superior in force to any such bands of the manifestly and avowedly unjust as may probably unite together. In state-factions, upon some specious tho' false views of right, vast numbers may unite, especially in the greater states: this should be prevented by a proper plan of polity. But seldom do thousands of robbers or pirates unite for avowedly unjust depredations, and yet a thousand families would scarce be sufficient to resist such bands of robbers as might be apprehended.

Again, 2. There are many grand and useful designs of great and lasting advantages in life, which require both great wealth and a great number of hands. Such as clearing forests, draining marshes, maintaining foreign commerce, making harbours, fortifying cities, cultivating manufactures and ingenious arts, and encouraging the artizans.

But 3. Whatever numbers might have sufficed for CHAP. 6.
the full improvement of human life, before any great states had arisen in their neighbourhood, and been therefore large enough for forming little states; yet after a great empire is formed, much larger numbers are requisite in the states around it, and it immediately becomes advisable for many small states to unite in a large one; or to form some strongly united system, that they may be able to resist the over-grown empire. This is seldom done successfully by common leagues or alliances; little jars and suspicions may make their alliance of little effect. And seldom do they all exert themselves as vigorously as they would do after an entire coalition, or after some system formed so strongly as to come near to a complete coalition.

6. As some extraordinary dangers in natural liberty may justify some extraordinary measures; and as in civil society it may be perfectly just to set limits even to such acquisitions as are not to be made injuriously, but may hereafter prove dangerous to the community; since a more extensive interest of mankind is always to limit and controul the less extensive: it may in like manner be perfectly just in neighbouring states to put an early check to any dangerous power arising. If they see any state artfully modelled for conquest or for oppressing their neighbours, and keeping a-foot such military discipline and force as they cannot be secured against, consistently with the allowing their people to follow their honest and innocent occupations, or without vast expences; they

*Extraordinary
rights for future
safety.*

BOOK III. have * just right to free themselves from these dangers at once before they grow too great, by breaking the power of that ambitious neighbour, or by obtaining such security as shall be sufficient for their safety, such as the surrendry of fortified places, or the demolishing them: or any other security the least oppressive that shall prove effectual for their safety.

The polity should prevent abuses of power by bad hands.

7. We lastly observe once for all, that in contriving of civil polity no account is to be made of what good men in power would do in any plan: good and wise men invested with power in any plan would promote effectually the general happiness. The grand point is “to prevent mischief to the state, or its members, “even when power comes into bad hands,” as no human wisdom can see into an hypocritical or changeable heart; and in all plans bad men may come into power. But there may be such contrivances in the polity as may restrain their evil intentions, as may remove temptations to abuse their power; or at least may take away all hopes of success, and of finding their interest in abusing it.

The peculiar advantages and dangers of the simpler plans.
i. Elective Monarchy.

IV. We proceed to the more special remarks upon the peculiar advantages and disadvantages of the several simpler forms. And first, Monarchy almost of every kind has these advantages that it naturally promotes *unity*, and can execute its designs with *expedition* and *secrecy*. Rebellions may arise against any sorts of governors; but, as the whole power in Monarchy is committed to one; there is no door open-

* Thus the Civil Law allows the *actio damni infecti* before damages are sustained.

ed in the very plan to sedition. And one person always present to exert his power may do it with more expedition, as well as secrecy, than any council of many. In elective Monarchies, if the plan of election be tolerable, there is pretty good security for *wisdom* in the governor. But by this plan there is no security for *fidelity*; and very little for unity. As the crown does not descend to the posterity of the elective monarch, he will ever be attempting to alter the constitution; or if he despairs of success in this design, his next will be to * enrich and aggrandize his own family, by all manner of exactions from his subjects. And tho' concord may be preserved during his life, on every new election there must be great danger of a civil war.

In hereditary Monarchies there may be less dangers of civil war, and more security for fidelity; as the grandeur of the prince's family depends on the prosperity of his country. But this is often overlooked by imprudent princes, who may take the most opposite measures, by giving themselves up to luxury and pleasure, or amassing wealth; breaking the spirits and ruining the fortunes of their subjects, and oppressing all eminent virtue and love of freedom as dangerous to themselves and their families. Thus the security for fidelity is but small, and there is none at all for wisdom or political abilities in men educated from their infancy in that elevation of fortune, where a constant deference is paid them inconsistent with all

Hereditary Monarchy.

* This has been the constant conduct of that Monarchy absurdly called spiritual, the Popedom.

BOOK III. candid advising or reproof, all expressing of dislike at what is wrong in them; no wonder that uncontrouled passions arise, that such ungoverned minds lose all equitable dispositions toward their fellow-creatures, for whose interest they are intrusted with these powers; and grow incapable of self-government, or of any vigorous application either to the publick interests or their own. Such persons must generally be made a prey or a property to fawning and artful sycophants.

Limited Monarchies better than absolute.

Could wisdom and fidelity be insured, no form would be preferable to absolute hereditary Monarchy. But there can be no such security in any hereditary office. In Monarchies only limited by laws without any council sharing with the prince in any parts of the supreme power, there are pretty much the same dangers, both of imprudence and separate interest of the monarch. But the right of resistance will be more manifest to the whole people; and there will readily be a more general concurrence of the people to preserve their rights by just violence, whenever the prince invades any of these that are expressly reserved by fundamental laws, than where there are no such limitations. In this form indeed there is a door open to perpetual struggles; as the prince will always be attempting to enlarge his powers, and the people watching against it.

Wisdom often founded in Aristocracies, but not unity, or expedition, or fidelity.

V. In Aristocracies where the whole power is lodged in a council of men of eminent stations or fortunes, one may sometimes expect sufficient wisdom

and political abilities to discern and accomplish whatever the interest of the state may require. But there is no security against seditions and civil wars. Nor can this form secure fidelity to the publick interest, or admit of secrecy and expedition. The views of a corrupt senate will be aggrandizing themselves and their families by all oppression of the people. In hereditary senates these evils are most to be feared, and the majority of such bodies may sometimes want even political wisdom. Among men born in high stations of wealth and power; ambition, vanity, insolence, and an unfociable contempt of the lower orders, as if they were not of the same species, or were not fellow-citizens with them, too frequently prevail. And these high stations afford many occasions of corruption, by sloth, luxury, and debauchery. An unmixed hereditary Aristocracy must be among the very worst forms, since it neither secures wisdom, fidelity, unity, nor secrecy.

In a council of senators elected for life by the people or by any popular interest, there is better security both for wisdom and fidelity. The people, tho' not the best judges of abilities, yet follow at least the character for wisdom, which wise men generally obtain. And such senators must be excited to fidelity, both by gratitude to their electors, and by their desire of popularity, and influence in any future elections, that they may carry them for their friends. But there is no security against discord and sedition in such a council. And ambitious views of enlarging their

*The elective are
the best sorts.*

BOOK III. wealth may make the senators unfaithful to the popular interests.

When new members are admitted by co-optation, the senate may turn into a dangerous cabal, without any of the advantages desirable in civil polity, and attempt to make their office hereditary. But when senators are elected by the people, and continue in office only for a short term, after which they return to the same condition in point of right with the populace, such a senate is more properly called a popular assembly, and the polity is a Democracy. In this form fidelity and wisdom are abundantly secured: but it lies open to seditions, and cannot be speedy or secret in the execution of its designs. This model can only be called Aristocratick when the people are confined to elect the senators out of certain eminent families; and even so it is not one of the simple forms, since the creation of magistrates, one of the essential parts of supreme power, is lodged with the people.

This limitation however of a people in their elections to certain orders, or to some eminent families, will always raise two grand factions with separate interests. The wise, and brave, and ambitious among the plebeians will ever be making strong efforts to break down this partition and obtain access to the senate, and seditions can scarcely be prevented.†

† Most of these remarks upon Aristocracies one sees confirmed by the whole first Decad of Livy, which Machiavel justly chose as the fund of his political observations. When senators are entitled to be elected by a certain degree of wealth, Ari-

stotle calls the form Oligarchy, and gives a long detail of its dangers, l. iii. c. 5. and l. iv. c. 2. When they are chosen upon some fame for virtue, he calls it the proper Aristocracy, as do others of the ancients.

VI. In all forms of Democracy one may be sure of fidelity. The popular assemblies always desire the good of the whole as it is their own. But where the whole power is lodged in such assemblies, without any check or controll by a prince or senate, there is no security for wisdom, unity, or secrecy. This is obvious where all the free men meet in the assembly, there is no hope of wisdom, no avoiding seditions, no stability of councils. Suspicion and envy can be raised, by artful selfish demagogues, against all virtue and eminence, even where there is the greatest need for them. Their resolutions are sometimes extravagantly bold; and again, when a pannick is raised, abjectly timorous.

CHAP. 6.

All Democracies are faithful, but deficient in other respects.

When the power is committed to a numerous assembly of popular deputies or representatives for a short term; equal fidelity may be expected, if they are fairly elected by a popular interest, and much more wisdom and stability: and yet there is no security here against faction and sedition; and, as the humours of a people change at the different elections, there may be too much instability.

A council of Democratick deputies the best sort.

Electing by the lot as it excludes all briguing and bribery, so it excludes all prudence in the choice, and all regard to merit: unless there be first a leet, or small number of candidates for each office, chosen by suffrage, and then one of this number determined by lot; constituting the supreme assembly so that matters are determined by plurality of centuries and not of single suffrages, may cast the power much into the

The best form of elections.

BOOK III. hands of men of superior † stations and knowledge,
 ~~~~~ but gives no security against seditions.

No simple forms  
 exist.

VII. From these reasonings it appears that none of these simple forms can be safe for a society. If these deserve to be called the regular forms which are wisely adapted to the true end of civil polity, all the simple forms are to be called rather rude and imperfect. Complex forms made up of all the three will be found the best and most regular according to the general doctrine both of ‡ antients and moderns. 'Tis little to the honour of any form, and of little consequence to shewing it to be a just or prudent, or sacred and venerable one, that it was the antientest, or prevailed in the earliest ages. There is no human contrivance that we could less expect to be brought to perfection at first, or in a short time and upon little experience, than that of civil polity; as the settling it well must require the greatest wisdom and experience. The argument of antiquity would recommend to us to return again to dens, and caves, and beasts skins, and accorns, or wild fruits of the earth, instead of our present houses, food and cloathing. A rude artless plan might succeed well in earlier days while more of the earlier simplicity and innocence of manners was preserved. But, when luxury and corruption of manners

† This form Aristotle calls a Timocracy.

‡ This is plain in Aristotle tho' he prefers a certain sort of pure absolute Monarchy, which only exists in the speeches of flatterers, where the king is someway di-

vine and superior to all others in personal virtues. Zeno was of the same opinion. See *Laert. in Zenone*. So *Polybius, Hist. p. 628 and 638*. *Dionys. Halicar. Antiq. l. ii. Cicero apud Non. Marcel. de verb. prop. 4. 292. Tacit. Ann. 4. 33.*

crept in, men would soon find the necessity of more artful politics. CHAP. 6.



*Complex forms  
innumerable.*

Of the complex or mixed forms there is an endless variety, according as the several parts of supreme power may be differently lodged in the Monarchick, Aristocratick, or Democratick bodies of the several species above-mentioned. Many of these varieties are considered in the fourth, fifth, and sixth books of Aristotle, and in Harrington, with the natural causes and occasions of changes and of ruin. We shall only suggest some general remarks upon the properest manner of combining these several simpler forms into a complex one.

VIII. To preserve the Democratick part, we observed above the use of some agrarian law, or some contrivance that would prevent any dangerous degree of wealth coming into the hands of a few. No precise sum can be fixed as the highest. Different states may admit of different degrees of wealth without danger. If the agrarian law limits men to too small fortunes; it discourages the industry of the more able hands in trade or manufactures. If it allows too much wealth, some cabal of potent families may enslave the rest. Without any such laws some mixed states are safe, provided the lords can sell their estates, and trade and manufactures flourish among the plebeians; and they have access to the places of greatest profit and power. By these means, without any law, wealth may be sufficiently diffused.

*The wisest sort  
of them with an  
agrarian law*

2. 'Tis of great advantage in every form that the

*A good yeoman-  
ry.*

BOOK III. common farmers or husband-men have good tenures ;  
 not such as shall maintain them in sloth or afford servants to do all labour for them ; but yet such as will yield a plentiful support to the laborious and industrious ; that they may live happy, and have strength of body and mind for defence of themselves and their country against domestick tyrants or foreign invaders.

*A popular assembly of deputies.*

3. The safest popular assembly in a mixed form is that of deputies or representatives proportionally and fairly elected for a certain term. In such assemblies the number of deputies from the several districts should be proportioned to the number of people and their wealth in the several districts. A constant door to corruption must be open if small or poor districts and cities have representatives quite beyond the proportion of their wealth to the rest, and of the share they bear in the publick burdens ; besides it is a manifest iniquity to the greater districts. And the manner of election should be such as excludes bribery and corruption, otherways they are not true representatives of their districts. In such an assembly there must be undoubted fidelity, and therefore the largest share of the legislative power should be committed to them. If such assemblies are less fit for deliberating, debating, concerting, and proposing laws, they should have the chief power of enacting ; as they will never incline to enact what they do not judge useful to the whole body, since whatever is oppressive or hurtful to the people must be so to themselves.

4. To prevent seditions in the popular assembly and the instability of its councils and measures, 'tis generally convenient that there be a senate of a few; which, being elected by the people or by a popular interest, upon character for eminent abilities, should have the whole right of deliberating, concerting, and proposing laws or decrees to the popular assembly: and should continue only for a limited term, changing by rotation, and not all at once: a senate thus constituted might safely be entrusted also with the highest jurisdiction, or judging of all causes in the last resort, and with the creation and election of magistrates and officers civil and military, at least they should have a large share in such creations. There would be little cause to apprehend their having any views opposite to the popular interest; since after a few years they and their families shall be in the same condition with the populace in point of right: and all their hopes of re-election after the limited periods, must depend on their good character with the people. Such a senate would be the best judges of the abilities of men for important offices.

CHAP. 6.  
*A senate necessary with the power of proposing and deliberating, of jurisdiction and creation of magistrates.*

5. In all senates, councils, or assemblies to be elected for a certain term, a rotation is of great use, by which a third or fourth part only goes out at one time and their places then are supplied. Suppose this happens annually, or every second year, a majority still remains of old members, such as are well acquainted with the reasons of all measures formerly concerted; and are enured to publick business; and yet dangerous

*A rotation and leges annales necessary as to officers.*

BOOK III. cabals may be prevented or broken; and new able characters are brought to light, and find opportunities of exerting their abilities in the publick service: and the state gets more hands whom it can trust in any important affairs civil or military; nor is it distressed by the death or treachery of those formerly employed; nor is there such envy and disgust raised by this method in the body of the people, or in the greater families, as when a small cabal of men engrosses for a long time all the offices of profit and power. Not to mention the dangers to be apprehended to any free state from the long continued power of a few, which begets in them insolence, and such ambitious views as they never would have entertained had the term of their power been limited by law.

*Magistrates  
should have fixed  
periods.*

6. The like reasons shew the advantages of making all magistracies annual, or, if that term be too short for some great designs, of limiting them at least to a certain small number of years. This regulation may sometimes deprive the state of the services of some men of singularly great abilities, and yet not generally. Those who go out of office by a fixed law are not affronted; their successors may often obtain their council and assistance. And where such laws have obtained for any considerable time, there will be considerable numbers of men of distinguished abilities and experience for the several offices civil or military. The hopes of the state need not depend on one alone; there would be no distress by the death of one. And each magistrate would be more zealous to do publick ser-

vices in his turn, that he may obtain honour and popularity, and thus secure his re-election as soon as the laws permit. Longer military command may be more successful in the ambitious views of conquering. But such designs seldom increase the happiness of the victorious state; and they create a great deal of unmerited misery to others; all such views are wicked and unjust. CHAP. 6.

7. To prevent seditions in either of these assemblies, and their contentions with each other, and all attempts to alter the constitution by the one's invading the right of the other, there should be a monarchick or dictatorial power constituted as an umpire between them; by which too the execution of all designs may be made more expeditious and secret where it is requisite. This power may be committed either hereditarily to some family, yet without other foundation of wealth than what depends on the law, or the grants of the popular assembly, or to a small number or council of a few elected for a certain term by the senate, and sitting continually, so as to be always ready to exert the force of the state for its defence against sudden dangers; changing by rotation, and each one of them accountable, after his power expires, to the senate or popular assembly for any steps taken during their administration. Such a prince, or dictatorial council, may safely enjoy the executive power, and a share also with the senate in the promoting to offices. *A regal or dictatorial power.*

BOOK III. 8. The ballot \*, well contrived, prevents all competition or undue influence on the suffrages, whether

*The use of the ballot.*

in elections, or in the determinations about affairs proposed in the senate or popular assembly, or in judicature. By the ballot men can vote as they please, without incurring the resentments of the powerful, or a popular odium, or the anger of their party. The corrupter may lose his bribe, and yet gain no vote by it. At the same time 'tis plain the ballot takes away all shame, and gives free scope to private pique and malice, and envy. But these passions can seldom influence any great numbers of a large assembly against any one person, unless he has given just occasion for them. These inconveniencies therefore are far from equalling those which may attend other ways of voting in a free nation. The worst effect of the ballot is the forcing sometimes some great and good men to leave their country for a few years when the people are suspicious of their power.

*Previous opportunities of informing the popular deputies.*

9. The members of the popular assembly should have † full previous information of matters to come before them, with the reasons on both sides, and not be first informed by tedious altercation when they are assembled. There may be opportunities for all who incline to inform those concerned of the reasons ur-

\* The most prudent method in elections by the people is that by both *ballot* and *scrutiny*, as explained by Harrington, and practised in Venice and some other states. The *Leger Tabellanae* in Rome are

well known. † A law concerted by the senate was intimated to all by the *promulgatio per trinundinum*, and men could promote or oppose the law by speeches from the *Rostra*.

ged on both sides, while men are cooler than they can CHAP. 6.  
be expected to be in the midst of keen debates in the very assembly.

10. In every state a cenforial power is of great consequence: that by it the manners of a people may be regulated, and that luxury, voluptuous debauchery, and other private vices prevented or made infamous, which otherways would destroy all publick virtues, and all faithful regard to the general good, and lead men to ruin the best contrived polity. Of this more hereafter. 'Tis in vain that princes or senates complain of corrupt manners. Their complaints must raise just indignation against themselves, while the highest dignities, the greatest offices civil and military are promiscuously conferred by them on persons of the most profligate characters as readily as upon the most virtuous. In vain they expect an inward reverence to their persons or authority, while the persons nearest to them, and promoted by them, employ the power and wealth conferred on them chiefly upon indulging themselves in all debauchery and infamous vices with impunity, or in a selfish aggrandizing themselves and their families.

*A cenforial  
court.*

The censors should be created by the senate with full power of degrading from all honours and offices men of infamous lives and of dissolute conduct. They should have power also of inflicting some more severe punishments. This trust is perhaps more safe in the hands of a cenforial council for a set term changed by rotation, than in those of any one person.

BOOK III. From a due consideration of these points the more convenient models of civil polity may be found, amidst that great variety of complex ones which may occur to us. The most suitable constitutional laws to each are at large considered by Aristotle and Harrington.

## C H A P. VII.

*The RIGHTS of GOVERNORS; how far they extend.*

*Civil supremacy  
what it consists  
in.*

I. **T**HE rights of the supreme governors are such as are vested in them by the constitution, as far as the rights of subjects are naturally alienable, and in fact alienated, by any just deed of theirs, against which there lyes no just exception. And first, such as are invested with the supreme power, 'tis plain, are not accountable to any person or court upon earth as a civil superior; to suppose it would be a contradiction.

*Not the same in  
every state.*

But we must not thence conclude that the same quantity of power, even absolute and unlimited, is in every plan of polity committed either to some political person, or council, or both jointly, as there can be in any other plan. The whole body of a people in any country, did they reassemble again, and resolve to enlarge the powers of the rulers to the utmost, may convey as much power to them as any rulers elsewhere can justly enjoy. But in some states unlimited power is already conveyed to a prince, or to a senate, or

to an assembly, or to all these together; whereas in other states certain rights in the very constitution are reserved to the people, which neither any prince, nor any political council, nor both jointly, have any right to invade. Such are the fundamental laws in many states, settling the very legislative power in some councils along with the prince, and both jointly cannot alter them. No deed of such a council can empower the king to make laws by himself or to levy tributes. Any such transaction of a council or popular assembly with the prince would of itself be void, as exceeded all the powers vested in them. In some called absolute and hereditary monarchies, the prince never claims the right of altering the order of succession, or of alienating any part of his territory, without consent of the whole body, or of transferring the kingdom to another.

The same thing is more manifest in the coalition of two independent states into one; where each has reserved certain rights, and exempted them from the cognisance of any person or political council constituted in this coalition, for the governing of the whole. No doubt in cases of great necessity the governors of any state may justly take some extraordinary steps beyond these limits set to them; and they may sometimes without necessity act treacherously against the conditions upon which their power was settled; and in these cases there may be no formal appointment of any method of redress. But the difficulty of obtaining redress does not prove that they had any right

*This manifest  
in the coalition  
of independent  
states.*

BOOK III. to take such unnecessary steps. And governors, where  
 there are no such limitations, may alter all old laws or articles of agreement for any superior expediency even without any plea of necessity, as that power is committed to them; whereas, where there are fundamental laws reserving certain rights as unalterable, nothing but a manifest necessity can justify any steps beyond the limits of these laws; otherways all faith in such treaties of coalition is gone.

The case is the same as in contracts of private partnership with some express reservations. An extreme necessity may justify the breaking these reservations; and yet no man says a partner has as much power without consent of the rest, when he is bound by express reservations, as he would have had if he had been intrusted with managing the stock without any such reservations. The violation of such reserved rights by governors without necessity always gives a right of resistance, and of violent defence or prosecution, to the persons injured and all such as incline to assist them.

*How governors  
 required.*

II. Governors wisely exercising the powers committed to them, are justly sacred in this sense, “ That  
 “ they are persons of high importance to the publick  
 “ good, and all injuries or violence offered to them  
 “ is more criminal, as it is more detrimental to the  
 “ publick, than the like offered to persons of less im-  
 “ portance.” But every good and useful man is sacred in the same sense, whether in the same degree or not. The rights of governors, magistrates, or clergy, are

no otherwise sacred than those of other men, though CHAP. 7. sometimes much more important. God has not by any revelation determined the forms of government, the quantity of power to be committed, or the manner of succession, nor has he named the governors of any nations now in the world. His law requires that government should be settled; as it requires all other means of publick good. But the form of polity, and the degrees of power to be committed, are left to human prudence. His law the same way requires property and confirms the natural and acquired rights of all men. But 'tis left to human prudence to transact about them. The same laws of nature and revelation confirm to subjects their private rights, which confirm the publick rights of governors: and the former seem the more sacred and important, as the latter are plainly destined for their preservation. In different respects every adventitious right, private as well as publick, may be justly called both the *ordinance of God*, and the *ordinance of man*.

While governors seem to have honest intentions, and their administration tolerably promotes the publick interest, tho' they are not eminent in virtue, or free from all faults in their publick conduct, we should have much indulgence to their weaknesses, considering the difficulties and the great temptations in that high state. They are still persons of great importance to the publick interest. Nay as to very worthless governors; tho' nothing may be due to them on their own account, yet much may be due on account of Duties toward weak governors.

BOOK III. the publick. Violent changes are attended with many dangers and some considerable evils. They must not be attempted, except when necessary to avoid or prevent some greater evils felt or justly to be apprehended from the present plan or the administration of it. While these mischiefs do not surpass the evils to be dreaded from a violent change, and while there is not a prospect of such superior good from the change as outweighs these evils, it is the sacred duty of subjects toward their country to continue in obedience, and to avoid the evils of civil war. But where it is otherwise, and no gentler methods can relieve or secure a state from misery, 'tis a duty incumbent on all toward our country to make all efforts to change the plan, or divest such perfidious governors of their powers: all imaginable sacredness of characters is then gone; they cease to be blessings, and are become plagues to mankind.

*Rights of resisting are in all plans.*

III. The right of resisting a limited monarch or senate, usurping powers not vested in him by the constitution, or invading the rights vested in some political council or assembly, which has some share in the parts of the supreme power, is very manifest. But we must not imagine that resistance is only lawful in limited governments, where some fundamental laws, or contract, or oath taken at the admission of the governors to their office, expressly reserve certain rights to the people, and exempt them from their power. In these cases the right of resistance may be less disputable, and all mankind as well as the subjects, will

more readily agree about the justice of it, and the proper times to use it. But in all governments, even the most absolute, the natural end of the trust is acknowledged on all sides to be the prosperity and safety of the whole body. When therefore the power is perverted from this end to the ruin of a people, either by a monstrous tyrannical intention, or any such folly or wickedness of the rulers as must have the same effect, the subjects must have a right of resistance, as the trust is broken; beside the manifest plea of necessity. Not to mention again, that all conveyance of absolute power, whether to a prince or senate, with a preclusion of all rights of resistance, must be a deed originally invalid, as founded in an error about what is most essential in such transactions, the tendency of such power to the general good.

This supposes no court or assembly superior to the king in monarchies, or to the senate in aristocracies, or to the popular assemblies in democracies. It only supposes that the supreme civil magistrates or rulers are subject to the laws of God and Nature, and are bound by some contract, express or tacit, which they entered into upon their admission to the power; and that they have no more power than the constitution gave them: and that, since all civil power is granted and received avowedly only for the publick good, he who employs it for a contrary purpose, by this perfidy on his part, frees the other party from all obligation, and consequently the subjects have the natural right of defending themselves against wrongs. A right

CHAP. 7.

*Resistance imports no civil superiority of the people.*

BOOK III. of resistance against injuries imports no civil superiority, nay it is consistent with the lowest subjection. The perfidy of a superior may set his subject free from all obligation to him: and even a slave may have a right of violently resisting a savage and barbarous master, tho' he had been subjected to slavery for the justest reasons.


*Who is the  
judge whether  
the power is per-  
fidiously abused.*

IV. As in all constitutions civil power is acknowledged to be a trust for the publick good, questions may arise whether it be abused or not by such perfidy as forfeits it. We do not here speak of such imprudences or mistakes of rulers as subjects must have expected in any fallible mortals. To bear these patiently, while their great interests are safe, they have tacitly consented, and they are sacredly bound to do so, both out of duty to a ruler in the main good, and to their country. But if the question be, whether the abuses of power are such as are inconsistent with a faithful intention, or so great that they must be ruinous to a people if they are persisted in? one might think that neither of the contending parties will be the most impartial judges in their one cause; but the ruler can have the worse pretensions to judge, as the point questioned is whether he has forfeited his power or not? and to be sure he never will give judgement against himself. To be sure the arbitration of some men of wisdom of some remote nation, which could gain nothing by either side, would not be useless on such occasions. But the people, or such a council of wise deputies as they can trust, and elected by themselves,

have the best pretensions to a right of deciding this question, as 'tis for their interest and that of their constituents, that all civil power is constituted, and not for that of their rulers; and who can so justly claim to judge of any trustee, or any person impowered to manage business for others, as these persons themselves who have entrusted him, and supported him for that purpose.

Nay, if upon trial the people find that the plan of power they constituted avowedly for their own good is really dangerous to them, they have a right to alter it. It must be strange effrontery in any governor, from any views of his own interest, or that of his family, to hinder them to change it; or to hold them to a contract which he knows they entered into upon this expectation and express design that it should tend to the general good, for which also he expressly undertook, when it is found to have a contrary tendency. The governor acts as a *Mandatarius*, who, after he had been once employed by others to manage some important business of theirs by a general commission, should refuse afterwards to receive any special instructions or limitations from those who employed him, or to quit his first commission. If he cannot by reasoning, and explaining the views of his conduct, satisfy the people; he may justly resign the troublesome office, and may insist on compensation of any damage he sustained, and that his family be settled in as good a condition as they were before he was raised to this power; and the people are bound to do so when it is

*People have a right in many cases to revoke powers they granted.*

BOOK III. consistent with their safety. But to force a people or  a great majority of them to continue a form they are dissatisfied with, or to be his subjects whether they will or not, must be strangely absurd; as if millions of men, among whom are thousands of equal knowledge, virtues, abilities, and capacities of happiness or misery, with the ruler, were destined as a property to be managed for his advantage, or pleasure, or vanity, contrary to the avowed end of all civil polity.

*There may be  
great crimes on  
both sides,*

If a prejudiced people become suspicious of their rulers, or of the plan of power, without sufficient cause; and withdraw their obedience contrary to the laws of a good constitution, they no doubt commit a great crime, often attended with horrid consequences. As does also the ruler who will retain a power that is truly dangerous to a people, however it has been conveyed. But when the cause of the suspicion is just, they do a necessary duty to themselves and posterity by making all the violent efforts which are necessary to accomplish a change. And of the justice of this cause there is no common judge upon earth.

*Rulers can  
scarce have a  
right of compelling the whole body of a people to be subject to them.*

But suppose a prince or senate persuaded that there is no just cause of distrusting either the plan of power or their administration; and yet neither any explications or remonstrances of theirs, nor any arbitration can satisfy a people, or a great majority of them, and remove their fears: as a people in continual suspicion and fear cannot be happy, and the publick happiness is the sole end of all civil power, the rulers cannot have a right to retain their power unless they find some means

to remove these fears. No doubt men in power may CHAP. 7. justly and prudently take some steps contrary to the present general inclination or approbation of their people, when they cannot safely communicate the reasons of their conduct to all. They may justly establish a plan which a stupid people shall not at first approve; provided they have all moral assurance that upon the discovery of the reasons of these steps, and upon a full trial of the plan and its advantages, there shall be a general satisfaction with both. A friend may, in some singular cases, take this power of counteracting the special instructions he has received from a friend who commissioned him in his business; nay, may venture justly upon some useful services without any commission at all, or contrary to what he knows his prejudiced friend would allow, not seeing the necessity of what is done, or the eminent advantages to ensue upon it. But all these must be some transitory matters: nothing can justify what will occasion a general permanent suspicion and distrust: as this must destroy all publick happiness in any people, who are not already ruined in their minds by their slavery, and have not lost all rational forethought or regard to the future interests of their country. Such suspicion and constant distrust must always remain at least in some degree under absolute hereditary Monarchies and Aristocracies, as there is no appearance of security for the valuable interests of a people under them.

IV. These forms of polity alone are just which Plans seldom give a solid right, when they are not well contrived. have a natural tendency to promote the general good.

BOOK III. If a form is constituted which is equally applicable to evil and good purposes, without any rational security about its application to good, such as are all the simple absolute Monarchies, and Aristocracies, or rather Oligarchies: the persons entrusted with the power have a right to use it for the publick good while no other plan of power occurs to the society. But they can no longer retain this plan when the majority will consent to a change, and any part of the people is dissatisfied with the old plan, and insists upon some better security for the general safety. Nay as common sense must easily shew that in such plans no proper precautions are taken against the greatest mischiefs; as soon as any one sees this, he is bound to consent to any necessary limitations and precautions. That a people have rashly contracted upon an error in what is most essential in the nature of the contract, gives no manner of right. It is the most direct perfidy, and a breach of the general sacred trust of all civil power, in any ruler to oppose such limitations and precautions as are necessary to prevent the most extensive mischief. No absolute hereditary rulers can bind their subjects by any oaths against all resistance of them and their successors; or prevent their right of constituting, when they can, some proper methods of controul, in case of the succession of any monstrous tyrants. They should always remember the sole end of their power, and that it is the business and interests of the subjects, that they are intrusted to manage.

'Tis true, when an imprudent plan is settled and CHAP. 7.  
 there is no hope of success in any efforts to alter it, *Obligations, some-*  
 but they must probably strengthen the chains; or when *times to submit to*  
 the evils apprehended from the continuance of it, and *bad plans.*  
 the advantages hoped from the change, are not great  
 enough to overballance some terrible mischiefs to be  
 feared in a civil war, the subjects may be sacredly  
 bound, in duty to their country, to defer their de-  
 signs to some more convenient opportunity; and in  
 the mean time to continue in obedience. Even as a  
 good man, in duty to himself and his family, is bound  
 to yield his purse to a robber rather than hazard his  
 life in defending it. The ruler's tittle to the subjec-  
 tion of the people, in those oppressive and absurd  
 plans, is no better than that of a robber's to any mo-  
 ney he had by force compelled one to promise him.  
 Error is as just an exception against a contract as force.  
 And in these absurd plans there is always this excep-  
 tion, not to mention the strong plea of necessity.  
 Where the form indeed is in the main good and the  
 people safe under it, tho' there be some smaller grie-  
 vances arising from some of its parts of which the  
 rulers are tenacious, we may judge that they have  
 such external rights to retain these parts as a selfish  
 man has to hold another to an unequal bargain. The  
 people may be obliged to acquiesce for a distant u-  
 tility, or out of duty to the publick; and to prevent  
 greater evils which might ensue upon any violent ef-  
 forts for a redress. But the ruler has no proper right  
 on his side which he can use with a good conscience.

BOOK III. V. When any rulers justly constituted, and exercising their powers well, incur the odium of a great part

*Obligations on subjects to defend their rulers against rebellions or invasions.*

of a dissolute people, and rebellions are raised against them, 'tis no doubt the duty of the other subjects to support them with all fidelity. They are in like manner bound to assist and defend them against any unjust competitor, or any foreign invader without a just cause. This is due not only to the very best of civil governors, but even to all who have in the main good intentions and fidelity, tho' attended with many weaknesses, such however as are not everfive of the great interests of society for preserving of which men united. The subjects are the more sacredly bound to such fidelity as the unjust competitor or invader gives the very worst presumptions of his intentions, and of his future administration, by his attempts to obtain it.

*When they may submit to a conqueror.*

But if after all, such a one is successful, dethrones the former governor, assumes the supreme power to himself, and is so established in it, that there is little hope of restoring the former possessor without the greatest bloodshed and mischief: if the conqueror settles such a plan of power as secures the important interests of the state as well as they were before, so that a restoration could do no publick good; it becomes the duty of the former prince to relinquish his title, as it was solely granted to him for the good of a people, which is now become inconsistent with it. And the people, conscious of their present safe and easy state, and that they cannot accomplish a restoration without the greatest mischiefs, may justly, nay

are obliged to acquiesce in the present change, and CHAP. 7.  
continue the publick happiness by ratifying it. In all  
these mutual obligations, 'tis absurd to speak of one  
side as continuing bound, when 'tis made impossible  
for the other to perform the duties in consideration  
of which the obligation was constituted. Such events  
are exceptions understood in all contracts.

VI. There is a popular outcry often raised against *These tenets do not tend to rebellion.*  
these tenets of the rights of resistance, as if they must  
cause continual seditions and rebellions: the contra-  
ry is abundantly known. Such mischiefs are more fre-  
quently occasioned by the opposite doctrines giving  
unbounded licence to vicious rulers, and making them  
expect and trust to the conscientious submission of  
a people, contrary to nature and common sense; when  
they are giving loose reins to all tyranny and oppres-  
sion. 'Tis well known that men too often break through  
the justest persuasions of duty, under strong tempta-  
tions; and much more readily will they break through  
such superstitious tenets, not founded in just rea-  
son. There is no hope of making a peaceful world or  
country, by means of such tenets as the unlimited  
powers of governors, and the unlawfulness of all re-  
sistance. And where the just rights of mankind are  
asserted and generally believed, yet there is such a ge-  
neral love of ease, such proneness to esteem any tole-  
rable governors, such a fondness for antient customs  
and laws, and abhorrence of what is contrary to them;  
such fear of dangers from any convulsions of state,  
and such advantages enjoyed or hoped for under the

BOOK III. present administration, that it is seldom practicable to accomplish any changes, or to get sufficient numbers to concur in any violent efforts for that purpose, against a government established by long custom and law, even where there is just ground given for them. We see that they scarce ever are successful except upon the very grossest abuses of power, and an entire perversion of it to the ruin of a people. Mankind have generally been a great deal too tame and tractable; and hence so many wretched forms of power have always enslaved nine-tenths of the nations of the world, where they have the fullest right to make all efforts for a change.

In ages of darkness, and too often also in those of greater knowledge, by the perfidious arts of designing princes, and by the base servility of too many ecclesiasticks, who managed the superstition of a populace, by the violent restraints put upon divulging any juster sentiments about the rights of mankind, the natural notions of polity were erased out of the minds of men, and they were filled with some confused imaginations of something adorable in monarchs, some representation of the Divinity, and that even in the worst of them; and of some certain divine claims in certain families, abstracted from any publick interests of the nations to be ruled by them; and upon these groundless attachments, the best blood of these nations hath been sacrificed by the contending factions. No great wonder this, that millions thus look upon themselves as a piece of property to one of their fel-

lows as silly and worthless as the meanest of them ; CHAP. 7.  
when the like arts of superstition have made millions,  
may the very artificers themselves, fall down before the  
block or stone they had set up, or adore monkeys,  
cats, and crocodiles, as the sovereign disposers of their  
fortunes. Hence many men of learning too are not  
ashamed to speak of patrimonial and despotick king-  
doms, where millions of men, and all their posterity  
too for all succeeding ages, are supposed to be in con-  
science bound to a perpetual subjection to one of their  
fellows, to be a piece of property subservient to his  
advantage or capricious humours, and to those of his  
successors.

VII. Civil liberty and natural have this in common, *Liberty civil and  
political.*  
that as the latter is “ the right each one has to act  
“ according to his own inclination within the limits  
“ of the law of nature:” So civil liberty is “ the right  
“ of acting as one inclines within the bounds of the  
“ civil laws, as well as those of nature.” Laws are so  
far from excluding liberty, that they are its natural  
and surest defence. Were there no law of nature re-  
straining others from incroaching or usurping upon  
the rights of their fellows, there could be no right or  
enjoyment of natural liberty. And were there no civil  
laws protecting against injuries, and unjust force of  
the stronger, there would be no security of any right in  
society; as all must depend upon the will of those who  
had superior force. And as one may be said to act  
freely when he follows willingly the direction of ano-  
ther, having a firm dependance on his superior wisdom

BOOK III. and kind intentions; it may be justly said, that in the strictest polity, where there are very exact regulations of manners, and a constant discipline over all the people, there still remains to them abundant liberty, if they are fully assured of the wisdom and good intention of the laws, and heartily acquiesce in them, tho' they can never counteract them without incurring punishment, and are in a great part of their conduct confined by them to that certain manner which the law prescribes. If indeed civil liberty meant an exemption from the authority of the laws, the best regulated states would allow least liberty.

*The Grecian  
and Roman mean-  
ing of a free  
people.*

In our modern plans of laws, where little regard is had to the education and discipline of the subjects, their natural liberty is little confined in any sense; and a people is denominated free, when their important interests are well secured against any rapacious or capricious wills of those in power. The Greeks and Romans seem to have had another precise meaning to the *populus liber*, denoting by that term only *Democracies*, or such forms where the supreme power, or the chief parts of it at least, were in some popular assembly, so that the people in a body had the command, or had their turns in commanding and obeying.

## C H A P. VIII.



*The WAYS in which SUPREME POWER is acquired;  
how far just.*

I. **WE** have already shown that the only natural method in which supreme power can be acquired is the consent or voluntary deed of the people, and 'tis plain that there is no branch of supreme power which cannot thus be constituted, whatever *majesty*, *supremacy*, or *dignity*, we can have any just conception of (for we do not account for the roving of an enthusiastick imagination) is nothing else than a great many rights conveyed by each one of a great multitude to a prince or a council, or an assembly\*. No one individual was previously supreme, or had this majesty, as no unite is a thousand. But each one of a multitude conveying some of his rights to the same person or council, may constitute this supremacy or majesty, as many unites can make a thousand among them.

*The deed of a  
people constitutes  
supremacy or ma-  
jesty.*

More particularly, the legislative power arises by each one's transferring to one person or council some part of the natural right of liberty he had about his own actions and goods. The executive partly arises from the same conveyance, and partly from each one's

*All civil power  
can arise from  
such deeds.*

\* 'Tis well known that the old Romans conceived the *majestas* in the people, hence *laesa majestas populi Romani* was the term for treason. Flatterers applied it to Emperors, as *insultantes personam populi vel civitatis*.

BOOK III. transferring to the prince or council what right he had  
 ~~~~~ in natural liberty against those who injured him or  
 his neighbours, to repell the injury, and obtain compensation of all damages done, and security for himself and others against like attempts for the future.

Even that of
 life and death
 which is of two
 sorts.


The power of life and death is no way so divine that it could not arise from a deed of the people. No magistrate is so far lord of human life, that he can of his own right take it away when he pleases without a cause. He has only these two rights about it, one *direct*, and of design; when 'tis necessary for the publick safety to take away the lives of criminals. This right † men had among them in natural liberty. The magistrate in place of the person injured, or in the name of the society, takes this necessary precaution against future injuries. The other right is *indirect*, by which the magistrate may compell subjects to undertake the most dangerous services for defence of the state, and even such as may cost them their lives. Now in natural liberty every one had a right to hazard his life for any very important purpose to mankind, such as defending his family, and neighbours, and their important rights; and that in the way that shall probably be most effectual. Common sense shews that, where many are concerned in such violent efforts, 'tis highly necessary that they act united and by one council. They all therefore had a right to commit the direction of such violent efforts to one person or council; and they could convey to this person or council

† See above book ii. chap. 15. § 5.

a right of compelling them, in case they should be refractory, to what they had a right, and even were obliged by the law of nature to do. 'Tis still more obvious how other parts of the supreme power could arise from the same source. CHAP. 8.

'Tis true, the constituting of civil power is the most important transaction in worldly affairs, and hence the obligations to fidelity in it are very high and sacred. But this consideration shews rather more the high obligation on rulers to a faithful administration; than that on subjects to obedience; and makes the rights of rulers rather less divine than those of the people, as the former are destined for the preservation of the latter: tho' the rights of rulers may be of more importance than those of any one particular subject. *The rights of a people as sacred is the essence of the sovereign.*

II. 'Tis almost superfluous to examine the reasons alledged for some divinity of one form of polity above all others. That one is truly most divine which is most adapted to the publick good. The holy Scriptures do not prescribe one form for all nations: and they seem least of all to favour the admired plan of absolute hereditary monarchy. The law of nature requires the doing whatever most tends to the good of mankind, as far as human prudence can discern: and no doubt obliges too to constitute the best sorts of polity. But it enjoins this no more specially, than it enjoins the use of the most salutary food, rayment, exercise, and the chusing the most useful employments, and most convenient forms of architecture: and has *How any form of polity is divine.*

BOOK III. left these things to be found out by human sagacity,  no man thence dreams that all men are confined to one sort of food, dress, exercise, or architecture; and that they are criminal who vary from it, tho' they do not apprehend its superior conveniency. Just so as to the models of government: the original plan of power should be the best that men can contrive: and they who constitute it have the power by some deed or original law to appoint the manner of its continuance, or the order of election or succession to it.

*Divine rights
of succession are
ridiculous.*

III. A divine right of succession to civil offices is ridiculous. In private fortunes, the law of nature does not appoint undivided inheritances falling to one. Some civil laws of this kind are monstrous. Nature makes frequently many co-heirs in private fortunes*, to wit, all who are equally near to the deceased in consanguinity: and would sometimes admit collaterals and ascendants together. The lineal succession †, where one always represents the deceased, is a mere human contrivance, for political views of having one enabled to support the civil or military offices, and do the publick services formerly incumbent on the deceased. Primogeniture gives no right to this, except by positive laws; and they are monstrously unjust when they give the whole inheritance to one of many equally near and equally deserving. The very plea of supporting a publick office or political dignity should only entitle to a larger share, a double portion perhaps.

* So did the old Roman law, see *Instit. l. iii. tit. 1—6.*

† See Novel. 118.

But no reasoning can be drawn from private fortunes CHAP. 8.
constituted for the good of one family, to the power
over states and nations, not destined for the private
interest of one family, but for the good of nations.

The only colour of right in successions to any civil powers constituted by the deed of the people, must be derived from the deed of the people. And we have already seen how many just pleas a people may have to revoke such deeds. The lineal succession settled by civil laws may be clear, and prevent all disputes about the person who is next representative according to those laws: * but the laws themselves have no natural foundation of justice. If primogeniture or seniority be allowed as one natural reason of preference; tho' 'tis not easy to shew why it should be so in the succession of brethren to a brother, as well as of children to a parent; or why it should take place of manifestly superior merit: yet this cause of preference must give place to that of sex in the first step; an infant son taking before the wisest woman; and yet in the second step or when more distant persons must succeed, no regard is had to the distinction of sex in these persons, but they take according to the sex of the deceased parent by whom they succeed, or according to the parent's seniority. Thus a grand-daughter by an eldest son deceased, takes place of a grandson by a second son, nay of the second son himself. The niece or grand-niece by an elder brother takes place before the nephew by a younger, nay before the young-

The lineal succession not founded in nature.

* See Locke on Government, book i. ch. 11.

BOOK III. or brother himself. And thus in innumerable other cases.

Hereditary succession often is different from the lineal.

If there be any thing divine or natural in these matters, one would think the general hereditary succession should be deemed such rather than the lineal. In the former persons succeed according to proximity of blood; a second son before a grandson by an elder son deceased, a younger brother before an elder brother's son; and so on among remoter relations where there is such uncertainty of the persons to succeed who can pretend either a natural or a divine law? where is the lineal succession, even as to private fortunes, settled in scripture? for about hereditary kingdoms there are no laws. The lineal succession is scarce to be found among these laws which settled *circumcision*, the *marrying of brothers widows*, and *unalienable lands*: and if it were found there, it binds no other nations. Does the law of nature admit of the succession of females to civil offices, or of persons related by females? a Briton affirms, and a Frenchman denies it. Shall cousins or nephews by the mother be admitted, or only those by the father? What says any law of God and nature to these cases? We all know our own civil laws; and are so inured to them, by long custom, that we almost deem them natural.

If any form had been peculiarly divine, the order of succession had been fixed.

Had any one form of polity been of divine appointment for all, can we imagine that a good God would have given to mankind unintelligible laws like Draco. He would have named the first rulers, expressed all the publick fundamental laws, specified the se-

veral powers granted, and clearly determined the order of succession. Nature shews that civil governments cannot generally admit of division with safety. The succession must be undivided: but what determines the line? all this is * human contrivance; either some old deed of a people conveying civil power to a prince and his heirs, according to the usages received in other successions, except where the nature of a state requires some differences, or some old deed of a prince, once vested with power to appoint an order of succession; or who by violence compelled a people to establish the order he had appointed.

No right of conquest.

IV. Of all that ever obtained the name of right nothing has less foundation than that claim called the *right of conquest*. If there was nothing else as a foundation of right but superior force, it is the right of a pirate or robber to his prey: it is an abuse of language to call it a right.

No right acquired without a just cause.

We must here recollect what was said above † about violent defence and prosecution of our rights; and about the injustice of making captives of all sorts slaves: from the principles there maintained it appears, 1. That in an unjust cause a conqueror acquires no right he can use with a good conscience, not even by any treaty he extorts by violence. And where the conquered have not resigned their claim, they have still a right to retake whatever they have lost, and every neighbour state has a right to assist them.

* See Mr. Locke on Government book i. ch. xi.

† See above Book II. ch. xv. § 5. And the 3. ch. art. 3. of this book.

BOOK III. 2. In the justest cause there is no further right, than after repelling injuries to demand full compensation of damages, and securities against like injuries for the future, by inflicting such punishment on the guilty, not on the innocent, as may deter all from like injuries for the future. What is necessary for these purposes may be just, but all violence or oppression, not thus necessary, is injurious. Now, first, injuries are still repelled long before a conquest, and indeed full reparation of damages is also generally either obtained or voluntarily offered by the unfortunate side, before they are entirely subdued. If, after this is offered according to arbitration of any impartial judges, the conqueror demands more, or persists in violence in order to obtain more on this head, he ceases to have a just cause. Almost every vanquished state can compensate any damages they have done by the moveables of the state or of the subjects, or at least by an annual tribute for a certain term; and they are always willing to make compensation in this manner, rather than by losing their independency and becoming a province to another prince or country, or by dividing their territories. And the person bound to make compensation, if he is willing to make it fully, has a right to chuse out of which of his goods he will make it.

*Not so security
against future in-
juries.*

And as to security against like offences for the future, the world sees it is always obtained and always offered before an entire conquest. What is allowed to be sufficient security against a state not yet con-

quered, and retaining yet much of its strength, is surely sufficient against one entirely defeated and broken. Now delivering up some frontier forts, or demolishing them, giving up ships of war, allowing garrisons of the conqueror maintained at the charge of the vanquished in some frontier towns or harbours, are thought in all arbitrations sufficient security against a state yet in almost all its vigour; and how much more so are they against one almost ruined by victorious arms.

As to punishment; it can with no shew of justice be inflicted upon the persons or goods of the whole body of a people, as we shewed * above that they are generally innocent, in every respect. Grant even all or most of the heads of families had been guilty, their lands and other goods are truly the property of wives and children along with them, tho' the heads of families are the natural administrators for them. The joint proprietors are universally innocent, and seldom is there any guilt even in one of a thousand of the heads of families. And yet the ruin or the enslaving of a state is a severe punishment on all its members. Punishment is naturally destined for a general security to all around. Now the victors assuming by force all civil power over the vanquished, is so far from giving such security, that it rather threatens all around with greater evils than they had to apprehend from those who were conquered; and 'tis the interest of all around to prevent such conquests.

*Punishment
should be inflicted
on the guilty only.*

* Chap. iii. of this book art. 3.

BOOK III.

The principal causes should be punished. If any principles of justice led conquerors to punish they should inflict punishments only on the guilty, and chiefly on the principal causes of any injuries they had sustained; and these are the princes, or chief governors of the injurious states, and their counsellors. They are the murderers of all who perish in the wars they unjustly raised. Were they to suffer themselves, we should have a more peaceable world; they would be more cautious about the justice of their designs. Bad princes are not restrained by the apprehension that their subjects may be punished.

If indeed any state has frequently been injurious to its neighbours, and shews either such rapacious dispositions prevalent among them for a long time, or have obtained such an opportune situation for oppressing all around them, by possessing places singularly strong, or such strait seas that they can always be masters of the trade of many neighbouring states: so that others cannot be secured against them but at an intolerable expence of fleets and armies. The neighbouring states have certainly a right to dislodge them out of these fastnesses, to dispossess them of all forts or harbours near these straits; or perhaps sometimes to force this band of robbers, rather than citizens, to dissociate, and to incorporate them with themselves, allowing to all of them whom they cannot convict of crimes to enjoy all the equitable rights of their own subjects. But it would be the greatest folly in the neighbouring states to allow any one prince or state upon conquest to obtain the same power over

all around which the injurious state had formerly by CHAP. 8.
virtue of its situation.

V. The subjects of an injurious state, tho' they be free from all guilt in these publick injuries, may on certain events be liable to compensation of damages. How subjects are liable to compensate.
This should indeed first be made by the authors of the injuries out of their private goods; if these fail, it should be made out of any publick stock the state may have, or the treasury. And this can seldom fail, as it may be supplied by new taxes imposed for this purpose. And in this manner, did the customs of the world authorise it, should conquerors demand compensations. But when compensation is not consented to by the injurious, the injured must take it by force, the goods of the rulers are the last they can reach or seize for this purpose, and they must redress themselves the easiest way they can.

The subjects, as they have constituted this plan of power, and raised those governors to execute it, are naturally * lyable either to compensate the damages occasioned by these means, or else they are bound to deliver up those governors; and to alter any thing in the plan of power that may lead the state to be injurious. They should have their option of either of these two, and upon agreeing to either, should enjoy all their rights and liberties.

But as the people are generally averse for reasons often very trifling and superstitious, to give up their governors to justice, they are bound to compensate The right of seizures in war and reprisals.

* See this claim explained above, chap. 3. art. 8. and ff. 9. tit. 1. and 4.

BOOK III. damages. And this justifies the seizures made in war of the goods belonging to subjects of the hostile state, when we cannot obtain compensation either from the goods of their rulers, or from the publick stock of the state. Upon these our first demands should be for any damage sustained, either by publick council of the state, or by any injurious action of its subjects whom it could have restrained or obliged to compensate damages and refused it. When we cannot thus obtain it, we have a right to take it from the subjects as we can. And let them have recourse to their rulers for compensation of these losses they sustained on a publick account, as they have a just right to obtain it from them out of the publick stock. As the wealth and power of a state depends on that of its subjects, the seizing their goods is often the only way we can have of distressing an injurious state and bringing it to just terms of peace.

When the state agrees to just terms, the innocent subjects, whose goods were seized, should have compensation either by restitution, or by obtaining the value. If the goods are retained by the captor according to the treaty, they are so much received on account of the damage sustained by his country, and lessen the claim upon the state. In that case the subject whose goods were seized has a claim upon his own state for compensation. If the goods are to be restored, or the value be given by the captor, his country has the greater compensation to claim from the other state on account of those injuries which occasioned the violent

seizures. The former method is more generally received as to any goods taken in publick wars, tho' compensation is seldom obtained for private losses by seizures. CHAP. 8.

VI. 'Tis argued in favour of the right of conquest, "that he who enters into an unjust war tacitly contracts or consents to whatever condition the fortune of war shall place him in, and consequently when conquered he is bound to civil subjection to the victor, or to slavery, when this is the customary treatment of the vanquished." But this is plainly absurd. The nature of war, and all the professions and declarations made about it on both sides, exclude all conception of any such contract, unless it has been expressly made; as sometimes indeed it has been as to a coalition into one state or civil subjection upon humane terms. Having recourse to arms is a declaration that we will assert our rights, and give none of them up either absolutely or upon any contingency, as long as we can defend them. Nay after the most entire defeat, none imagines it a piece of perfidy that the vanquished rally again; or that people transport themselves to any other part of the world, or get new allies to renew the war. All these steps would be deemed treacherous if there were any such tacit convention apprehended. *No tacit convention in wars; a cut future subjection.*

Again there is no presuming that the unjust side have made such a covenant unless the other side also consents to the like terms. Now did ever any man repute the military operations of a state in the just *Such contract cannot be alleged mutual.*

BOOK III. defence or prosecution of its rights as importing a
 ~~~~~ covenant to renounce its independency, sovereignty,  
 or the personal liberty of its people upon the event  
 of a defeat? and neither does any side in any publick  
 war ever own or profess its own cause to be unjust.  
 They do not therefore enter into any such contract,  
 nor can they be deemed to have done it, as they al-  
 ways declare the very contrary. Nay pirates and rob-  
 bers, whatever rights of mankind they forfeit or ab-  
 dicate by their avowedly unjust violence, are never  
 supposed to contract about their future condition in  
 case they are conquered. Nor are their attempts to  
 escape, or any other violence of theirs deemed perfidy,  
 where they have not given exprefs promises.

*Or made by a  
 whole people.*

The pretences of the contract of a whole people  
 are ridiculous in this case, except as to pure Demo-  
 cracies; and in these too, for the above reasons, they  
 are groundless. In other states, not one in an hundred  
 have any hand in any wars undertaken or publick in-  
 juries their state may have done; and many may not  
 know whether their country is in war or peace, which  
 is generally the case of minors and women, and even  
 of many lower heads of families. And yet this won-  
 drous right of conquest, supported by a tacit conven-  
 tion, must subject them all to a grievous punishment,  
 a despotick, or patrimonial government over them and  
 their posterity to all ages, nay to perpetual slavery.

Suppose the custom of subjecting the conquered  
 to the absolute civil power of the victor, or of mak-  
 ing them slaves, to be universally received, tho' con-

trary to all justice; suppose too that the governors made such exprefs contracts: they could bind no civil society by them nor any person but themselves. By such a contract they manifestly exceed their powers, and all the rights which can be presumed as granted to them in any civil polity. The power vested in them is only what may probably be useful for the general interest of their countries. They have no right to destroy, alienate, or enslave, a people, either by absolute sales or by bargains upon a contingency. Every such contract must be fraudulent on both sides, contrary to the well known trust of all civil power, and the known rights of other innocent persons; and therefore can produce no obligation except upon the persons of the contractors. A prince or senate in the most absolute form has only the right of a *mandatarius* empowered to transact for the benefit of others without special instructions. The employers suspecting his perfidy are bound only to this alternative, either to ratify the contract, or if not, to indemnify the other party of any loss sustained by means of the person thus commissioned to transact for them. Nay in lieu of this it is enough in many cases if they deliver up this fraudulent transactor to those who are injured by him.

VII. These reasons shew that mere conquest, even in a just cause, can scarcely give any right of civil power over the conquered nation. Now conquest is almost the sole foundation alleged for despotick and patrimonial kingdoms, where the prince can sell, trans-

*No despotick  
or patrimonial  
kingdoms.*

BOOK III fer, or divide the kingdom, or subject it to any form of power, or to any person he pleases: and therefore they may generally be deemed grossly impious usurpations upon the rights of mankind.

Grotius and other great men suggest some possible but highly improbable cases in which a patrimonial power may seem to have another foundation, in consequence of some \* consent of a people in the utmost danger of a massacre from some barbarous invader, to avoid which, and to induce some potent neighbouring state to defend them, and sustain a perilous war against the invader; they may subject themselves as far as their rights are alienable to this potent neighbour, and give him a right to rule them in any manner he pleases, consistent with humanity, for his own advantage. A crime or great damage done by concurring multitudes may also justly subject them to slavery, and forfeit all these their alienable rights which may be requisite for compensation of damage. But this last cause can only found a temporary power over the criminals, or the authors of this damage themselves; their innocent posterity have all the natural rights of mankind, and that of liberty among the rest, as soon as they have compensated the necessary expences made on their education. And the power over the criminals, or the authors of unjust damage, should not be called a civil power even while it subsists.

As to contracts made in the utmost distress, there can be no more just right acquired by them to a prince

\* See the cases mentioned in *Grotius de J. B. et P. lib. i.*

or neighbour-state, than what it would be equitable CHAP. 8.  
and just to demand in consideration of the impor-  
tant service done. If much more has been rashly prom-  
ised, there is a right of redress by arbitration, as in  
all other oppressive onerous contracts, where there has  
been a mistake on either side as to the values. These  
general submissions must naturally be understood with  
many tacit reservations and stipulations; that the pro-  
tection of this potent state shall be continued, that the  
civil power shall be exercised with humanity, and for  
its natural purposes. Consenting to subjection to one  
potent state, which exercises its power mercifully, does  
not import a consent to be transferred to any other  
weak or impotent one, or to any foolish or inhuman  
tyrant. No right of alienation, or dismembring, and  
dividing can be presumed, upon any submission of one  
state to another. Nay the pleas of necessity may al-  
so take place, against the most express contracts, when  
any thing is attempted which must create a great un-  
necessary misery, contrary to what must be understood  
as stipulated in all submission to any human power.  
All innocent persons have always a right to insist on  
better securities for their safety than are given them  
in any hereditary patrimonial kingdoms; and even cri-  
minal parents cannot forfeit this right of their inno-  
cent children, or any other natural or acquired right  
they hold underived from their parents.

VIII. If a conqueror, even in a just cause, com-  
pels the conquered people to contract with him and  
submit to his civil power; as this contract is extorted

*How far a con-  
queror may ob-  
tain a right by a  
subsequent con-  
tract.*

BOOK III. by unjust violence he obtains no right which he can use with a good conscience, more than a pirate or robber. His cause is now unjust, however it was just before. And tho' it be a valuable matter to the conquered, that he should now desist from violence when he has obtained all he could justly claim by war, (as he always does or may without this civil subjection); yet it is what the conquered have a right to. And his not persisting in any further violence, which could have been unjust, gives him no claim upon them, more than my not killing a man, whom I meet unarmed and defenceless in a desert, gives me a right to his services. But if a conqueror gives protection, as he is bound to do, and a vanquished people desist from arms for some time, and in matters relating to common peace and order apply to the victor, or to his courts for justice; this seems indeed to import a convention of submitting for some time and has the full force of a truce, nay may perhaps oblige them not to renew hostilities without previous indiction or declaration, and yet the present power of the conqueror, making all efforts against him dangerous, takes away all cause of presuming any tacit consent to perpetual subjection. Nothing but an express contract voluntarily entered into, without unjust force extorting it, can give a right to the conqueror to demand a perpetual civil subjection from a people and their descendants.

*When, there is  
a nearly in-  
compelled consent.*

When however a conqueror in any cause by force retains his power, and yet settles such a plan of go-

vernment as sufficiently ensures the happiness of a people, so that without compulsion they are heartily satisfied with it: when the restoration of any former prince becomes impracticable, or at least is so, without new terrible dangerous convulsions, the event of which may be very uncertain; as all the right of the former prince was vested in him, solely for the good of the state, which now plainly requires the abolition of his right; he is highly insolent, and injurious, if he demands that the peace and safety of a whole people be hazarded, or perhaps sacrificed for his grandure: and the people have a right to take the only probable method for their safety by submitting to the conqueror. The conqueror indeed is guilty of a great crime in retaining the power and may be obliged in conscience to divest himself of it: but, in duty to themselves, and to the general safety, the people are obliged by the contract they make with him. In a tract of time the successors of the old prince either quit their claim or become incapable of the office. Their right extinguishes; and that of the successors to the conqueror may become every way compleat, by the continued hearty consent of the people.

IX. In Monarchies or Aristocracies made hereditary by the old deed of the people, or by the fundamental laws, the right of succession to the offices generally resembles that of fiefs, where the successor holds not in consequence of any deed of his predecessor, since he had no power of excluding him; but he holds, by virtue of the fundamental laws, all the powers and the

*How the fundamental laws of succession are to be understood.*

BOOK III. annual emoluments of the office, and that disincumbered of any debts the predecessor contracted; and as there is no natural reason, or equitable foundation in nature, previous to a constitution made by the people, that offices, destined for the service of the publick, should descend hereditarily; all the rights of persons in remainder must solely depend on the fundamental law or original contract.

Where there is nothing specially determined in old laws about the manner of succession to a crown, but in general it is made hereditary. It is presumable that the law intends \* the same order of succession that is received in private fortunes, by old custom, except when the nature of the office plainly requires a variation. Thus the kingdom must descend undivided, tho' other inheritances are divided. And it is confined to the descendants of the first prince, unless the contrary be expressly declared.

*How to be understood upon the event of forfeiture.*

As in the old laws of such Monarchies, seldom is any thing expressly determined upon the event of a forfeiture incurred by mal-administration of one in possession: and yet common sense, and the known intention of the office, must shew that a grossly perfidious administration, contrary to express engagements, and the very end of the trust, must forfeit the right:

\* Thus if inheritances are simply hereditary, that is descending to the next in blood, so it is presumed they intended the crown should descend; that is, for instance, to a second son in preference to a grandson by a deceased eldest son; to a younger brother in preference of a nephew by an

elder brother deceased: to a grandson by a youngest son or daughter, in preference of all grand-daughters. If the lineal descent is received by custom, so it is presumed they intended the crown should descend.

if the custom be universally received in a nation, that in all inheritances whosoever incurs a forfeiture, or voluntarily abdicates, precludes not only himself but all his descendants, nay collaterals too; so that the inheritance reverts entirely to the superior, or to the person, or politick body which granted it; it is presumable, in all fair interpretation, that this too was the intention of any old fundamental laws or original contracts as to the descent of crowns, where nothing is more specially determined upon the event of forfeiture or abdication. In the forfeitures of private inheritances or fortunes indeed, such regulations are contrary to humanity, as these fortunes are truly destined for the behoof of a family. Wives and children are joint proprietors, tho' the head of the family has the sole administration. But the heirs in remainder to crowns have no such equitable plea. The regal office is not in its nature destined for the behoof of any family, but is a trust for the service of a nation, nor is there any equitable foundation to claim that such offices should be hereditary or descend according to proximity of blood, or by a line of representatives. Those in remainder have no other claim than from the old deed or law. And it is presumable that the true intent of it is to exclude all descendants at least, and sometimes the whole family, of such as forfeited; since nothing else called hereditary descends to the posterity, or to any kinsman of one who had forfeited\*.

\* An incapacity only justifies the exclusion of the person incapable. But mal-administration may exclude the whole line, as they hold only by the old law.

BOOK III. The intention of such old laws is very manifest in countries where all inheritances were antiently held as fiefs, conveyed upon condition of the fidelity of every one who succeeded, so that upon any one possessor's incurring a forfeiture or abdicating, the fief reverted to the granter as in his former estate, without any regard to innocent descendants or collaterals. This custom or law, how inhumane soever as to private fortunes, shews what we are to presume was the meaning of the old constitution of an hereditary crown. And indeed the reasons of humanity do not hold against like forfeitures of political offices destined not for the good of a family, but for the publick interest. There may however be many reasons of prudence, and sometimes of humanity, to induce a nation, upon such a forfeiture, to grant the crown anew to any worthy person of the antient family, rather than to a new one, but this is plainly left to the prudence of the nation. A forfeiture is a legal bar to the claims of all descendants, since they have no other than from the law.

*Nothing divine  
or founded in na-  
ture in the lineal  
succession.*

X. 'Tis surprizing how one should conceive any thing divine or natural in the right of lineal succession; when it is plainly preferable to the simple hereditary one only for this, that it is free from uncertainty or debates about the next successors. Whereas it is at the same time exposed to some vast inconveniencies, and causes most absurd successions, which the simple hereditary order would have prevented. For instance, by lineal succession the crown of a king-

dom in the greatest confusions, and requiring the direction of the wisest prince, must descend to the infant grand-niece by an elder brother's daughter, in preference of the most worthy younger brother of mature age and wisdom. Each one inured to the customs of his own country confusedly imagines them natural, without reflecting or considering the great diversities of customs which have been received in different nations, when yet the crown was hereditary in one form or other, each of which customs long use makes something natural. CHAP. 8.

XI. As the people have a right of resistance, and of dethroning a prince who is grossly perfidious to his trust after he comes to possess it, whensoever it is necessary for the preservation of the state; we may certainly also conclude, that when an heir apparent shews before he comes into possession either such stupidity, or such cruel, and tyrannical dispositions, or such pernicious superstitions and perfidy, as are inconsistent with a faithful discharge of the trust intended for him by the laws, and with the safety of the people in their most important interests civil or religious: they have a right to prevent his coming into possession, and thus to prevent all the bloodshed and other mischiefs which must attend a civil war to dethrone him: since such a person can give no real security against his abuse of power, to the very worst purposes when he shall obtain it. *How forfeitures are incurred and heirs precluded.*

In particular, tho' errors in religion, as such, do not make void any civil rights of men; though no *if that trusts preclude an heir apparent.*

BOOK III. man would forfeit his right by Polytheism, Deism, or  
 ~~~~~ Heathen idolatry, while he held no superstitious tenets which would make him unfaithful to his contracts, cruel and oppressive to his people, or unjust in his jurisdiction, or unfit to support the liberty and independency of the state: yet if he obstinately adheres to such tenets as these, “ That he shall have a divine  
 “ right to act as he pleases in state affairs, even to
 “ sell or alienate the state, that he shall have a right,
 “ and be obliged in conscience to extirpate by fire
 “ and sword such as differ from him in religion, and
 “ that this duty must take place of all promises or
 “ engagements made by him or his ancestors to the
 “ people: that he is obliged in conscience to allow a
 “ foreign prince, under a pretended religious character, to exercise a great deal of civil jurisdiction
 “ within the state, and over many of its members, and
 “ to grant investitures to many lucrative offices of
 “ great secular power, tho’ with mock spiritual names;
 “ and to prohibit all commerce with any subjects of
 “ the state who are interdicted by him:” a person holding such tenets, may be more justly excluded from succeeding to the crown of a free independent nation governed by laws, than a madman or an idiot as he must be much more pernicious to the publick.

*Tenets of a
 man over others
 who*

XII. The same doctrine about the rights of conquest which holds as to Monarchs, holds also as to all bodies politick under any form: and as great invasions have been made on the rights of neighbouring states by Aristocracies and Democracies, as by prin-

ces. We may finish this subject by considering the rights CHAP. 8.
of the mother-countries over colonies. These are sent with very different views and rights. * Sometimes a nation overstocked, and not desiring to enlarge its territories, sends out a part of the subjects well provided, to find new habitations for themselves, and to found a new independent state, upon which no other claim is retained but that of a friendly alliance. Sometimes colonies of free citizens are sent to make new conquests, with a view that the colony should remain a part of the old body politic, and that it should enjoy the same rights with the other parts of the body. These two ways of settling colonies are humane and equitable with respect to the colony. Sometimes upon a conquest or acquisition made of distant lands, a colony is sent to possess, defend and cultivate them, that they may be a province to the old state, to be managed for its advantage; so that the members of the colony, while they reside there, shall not share in the power or privileges of the ancient subjects. If any number of citizens voluntarily consent to these terms, and are allowed, when they incline, to return to their mother-country with their fortunes, and enjoy all the rights of other subjects, there can be no injury alleged as done to them. But it would be a great hardship, not justifiable but by some great necessity, to force any number of subjects into a worse condition in point of right or liberty upon their bold-

* Such was the settlement of Lacedemonians at Tarentum under Phalantus, and those of other Grecian states in Italy.

BOOK III. ly adventuring abroad and settling their fortunes in a distant land, by direction and countenance of the state to increase its dominions or enlarge its trade, or to make laws after they are settled in such distant places, that shall deprive them of any valuable right or enjoyment, which is not destructive to the old state, or beneficial to its enemies or rivals.

When it is that colonies may turn independent.

Nay as the end of all political unions is the general good of those thus united, and this good must be subordinated to the more extensive interests of mankind. If the plan of the mother-country is changed by force, or degenerates by degrees from a safe, mild, and gentle limited power, to a severe and absolute one; or if under the same plan of polity, oppressive laws are made with respect to the colonies or provinces; and any colony is so increased in numbers and strength that they are sufficient by themselves for all the good ends of a political union; they are not bound to continue in their subjection, when it is grown so much more burdensome than was expected. Their consent to be subject to a safe and gentle plan of power or laws, imports no subjection to the dangerous and oppressive ones. Not to mention that all the principles of humanity require that where the retaining any right or claim is of far less importance to the happiness or safety of one body than it is dangerous and oppressive to another, the former should quit the claim, or agree to all such restrictions and limitations of it as are necessary for the liberty and happiness of the other, provided the other makes com-

penfation of any damage thus occafioned. Large CHAP. 8. numbers of men cannot be bound to facrifice their own and their pofterity's liberty and happinefs, to the ambitious views of their mother-country, while it can enjoy all rational happinefs without fubjection to it; and they can only be obliged to compensate the expences of making the fettlement and defending it while it needed fuch defence, and to continue, as good allies, ready to fupply as friends any lofs of ftrength their old country fufained by their quitting their fubjection to it. There is fomething fo unnatural in fupposing a large fociety, fufficient for all the good purpofes of an independent political union, remaining fubject to the direction and government of a diftant body of men who know not fufficiently the circumftances and exigencies of this fociety; or in fupposing this fociety obliged to be governed folety for the benefit of a diftant country; that it is not eafy to imagine there can be any foundation for it in juftice or equity. The infifting on old claims and tacit conventions, to extend civil power over diftant nations, and form grand unwieldy empires, without regard to the obvious maxims of humanity, has been one great fource of human mifery.



C H A P. IX.

Of the NATURE of CIVIL LAWS and their EXECUTION.

I. **T**HE legislative and executive are powers exerted within the state: Of these in the first place.

How far the civil power can regulate religion.

As the end of all laws should be the general good and happiness of a people, which chiefly depends on their virtue: it must be the business of legislators to promote, by all just and effectual methods, true principles of virtue, such as shall lead men to piety to God, and all just, peaceable, and kind dispositions towards their fellows; that they may be inclined to every good office, and faithful in every trust committed to them in their several stations. It is poor policy merely to punish crimes when they are committed. The noble art is to contrive such * previous education, instruction, and discipline, as shall prevent vice, restrain these passions, and correct these confused notions of great happiness in vicious courses, which enslave men to them. As pious dispositions toward God, a firm persuasion of his goodness, and of his providence governing the world, and administering justice in a future state by rewarding justice, temperance, and all social dispositions, and punishing

* This was the aim of the institutions of Lycurgus, Solon, Plato, Numa, and of the old Persians, according to Xenophon, and of the Chinese.

the contrary, are the sources of the most sublime happiness, so they are the strongest incitements to all social, friendly and heroick offices. The civil power should take care that the people be well instructed in these points, and have all arguments presented to their understandings, and all rational inducements proposed which can raise these persuasions, and confirm these dispositions. Truth with equal advantages will always prevail against error, where errors have not been rooted by such early prejudices as prevent a fair examination. The magistrate should therefore provide proper instruction for all, especially for young minds, about the existence, goodness, and providence of God, and all the social duties of life, and the motives to them.

Every rational creature has a right to judge for it self in these matters: and as men must assent according to the evidence that appears to them, and cannot command their own assent in opposition to it, this right is plainly unalienable: it cannot be matter of contract; nor can there be any right of compulsions as to opinions, conveyed to or vested in any magistrate. He can have no right to extort mens sentiments, or to inflict penalties upon their not agreeing to the opinions he thinks just; as such penalties are no evidences to convince the judgment, and can only produce hypocrisy; and are monstrous usurpations on the most sacred rights of all rational beings.

But as it is certain from the indolence, and the necessary avocations of multitudes, that scarce one in

No coercive power over the opinions of men.

The civil power should appoint proper instructors for the people.

BOOK III. an hundred will ever exercise this right of private judgment vigorously; the far greater number, by admiration of some favourite characters, will always follow such as make high pretensions to superior wisdom. It is therefore the interest of the magistrate and his duty to the state in general to take care that wise and good men be provided and supported to take the leading of such as will be led by some person or other. And by this means, if the magistrates scheme of religion be tolerable, he may always have a vast majority to follow these leaders he has appointed, and thus prevent the influence of dangerous enthusiasts or rogues. It must indeed be a vile unnatural perversion of his office if he attempts a leading about useless and disputable trifles, which are of no moment to form in his subjects dispositions of piety, love and resignation to God, of temperance toward themselves and just and beneficent dispositions toward their fellows. But it must naturally belong to such as are vested with power, and entrusted with managing any funds for the general interest of a people according to their prudence, to take care that such principles as lead to these most useful virtues be fully explained and inculcated upon their people.

But without any persecution.

All this may be done without any restraint or penalties inflicted upon men for different sentiments; nay as men of different sentiments may think themselves obliged to publish them, and convince others; the magistrate can have no right to punish any for publishing their sentiments, how false soever he may

think them, if they are not hurtful to society. What-
ever whimsical men may introduce into their schemes
of religion, while they do not oppose the goodness of
the Presiding Mind, and his moral providence exer-
cised over the world, or any of the principles of the
moral and social virtues, they do not oppose the end
of the magistrate's office or the points about which
his leading should be employed. It is therefore un-
just, as no publick interest requires it, that men should
be punished for following their consciences in publish-
ing even these weak conceits which do no hurt to the
state, and seem to them of importance. It has always
been found, where there have been no restraints upon
men about such tenets, in free states, and where there
has been a general toleration of them with good na-
ture; free conversation and argument have gradually
abated the bigotry and hot zeal of weak men about
such points, and made more just sentiments of religi-
on generally prevail.

II. As to direct Atheism, or denial of a moral pro-
vidence, or of the obligations of the moral or social
virtues, these indeed directly tend to hurt the state in
its most important interests: and the persons who di-
rectly publish such tenets cannot well pretend any ob-
ligation in conscience to do so. The magistrate may
therefore justly restrain them by force, as he might
any deluded fool or enthusiasts who pretended con-
science in invading the rights or properties of others.
The magistrate has a right to defend the state and
its members against whatever hurts them, let the pre-

*The publishing
of Atheism, or
principles direct-
ly immoral is pre-
judicial.*

BOOK III. tences of the authors be what they will; and thus has a right to restrain such as would by any sophistry corrupt the weak into sentiments inconsistent with their duty to their fellows, or such as are destructive of the publick happiness, by taking away the most powerful incitements to all good offices and restraints from injury. But as there is little danger that such tenets will ever prevail in a civilized nation where knowledge and arts are encouraged, and as punishments inflicted by publick authority, beside moving the compassion of men, sometimes give an air of importance to the silly ravings of an empty fool, and raise in the weak some suspicions of such strong reasons on that side as no reason on the other can answer; some have looked upon it as a piece of prudence in magistrates, where there is no manifest danger of the spreading of such opinions, to let them alone to the common sense of mankind to be confuted and despised: giving no trust to such men as renounce all bonds of conscience, but only punishing when the principles are discovered by wicked actions.

But not different modes of religion.

But as to various forms of external worship and the different schemes of religion, which yet retain the grand moral principles of duty toward God and our fellows, as there is no hope that ever mankind, with their strangely different degrees of sagacity, and different opportunities, and prejudices of education, will agree about them; persecution on these accounts must be the greatest folly and cruelty. It must go to fire, and sword, and gibbets; otherways different senti-

ments will appear. Such persecution is the most horrid iniquity and cruelty, and may often dispeople a country of its most useful hands, upon which its wealth and strength depended. It is plainly the true interest of a country on the contrary, to be a refuge to all industrious peaceable men from neighbouring nations, and to engage all such as we have already to remain with us. Half persecution does not conquer the diversities of opinions, it only irritates mens minds and kindles feditions, or provokes them to fly to nations where they can find ease.

As to the publishing of tenets everfive of the social virtues, or such as destroy the strongest motives to them, or the holding such tenets as make men scruple in their consciences to perform such civil or military duties as the magistrate has a right to enjoin; one must allow that these matters fall under the magistrate's power. That he may restrain men from publishing such tenets by penalties: and that he may either compell men to perform the necessary duty to the state, or to make up the loss by supporting such as are willing to perform it in their places: as to this latter method there can be no question. But there have been such gross abuses of this power of restraining men from publishing the tenets which magistrates have reputed dangerous, that it is no wonder many good men are unwilling to allow it: and would grant no more to belong to the magistrate than a right to exclude men from all civil power whose tenets are opposite to any social duties, or everfive of the mo-

*Immoral tenets.
how cognizable.*

BOOK III. lives to them, and to demand security of their good behaviour; but to punish only the practices hurtful to society in consequence of these tenets; and that with as great severity as the bad tendency of them may require.

The great danger of the abuse of this power.

The possible abuse of alleged right or power does not indeed prove that there is none. And yet the force of party prejudices, and the fury of religious contraversies is amazing. Scarce any thing more odious than the tenets which the several sects of Christians charge upon their adversaries, while yet any candid mind must see the charge to be groundless against most of them; and that these tenets which have caused the highest contentions and mutual persecutions, lead to nothing everfive of true piety or the social virtues. If in any case the frequent danger of abuse would make void a right, it would be in this of punishing for the publishing of opinions everfive of piety and social virtue; since the warm zealots of all sides * have represented all schemes of religion opposite to their own, opposite also to all goodness.

* All Calvinists, say the zealot Arminians, are blasphemers, charging all injustice and wickedness upon God, and taking away the morality of human actions. The Calvinists in their turn make Arminians blasphemers and denyers of God's prescience and providence, making men independent in their actions. All Materialists are Atheists, say some warm Metaphysicians, tho' some primitive fathers were of that opinion. Arians and Socinians, are idolaters and denyers of God, say the orthodox. They retort upon the orthodox that they

are Tritheists; and so do other sects; and thus they spirit up magistrates to persecute. While yet it is plain that in all these sects there are the same motives to all social virtues from a belief of a moral providence, the same acknowledgments that the goodness of God is the source of all the good we enjoy or hope for, and the same gratitude and resignation to him recommended. Nor do any of their schemes excite men to vices, except that horrid tenet too common to most of them, the right of persecuting.

III. Where good instruction is provided, the next CHAP. 9. most effectual means for promoting all virtues publick and private is the example of those in supreme power, and the preferring of virtuous men to all stations and offices of dignity, while the vicious are made contemptible. Elections either popular, or partly such, to temporary dignities and offices, promote a general humanity and justice in the deportment of such as hope to rise in the state. The controll of a prince and senate upon the imprudence of a populace in elections, would seem to answer all purposes of policy; the popular assemblies of the several districts returning several candidates for any office, out of which the prince and senate might chuse one. Virtue ever was and will be popular, where men can vote freely. Where all dignities and places of power and profit are in the gift of a prince, a bad one may pervert this power to all mischief: making them the constant rewards of betraying the country, or ministring to his ambition, or meaner vices. In the hands of a good and wise prince any power is safe.

IV. The virtues most necessary to a state next to piety, which excites to and confirms all the rest, are *sobriety, industry, justice, and fortitude*. By sobriety we do not mean an abstinency from all external pleasures or splendour; but such moderate dispositions toward them, as the nobler desires of virtue and of doing good can always controll, when it is necessary for any more important purpose. Where sensual pleasures and a splendid manner of living are keenly de-

*The promoting
of men of virtue.*

*Virtues necessary
in a state.
Sobriety.*

BOOK III. fired, reputed very honourable, and are the grand pursuits of men in power; while a different manner of living by corrupt custom is made matter of contempt; all will be sacrificed for wealth as the means of these enjoyments. Men become needy and venal in all stations, and the whole administration grows corrupt. The interests of the country shall be sacrificed to an ambitious prince at home, to foreign nations, or to any invader, by those very persons who are entrusted to support them.


Industry.

Industry is the natural mine of wealth, the fund of all stores for exportation, by the surplus of which, beyond the value of what a nation imports, it must increase in wealth and power. Diligent agriculture must furnish the necessaries of life, and the materials for all manufactures: and all mechanick arts should be encouraged to prepare them for use and exportation. Goods prepared for export should generally be free from all burdens and taxes, and so should the goods be which are necessarily consumed by the artificers, as much as possible; that no other country be able to undersell like goods at a foreign market. Where one country alone has certain materials, they may safely impose duties upon them when exported; but such moderate ones as shall not prevent the consumption of them abroad.

*How industry is
best promoted.*

If a people have not acquired an habit of industry, the cheapness of all the necessaries of life rather encourages sloth. The best remedy is to raise the demand for all necessaries; not merely by premiums up-

on exporting them, which is often useful too; but by CHAP. 9. increasing the number of people who consume them: and when they are dear, more labour and application will be requisite in all trades and arts to procure them. Industrious foreigners should therefore be invited to us, and all men of industry should live with us unmolested and easy. Encouragement should be given to marriage, and to those who rear a numerous offspring to industry. The unmarried should pay higher taxes as they are not at the charge of rearing new subjects to the state. Any foolish notions of meanness in mechanick arts, as if they were unworthy of men of better families, should be borne down, and men of better condition as to birth or fortune engaged to be concerned in such occupations. Sloth should be punished by temporary servitude at least. Foreign materials should be imported and even premiums given, when necessary, that all our own hands may be employed; and that, by exporting them again manufactured, we may obtain from abroad the price of our labours. Foreign manufactures and products ready for consumption, should be made dear to the consumer by high duties, if we cannot altogether prohibit the consumption; that they may never be used by the lower and more numerous orders of the people, whose consumption would be far greater than those of the few who are wealthy. Navigation, or the carriage of goods foreign or domestick, should be encouraged, as a gainful branch of business, surpassing often all the

BOOK III. profit made by the merchant. This too is a nursery
 of fit hands for defence at sea.

Neither luxury nor intemperance necessary to publick prosperity.

'Tis vain to alledge that luxury and intemperance are necessary to the wealth of a state as they encourage all labour and manufactures by making a great consumption. It is plain there is no necessary vice in the consuming of the finest products, or the wearing of the dearest manufactures by persons whose fortunes can allow it consistently with all the duties of life. And what if men grew generally more frugal and abstemious in such things? more of these finer goods could be sent abroad: or if they could not, industry and wealth might be equally promoted by the greater consumption of goods less chargeable: as he who saves by abating of his own expensive splendour could by generous offices to his friends, and by some wise methods of charity to the poor, enable others to live so much better, and make greater consumption than was made formerly by the luxury of one. Five families supported in sober plenty may make vastly greater consumption for every good purpose, than one living in luxury. Younger children settled well with proper shares of a patrimony in sober plentiful families, may consume more than if an heir lived in all luxury, and the rest in indigence. And as to sobriety, it is generally true that it makes the greatest consumption. It makes men healthy and long livers. It enables men to marry soon and support numerous families. And consider even one alone: a sober plentiful consump-

tion for sixty or seventy years is greater than a riotous one of ten or twelve, and of fifty more in beggary. CHAP. 9. Unless therefore a nation can be found where all men are already provided with all the necessaries and conveniencies of life abundantly, men may, without any luxury, make the very greatest consumption, by plentiful provision for their children, by generosity and liberality to kinsmen and indigent men of worth, and by compassion to the distresses of the poor.

V. High principles of justice universally prevailing in a nation are of great importance to the general happiness; not to mention the inward satisfactions attending the disposition, it creates universal ease and security, as it ensures to each one all his valuable rights and enjoyments, and gives the greatest encouragement to industry, by ensuring to each one the fruits of his labours. Whereas a prevalent injustice in the dispositions of a people has all the contrary miserable effects of animosities, wrath, fear, suspicion, and ruin, or grievous distresses to families; and as traders must charge on their goods higher prices on account of all the ordinary losses of trade, by bad debts, by delays of payment, and the expensive suits they are forced to for obtaining it, the goods of such a nation must come higher on these accounts to all markets, and be sold dearer at home, and thus the innocent suffer for the guilty: and foreigners who have greater regards to justice, are enabled to undersell and engross the trade.

Justice of the greatest use.

Every state must have courts of justice and laws to VOL. II. S s

Courts of justice of easy access.

BOOK III. prevent such mischiefs. Happy that people whose laws are plain and intelligible to every honest man without the aid of those whose fortunes depend on the intricacy of laws. It is impossible to make such a system of laws as shall take in every possible case in all its circumstances, and the imprudent attempting it has occasioned that perplexity, and those endless labyrinths of law, affording so many artful and dishonest evasions, which most nations, who have continued long without an entire change of polity, complain of as an unsufferable burden upon the property and transactions of their people.

*Few laws will
do best with a
prudent plan of
judicature.*

It is plain that right and property are better preserved by a very few simple laws leaving much to the judges, provided there be a good plan for obtaining wise and disinterested judges. The Romans in their best ages had a large roll of* intelligent men in the law named by the praetor as judges for that year, when he entered on his office; and out of these a small number were taken by lot for the decision of each cause: the party whose cause appeared just was freed from all charges, and the whole expence was cast on the other side, unless the judges determined that he had such plausible pleas as might have deceived an honest man. Where it was not so, further penalties and these very high were inflicted for his unjust litigiousness. The great men of eloquence in Rome pleaded gratis, as the lawyers also gave their opini-

* These were the *judices selecti* who for some time were to be all patricians, afterwards to be of the equestrian order, and then of both orders.

ons and directions; and this was one of the natural CHAP. 9.
ways of obtaining popularity, and of succeeding in
elections. But what should hinder in any plan of po-
lity, that out of such a roll the plaintiff and defend-
ent might also each for himself chuse a patron or
advocate, who should plead without fee from the cli-
ent; and that he who pleaded the just cause should
be payed by the state for his good service to a citizen.
Protection against injury, and the obtaining of every
just claim without charge, seems naturally due from
the governors of a community to its members; since
they have resigned their natural rights into their
hands. Judges and juries, to whom we trust our lives,
could always determine whether the party who lost
the cause had any such plea as might have deceived
an honest man. Where he had not; the penalty for
theft is not too high for a litigious prosecution or
defence, severity on such crimes is mercy to all ho-
nest men, who often suffer more by them than by
thefts and robberies, and that with more vexation.

VI. Fortitude and military discipline should also
be as universal as possible. It is infamous to a coun-
try if men of the highest stations are not generally
fitted for the most honourable services, the defence of
their country in times of danger. As war is a thing
accidental, and designs of conquest are almost always
injurious, military service should not be a constant
profession to any; but the whole people should be
trained to it to be ready whenever just occasions may
require it; and during peace be kept in mind of their

*Military skill
and fortitude.*

BOOK III. discipline. All this is practicable where the chief governors allow it. In a war of twenty years, a nation which never maintained above forty thousand soldiers at once, might sufficiently train four times that number, and make them all good veterans who had served five or more campaigns, by making such a rotation that they never would have above one fifth of new levies incorporated into old regiments. By this too a sweet relief would be given to those who had served the publick for a certain number of years, that they might return to industry and the sweets of peace.

The great advantages of rotations in the services of war.

By a rotation in the higher offices of command a nation would be well provided in old officers and generals, and not be in the miserable necessity of depending on one or two to command in chief, without any fit to supply their places in case of death, or to oppose them if they turned their arms against their country. There would be a stock of veterans at home to oppose unexpected invasions, or to supply an army at once upon any calamitous defeat. The youth of all orders, where there are more sons than one in a family, should be obliged to take their turns in such services, and after their term return to their domestick affairs. Such reputable virtuous citizens, many of them having valuable stakes in their country, would have both greater courage and fidelity than mercenaries for life, domestick or foreign, chosen or offering themselves out of the refuse of a people, even such as were unfit for any other occupations.

This practicable without great loss.

To set such a scheme a-foot, at first must give a


considerable avocation from industry to a people which CHAP. 9. formerly had employed mercenaries. But when it was once settled would give less obstruction to it than the other method. A sober virtuous people employed in arms for a few years, would in all little intervals of military service be exercising some industrious arts, and would return to them with delight when their term expired. A thousand kept idle for forty years, or for all their lives, is as great a loss to manufactures or agriculture as five thousand idle for eight years. Nor would military service for eight years create any such notions or habits as would prevent their returning joyfully to peaceful industry, in men who knew their fixed term all along, and could have no views of support for life that way, and were chosen from the best of the people: especially if they were habituated well to labour in all intervals of military service, while they were supported by the publick; and that for some publick benefit, such as in draining marshes, cutting down woods, making roads and harbours, fortifying cities, or making rivers navigable. Such labours, moderately imposed, would strengthen both their bodies and minds. History would convince all men that these schemes are practicable. But other views than those of defending a country have recommended the use of mercenaries.

VII. Nothing can be more ruinous to a state than to depend, in the exercise of any part of supreme power, upon any foreign princes or courts, which may have views opposite to its interest. We must not in this matter

*Independency
from foreign
power of any
kind.*

BOOK III. be deluded by names of offices. That person or court which levies taxes, decides contraverſies about property, or the conveyances of it, either during life or upon the event of death, impoſes fines, or corporal puniſhments, prohibits or commands the taking up of arms, determines or confirms civil rights to lands or revenues, decides the rights of princes, and judges of the obligations of ſubjects to obedience, and aſſumes to exempt them from it, that advances to places of profit and power, is certainly aſſuming and exerciſing the higheſt ſecular powers. The object of them are ſecular and civil. And if the perſon or court act in their own name and not by delegated power from civil ſovereigns, they act as civil ſovereigns; be they popes, colleges of cardinals, high prieſts and elders, convocations or aſſemblies of any kind: and let them inforce their ſentences by what artifiſes they pleaſe: if they derive not their power from the ſtate, they aſſume a civil ſovereignty. A prince or ſtate which ſubmits to them, gives up to them ſo much of the ſupreme power, and becomes ſubject to an internal or external civil juriſdiction.

If by any religious impoſtures or baſe artifiſes of ſuperſtition princes or ſtates have conſented to ſuch ſubjection; upon detecting the fraud they muſt ſee that they are no longer bound; as contracts obtained by fraud produce no obligation. And if any ſtate has ſhaken off ſuch a ſuperſtitious yoke, and aſſerted its independency; its governors cannot ſubject it again by any deed of theirs, more than they can alienate

the state, or any part of the supreme power, by sale CHAP. 9. to a foreign prince with no such mock spiritual titles.  The changing of names is the common state-trick of all impostors.

VIII. Things in all respects indifferent are not the proper matter of civil laws. It is capricious and unjust to limit men by any laws about such matters. The matter of civil laws. The business of civil laws is, 1. To confirm the laws of nature by secular penalties, and proper ways of prosecution upon any violation of them. 2. To appoint the best forms and circumstances of all contracts, dispositions, and commerce, so that full proof may be had of the true deed and intention of the parties, and frauds be prevented. 3. They should direct a people in the best way of using their rights, both for the publick and private good: limiting them to the most prudent methods of agriculture, manufactures, and commerce. 4. Where some good end is in view, and attainable by very different means, civil law should limit the best means, where such limitations will not occasion some other superior inconvenience. And where several sorts of means are equally fit, and yet it is advantageous that a whole society agree in some one set of them, the civil law should fix on this set of them, tho' it be no better than some others. And it must in like manner determine more precisely what the law of nature orders with greater latitude.

Thus it is just and proper that civil laws fix the precise times for the meetings of courts or assemblies for purposes civil or religious; institute exercises, ap-

BOOK III. point prizes and premiums; fix the proportions, time, and manner in which subjects should contribute by their goods or services to the publick interest; determine a precise time when men should be admitted to manage their affairs as being come to maturity. In these and such like matters several different laws might have answered all good purposes equally; but they cannot be left undetermined.

*External rights
and unjust ad-
vantages must
often be allowed.*

IX. From the very best system of civil laws many external rights may arise, and many advantages may be allowed and confirmed which no man can insist on with a good conscience: and * many vicious practices go unpunished. Courts of justice must allow time to both parties to produce their evidence, nor do they know before the trial which side has the just cause. Thus one who is conscious he has no just plea or defence must be allowed time; and may cause great expences and delays to the other party. Laws must require certain formalities and witnesses as necessary to the validity of deeds that frauds may be prevented. Men may take advantage of such laws, and make void such dispositions or testaments as they well know to be the real voluntary, and just deed of the granter or testator, upon defect of some legal formality. If indeed there was any thing in such dispositions or testaments naturally unjust or inhuman, or unreasonably partial to some favourite, while others

* This is plain in cases of ingratitude; want of piety, inhumanity toward the distressed, covetousness, and such like. See B. ii. See also Barbeyraque's two orations *de beneficiis et permissione legum*.

who had equal or better claims are neglected, a man may with a good conscience take the advantage the law gives him against such deeds, provided he does of himself whatever is equitable toward others. But when the deed was just and humane and equitable, and according to the power of the granter or testator, a good man would take no advantage of any informality, as he always must carry in his own breast a more generous rule, a more candid measure of conduct than the civil law of his country.

X. The sanctions of laws are the rewards and punishments. Rewards have place in all civil laws as well as punishments. There is one general reward understood, the continuance of the protection of the state and the enjoyments of the advantages of a civilized life. And in many laws there are other special rewards: such as premiums, and advancements to honour, and to profitable offices, which also give opportunities of honourable actions, which are to good men a sweet reward.

Sanctions of rewards.

Esteem or honour is either of the *simpler kind*, viz. the mere reputation of integrity and such dispositions as fit a man for a social life; or that of distinguished *eminence*, such as is due only to great abilities and singular services and virtues, or such at least as are above the common rate. To the former, every one who has not forfeited it by some crime of a more atrocious nature than is readily incident to men in the main good, has a natural perfect right; so it can be no matter of civil reward. The taking it away or ex-

Honours of different sorts.

BOOK III. cluding one from the rights attending it, may indeed
 ~~~~~ be a severe punishment. The magistrate has no more  
 power over it than over the lives and properties of  
 the people. He justly may take any of them away for  
 a crime deserving it, but not without a crime. Nor  
 will the opinions of wise men follow an unjust sen-  
 tence.

*The magistrate  
 can determine ex-  
 ternal honours  
 not internal.*

Our inward estimation of the eminent kind will  
 not follow the decree of the state or of the prince,  
 but the opinions we have of the merits of the person.  
 The magistrate indeed is the proper judge of any out-  
 ward deference, precedence, or other marks of ho-  
 nour; and his decree gives men an external right to  
 claim them. While the magistrate in this matter ge-  
 nerally follows the real merit of persons, honours may  
 be very useful in a state. But when honours are con-  
 ferred without merit, or continued hereditarily to those  
 who are universally known to have degenerated from  
 the virtues which procured them to the family, they  
 become despicable of themselves, tho' the power at-  
 tending them may be courted by the ambitious. Such  
 conduct in any prince or state, in conferring or con-  
 tinuing honours without merit, has a most pernicious  
 effect. Such a reverence and deference attends high  
 titles in weak minds that those who enjoy them are  
 often screened from the just resentments of a nation:  
 the moral sentiments of a people are weakened, when  
 they see the most scandalous vices adorned and at-  
 tended by what should naturally be always the reti-  
 nue of eminent virtue.

Hereditary honours have been conferred upon pre-  
 sumption that the posterity of the eminently virtu-  
 ous, would either by nature, imitation, or good edu-  
 cation, prove eminent the same way: and with a de-  
 sign to make the rewards of eminent services more  
 agreeable, as they conferred a dignity upon the de-  
 scendants of the virtuous. The expectation of such  
 dignity may raise young minds to nobler views suit-  
 ed to their station. If a censorial power, of degrading  
 such as act unbecomingly to their dignity, be vigo-  
 rously exercised; hereditary honours cannot be intire-  
 ly condemned as useless. The natural causes of ho-  
 nour or merit may be abundantly seen by what was  
 said above upon the degrees of virtue. But as they  
 are made political rewards, they must not be employ-  
 ed in exact proportion to the degrees of moral good-  
 ness, but as they shall most encourage the virtues most  
 necessary to the state.

CHAP. 9.  
 Causes of here-  
 ditary honours.

X. The other sort of sanctions are punishments; the peculiar end of which is the deterring all from like vicious practices, and giving publick security against others, as well as the offender. When this right of punishing which belonged to all in natural liberty, is conveyed in a civil state to the magistrate, he obtains the sole right in all ordinary cases, and has the direct power of life and death over criminals.

The proper end  
 of punishment.

There is just ground of distinguishing *chastisements* from punishments as they are solely intended for reforming the offender, and are not peculiar to magistrates. They may be inflicted privately; whereas pu-

Chastisements  
 how different  
 from punish-  
 ments.

BOOK III. *ishments* should be publick, and the crime intimated to all, that they may be deterred from it. Both these are distinct from the *compensation* of damage, “which respects the repairing any loss sustained by “another.” And men are often obliged to it who had done nothing viciously or unjustly. \* The violence used in war has also a different end, at least such as is used before conquest, to wit the defending or prosecuting our rights. What is done after a victory with a view to deter all, would have the nature of punishment.

The true principle of heart which should excite a man in inflicting any evils on his fellow-creatures should always be some kind affection; generally those of a more extensive nature should influence the magistrate in punishments; and those of a less extensive should move men in chastisement, and compelling to compensation. Nothing can make a good man’s own heart approve him in these steps but a consciousness that he acted from some kind principle, and that such steps were necessary to some superior good. Nay in justifying the divine punishments we have always recourse to like considerations, which shew that they flow from goodness; such as the supporting the authority and enforcing the influence of his laws calculated for the highest happiness of his rational creatures, which must be desirable to perfect goodness it self; as must also the demonstrating his love to vir-

\* Thus authors distinguish all these four, *Pœna*, *Castigatio*, *Compensatio*, and the *Mala bellica* from their different ends.

tue, and his steddý purpose of restraining vice by the CHAP. 9. most powerful motives: and for these reasons we repute the divine punishments to be just and good.

Since the end of punishment is the general safety; The true measure of human punishments. the precise measure of human punishment is the necessity of preventing certain crimes for the publick safety, and not always the moral turpitude of the actions; tho' this often is proportioned to the detriment arising from crimes. But as it is not always so, some of the worst vices must go unpunished, as we said above; and some actions very dangerous to the community, and yet flowing from no great depravity of heart, must be restrained by great severity: such as insurrections against a just prince upon some specious pretence of the preferable title of another. As the evils of civil wars are very great, men must be strongly deterred from entring rashly into them. When crimes arguing none of the greatest depravity are very inviting by hopes of secrecy and impunity, the severity of the punishment upon those who are convicted must by its terror over-balance these allurements: thus theft must be more severely punished, even when men are induced to it by some straits of their families, than some greater crimes flowing from worse dispositions.

Punishments for the publick crimes in the abuse of power, or usurpation of it contrary to law, should be Punishments due for publick crimes. more severe than for crimes of a more private nature, as the effects of the former are far more pernicious. The ruin of some great states has been owing

BOOK III. to too much lenity in punishing such crimes of magistrates\*.

Severe punishments are necessary too for small guilt whensoever there is danger of such frequent transgressions as might be destructive to a state in certain exigencies. Thus the desertion of soldiers in a time of war, either from cowardice, or impatience for a peaceful life with their families, must be severely punished. In times of peace this is less necessary; and it is cruel without necessity to detain them long in a service grown disagreeable to them.

*Actions flowing  
from some lovely  
dispositions must  
be punished.*

Nay some actions flowing from the best dispositions must be strictly restrained when the publick interest requires it. Thus an inferior officer of too keen valour may be punished sometimes justly for a brave attempt contrary to the express orders of his general: as the greatest confusion would arise if inferiors disobeyed express orders of their superiors upon any appearances of advantage to be obtained over the enemy. As greater evils must ensue from relaxing military discipline, than can readily upon obedience to the imprudent commands of superiors, which are not plainly treacherous, and ruinous to an army; a good man may see it to be his duty to obey such orders as he certainly knows to be imprudent, and to abstain from wise measures which his superiors prohibit; unless he can prevail upon them by reasoning to alter their orders. One who acts otherways must be pu-

\* See Cicero *Off.* l. ii. c. 8. and Moyle's essay on the Roman Government.

nished, as laws must regard the distant effects of actions upon the whole body. CHAP. 9.

XII. Internal designs not discovered by action, tho' they could be proved, are seldom punished in milder governments. Men may project and talk of designs, who are not wicked enough to execute them. When by expressing such intentions and defending them, they may have corrupted others, they may justly be punished; and the magistrate may always justly demand a security for the good behaviour of such as have entertained them. When the design is come to action, and to such efforts as might have been successful, had they not been defeated by superior force or accident, the criminal deserves the same punishment, whether he succeeds in his attempt or not, as the same depravity is discovered, and the same danger to society from his future attempts. Thus one who gave poison, or who discharged a gun at his neighbour with a design on his life is to be punished as a murderer be the event what it will. *Internal designs not punishable.*

It is proper that in every state there should be a power of dispensing with the sanctions as to ordinary crimes, when singular reasons occur for it, and sufficient security against like crimes can be otherways obtained. But for crimes of magistrates against the publick rights of a people; or for gross abuses of power, or attempts against the plan of polity to encrease their own power or influence there should be no impunity. *A power of dispensing with the sanctions necessary.*

The publick interest may sometimes require the

BOOK III. giving impunity, nay rewards, to some who have been guilty of the worst of private crimes, to employ them in some necessary services. Thus to break all faith in bands of robbers or pyrates, and destroy all mutual confidence among them, pardons, and even rewards are justly given to such as betray the band, or deliver up any partners: as by such conduct such confederacies against mankind are broken without effusion of innocent blood; tho' the worst of the party may most readily take the advantage of betraying their partners, from these hopes.

*The undue respect of persons in judgment.*

XIII. That *respect of persons*, which is unjust in judgment, consists in regarding such circumstances of them as neither affect the guilt of the action, nor its importance toward any publick detriment, nor the quantity of the suffering. As when men are differently punished on account of kindred to the judge, of being zealous for his party or faction civil or religious, or of prior benefits conferred, or services promised or expected; while yet the guilt and detriment to society is equal. But circumstances shewing greater or less guilt, or rather greater or less tendency to the detriment of society, or such as encrease or diminish the sense of the punishment, should be considered as far as human courts can do it, to make the sentences well proportioned and just. In *pecuniary fines* the sums exacted from different persons for the same crimes or equal ones, should be in proportion to the wealth of the criminals.

The sum which is severe upon the poor may be a

trifle to the wealthy. In *corporal* punishments, the weakness of the criminals should alleviate the punishments: and infamous punishments should be lessened as the sufferers are in greater dignities. For thus alone the sense of suffering shall be equal for equal crimes.

CHAP. 9.

*How far it should proceed in the increasing of punishments. Tortures are pernicious.*

It may justly be questioned however, whether in increasing of punishments on account of horrid crimes, there be not a certain pitch of suffering beyond which nothing severer should be inflicted. If death is the penalty of any deliberate murder or robbery, one's indignation would move him to inflict something worse upon the more horribly cruel murderers, and to torture such as had tortured others; or to use tortures where the gentler kinds of death inflicted seem scarce sufficient to deter men from the crime. But on the other hand, horrid spectacles of torture, especially if they are frequently presented, may have a very bad effect upon the minds of spectators. They may harden their hearts, and abate the natural sense of compassion by overstraining it, and make it lose its force; as we see in the overstrained fibres of the body. Beside the terrible efforts they may tempt wicked men to in their robberies, to secure themselves against conviction, or to avenge themselves for the sufferings of their fellows. We may find perhaps that nations where they are used have seldom so tender feelings of humanity as those where they are not. And that an easy death, with any subsequent infamy upon the carcase that may affect spectators, without causing

BOOK III. any real misery to the criminal, may sufficiently answer the purposes of human justice. If tortures are ever allowed, they must be very rare.

*Who are liable  
to compensate da-  
mages.*

XIV. No man should be punished for the crime of another; nor is any one liable to compensation of damage who did not contribute to it by some action or omission contrary to his duty, nor shared in any gain by it, nor occasioned it by any contrivance or action destined for his own advantage. As children are truly joint proprietors with their parents in the stock of the family; and have a most sacred claim not only for maintenance, but a comfortable subsistence, upon that stock as far as it will afford it, and the parent bound to furnish it out of this stock: it seems plainly unjust that the whole should be forfeited by the crime of a parent; not to mention also the just and strong claim of the wife, even that of a fair purchaser by the fortune she brought, or by her own industry in improving the common stock. It is true the parent may be the natural administrator, or manager for the company, and thus his debts contracted prudently or imprudently always affect it, nay his prodigality may squander it all. But in many civilized nations, this natural joint right of the whole family is recognised by the civil laws; by allowing an inhibition or interdict upon an extravagant or imprudent parent \* at the suit of the children or any proper person in their name. And this is plainly according to jus-

\* Thus the estate was *res familiaris* among the Romans; hence also the *jus suutatis* in the children.

tice and natural equity. It is scarce therefore defensible with any shadow of justice, that civil laws should appoint a punishment on the guilty which equally or more severely affects the innocent. CHAP. 9.

XV. As to the punishment of corporations, the following maxims seem just. *The punishment of corporations.* 1. If all the guilty, or as many of them as are sufficient for compensation of damage and a publick example, are found, nothing can be further demanded from the corporation.

2. When this cannot be obtained, no innocent man should be punished in his person or any private fortune of his he holds independently of the corporation, for any crime of its magistrates or other citizens.

3. As merit and demerit are personal and not properly residing in corporations; if all the criminals are dead or banished out of it, no punishments can be justly inflicted on it or its members. Punishments or fines exacted out of the publick stock have not the proper effect intended. Bad men feel and are deterred only by what shall affect themselves. They are not moved by the sufferings of communities.

4. As to compensation of damages; when it cannot be obtained from the criminals, it next falls upon any in power who by grossly culpable negligence shared in the guilt, and it should be levied out of their private fortunes. If these fail, the common stock of the corporation is liable, and where this fails it may be exacted out of the private fortunes of its mem-

BOOK III. bers; for the same reasons alleged above \* in the case  
 of conquest in a just war.

5. As corporations have generally sufficient power to restrain their members from injuries, the governors should be obliged to give sufficient security against future injuries, and should be vested with further powers if the former were not sufficient. Nay they may be divested of any such privileges as are apt to be abused, when no other sufficient security can be obtained against their being abused to the detriment of the publick. But without some great necessity, or when other securities can be obtained, it is very unjust to deprive a large innocent body of men of any privilege of importance to them upon the crime of a few, or even of their magistrates.

6. As to any rights which smaller corporations enjoy as parts of a great body politick and with relation to it, such as a right of representation in the supreme council; no mal-administration of even the magistrates or councils of such corporation should forfeit a right of importance not only to all the innocent members, but to the whole state.

7. Bodies incorporated merely for trade and for the benefit of a few partners, may † justly be deprived of their privileges upon their non-compliance with the terms or conditions upon which they were granted. And the corporation may be dissolved.

XVI. As to taxes for defraying the publick expences,

*What taxes or  
tributes most eli-  
gible.*

\* See above ch. viii. art. 5. of this book.

† This is a *pœna conventionalis*, distinct from the proper *pœna universitatis*.

these are most convenient which are laid on matters of luxury and splendour; rather than the necessities of life; on foreign products and manufactures, rather than domestick; and such as can be easily raised without many expensive offices for collecting them. But above all, a just proportion to the wealth of people should be observed in whatever is raised from them, otherways than by duties upon foreign products and manufactures, for such duties are often necessary to encourage industry at home, tho' there were no publick expences.

This proportion can never be observed without a *census* or an estimation made of all the wealth of private families at frequently recurring periods, once in five, six, or seven years. How practicable this is, may be seen by the Roman laws. It would detect perhaps a few broken merchants and men of business, and both turn them out of trade and prevent their opportunities of defrauding more creditors; and this is all the harm it would occasion. For men of prudence and good conduct, whose stocks were lost by accidents, they would still be trusted by their friends: and yet incautious rash projectors, without any fund for their business, would lose opportunities of fraudulent bankruptcies, and of many injuries now too common.

By a *census* all would be burdened proportionally to their wealth; and thus the publick expences be oppressive to none beyond his neighbours. In land-taxes, gentlemen in debt are immoderately oppressed, beyond those of clear estates; and moneyed men con-

*The great use of a census.*

BOOK III.tribute nothing. Duties and excises, however the merchant or other wealthy trader first advances them, yet are at last paid by the consumer. The hospitable generous men, or such as have numerous families supported genteely, bear the chief burden here, and the solitary sordid miser bears little or no share of it.

*Obedience active  
or passive.*

XVII. To these rights of governors correspond the obligations on subjects to obedience active or passive, as we shall shew more particularly in a few observations.

1. When the command of a governor is truly just and wise, and within the power committed to him by the constitution; a subject is always bound to obey notwithstanding of any private inconveniencies or danger to himself; and that even in conscience, tho' he could artfully evade the penalties of the law. This holds particularly in paying of taxes and in military service.

*Obligations to  
obey imprudent  
commands.*

2. When the matter commanded is within the power committed to the governor, but he is using his power imprudently in commanding it; if modest representations will not move him to change his orders, and they are only burdensome and dangerous to us in particular and not contrary to any perfect right of the innocent, or injurious to others, it is our duty to obey, tho' the governors sinned in commanding. In war the commander may often be very guilty in imprudent orders given, and inferiors may see that they are not only dangerous to themselves who execute them, but even prejudicial in a small degree to the publick cause. But as dissolving all military discipline must

be a much greater evil to a nation than the loss that CHAP. 9.  
can be readily sustained by executing the imprudent orders; and all discipline must be lost where the inferior assumes to himself to disobey orders he judges imprudent; it is often the duty of inferiors to execute them while they judge them imprudent.

If the orders are judged treacherous, or so pernicious that the execution of them would be more destructive than breaking through in this case the rules of discipline, a good man would disobey, and take his hazard. It is in like manner our duty to pay taxes or tributes, tho' we judge that they are unequally imposed, and to be applied to imprudent purposes, when they are imposed by that person or council to whom that power is committed. There are many commands, civil and military, about the prudence or justice of which inferiors are not proper judges, wanting access to the reasons of them. Upon presumption of the wisdom and justice of their governors, they may act innocently and virtuously, when their superiors are very criminal; and they often owe such obedience to the general interest of their country, when they know that the orders are imprudent. *When they may be disobeyed.*

3. But if a subject is persuaded of the injustice of a war, or of a sentence he is commanded to execute in consequence of an iniquitous law, he should refuse active obedience, and bear patiently for a good conscience the sufferings he may be exposed to.

XVIII. But when a governor exceeds the powers vested in him by the constitution, assuming such as *When the ruler exceeds his legal power, no obedience is due.*

BOOK III. are not granted to him; unless it be in cases of singular necessity, it is always just and honourable to oppose such usurpation of power on its first appearance, whatever specious pretences are made for it of good designs and intentions; as the precedent is dangerous, and will readily be followed in worse cases, to the subversion of the constitution, and all rights established by it.

2. Suppose the governor does not exceed the legal powers vested in him, but is abusing some immoderate powers granted him in an imprudent plan of polity to purposes everfive of the publick safety and liberty; subjects may justly refuse obedience, and by a joint resistance oblige him to consent to such limitations and restrictions as are necessary for the common safety, a private man, when he has no hopes of a sufficient concurrence of others, must fly from oppression or resist it as he can. It would be wrong, without hopes of success, to involve himself and a few friends to no purpose in greater mischiefs, or to obey commands injurious to others.

*Private injuries from a good prince should be borne patiently*

3. Suppose the plan of polity good, and a prince also in the main faithful to his high trust, but possessed with some groundless prejudice or violent anger against any private subject, and aiming at his destruction without any just cause: no man can innocently obey his unjust orders in destroying an innocent man, and one should suffer rather than execute them. The innocent person thus intended for destruction would have a right to all violent methods of defence, even

against the prince in person, were he only to regard CHAP. 9. the right of the prince against him; but for the sake of his country, not to deprive it of a prince in the main good, or expose it to any great evils which might ensue upon his death; it may be the duty of the subject to fly rather than use violence, or to be a martyr for his country's interest, when he cannot escape by flight.

But to say that in no case men have a right of resistance, or that in no case they can assume to themselves to judge of the commands of their superiors, is monstrous. All ends of government, all safety, all important rights of a people would be precarious, and be lost without redress, as soon as supreme power came into wicked hands. They who cannot judge of the justice of commands given, can surely as little judge of titles to supreme power. This doctrine therefore must for ever establish every usurper who once gets into possession. A wicked prince or usurper, a senate, or a few Democrattick deputies once in possession are for ever secure: upon their orders, which none must assume to question or judge about, their soldiers might rob, pillage or massacre any whom they suspected; nor could there be any redress.

4. As to persons condemned to punishment according to just laws, they seem obliged to bear it, and owe to the publick that reparation of the mischief done by their example. Their declining it by artful contrivances to make an escape is scarce justifiable, tho' it is generally excused on account of the great

*Resistance often  
lawful.*

*The duty of per-  
sons justly con-  
demned.*

BOOK III. nefs of the temptation. As the fociety has a right to punish, they can have none to resist by violence. Nor is it lawful to tempt any officers of justice by bribes to be unfaithful in their trust, or to use violence against them.

*Of those unjustly  
condemned.*

5. One condemned upon an unjust law or false accusation seems to have a right to make his escape by any methods which are not injurious to the innocent. Nay as one may have a right of self-defence, or of defending an innocent man by violence against any aggressor, tho' the aggressor was in an invincible error, and so innocent too: in some cases the like may be just in an innocent man, or in his friends against some inferior officers of justice, when all the detriment arising from such efforts shall be a far less evil than the execution of the unjust sentence upon the innocent, and eminently worthy.

The case is much more obviously favourable where the laws are notoriously unjust and oppressive toward great numbers; or plain usurpations upon the natural and unalienable rights of all rational beings. Such are all those which invade the rights of conscience by persecution for innocent religious opinions. Had one sufficient force by the concurrence of others, he would have a right to compell the legislator by force to rescind such unjust decrees. Much more must he have a right to defend himself against their tyranny in this point by any violence against the execution of such laws when he has probability of success.

Thus the general duties of magistrates and sub-

jects are discoverable from the nature of the trust CHAP. 10.  
committed to them, and the end of all civil power. ~~~~~  
Political prudence to exercise the rights vested in  
magistrates wisely according to the several exigencies  
of publick affairs, is a most important part of hu-  
man knowledge, and must be acquired by much ob-  
servation, and experience in political affairs, by know-  
ledge of the interests and constitutions of neighbour-  
ing states, by civil history, and political writings.

## CH A P. X.

### The LAWS of PEACE and WAR.

I. WAR is the state of those who by violence defend or prosecute their rights: and as so-  
vereign princes and states are in respect of each other Laws of war among States the same as among individuals.  
in natural liberty, the whole doctrine \* above deliver-  
ed, about the violent defence and prosecution of  
rights, belongs also to the wars of states, and the just  
terms of peace among them.

Wars are either *private* or *publick*, the former are Wars publick or private, solemn or not solemn.  
those of private men in their own names; *publick* are  
“ those wars undertaken by the authority of a state  
“ or its supreme governor on one side at least.” When  
“ a war is undertaken by the authority of sovereign  
“ states on both sides,” it is called a solemn war, and  
a sort of † external justice is attributed to it on both

\* B. ii. c. 15. § 5. † See Grot. l. i. c. 3. § 4. thus *justum et purum duellum* is ascribed to both sides, tho' other wars are as lawful. So *justae nuptiae* are not the safe lawful marriages.

BOOK III. sides by the customs of nations; not that there can  
 ~~~~~ be true justice upon both sides; or, as if all other wars were morally unjust. To this *bellum solemne* Grotius and his followers require also a previous indictment or *declaration*, after just reparation of wrongs or the fulfilling our just claims has been demanded and refused, according to the old *foeial law* of the Romans. But whatever may be said of the previous demanding our right, which indeed seems necessary on the offensive side, if their affairs can allow it, there is no such necessity after a just demand has been made and refused, that there should be a \* previous declaration of war. It is never expected on the defensive side, nor is it always safe to the other, as it may give time to the enemy, and prevent the best opportunity a nation may have of doing itself justice. Nor has any such universal custom obtained even among the more civilized.

*Civil wars may
be as just as any.*

Publick wars but not solemn, are those when magistrates quell seditions and tumults; when two great factions in a state upon some debated point of publick right have recourse to arms. Sometimes one side having the supreme governor's authority, as in Monarchies; and sometimes neither; as when one half of a senate or popular assembly makes war with the other. These are called also civil wars; and in many cases there is as much reason pleading for favour, and all humane treatment in these civil wars, from each

* See Bynkershoek *Quest. Juris Publ.* i. 2.

other and from all other nations, as there can be for both sides in any solemn wars; as both sides may have as specious reasons or pleas of justice, as can be found on both sides in the wars between sovereign states: which must appear from the many cases in which resistance to governors may be lawful; of this hereafter.

II. The laws of war relate either to the rights or obligations on the contending parties toward each other, or toward neutral states who are at peace with both the parties; of these in order.

Laws of war relating to the parties.

There is one duty incumbent on both with respect to each other, and to all mankind around, that when they cannot give previous declarations, they should however give subsequent ones, explaining their claims and the grounds of them. The defensive side is obliged as much as the other to make known their defences and exceptions against the demands of the aggressor. Such declarations are the natural means of letting each other and all the world know, that neither of them are using violence, with the spirits of pirates or robbers, without regard to right and justice; and they preclude all presumption of their renouncing the law of nature, or forfeiting the common rights of mankind, if indeed their declarations contain any specious pleas or allegations founded in fact; where it is so, the body of the people on both sides may be innocent in deeming their causes to be just; nor should those who bear arms on either side be reputed infamous, or enemies to mankind: as they ac-

BOOK III. ted under the authority of civil governors, and by
 ~~~~~ their orders, upon fair presumptions of justice.

*The just causes  
 of war are pro-  
 per injuries ;*

III. In the wars of states, as in those of individuals, we may consider the causes, the time of commencement, and the term to which they may be continued, and the lawful methods of carrying them on.

*or apparent dan-  
 ger of them.*

1. The ordinary just causes are some violations of perfect rights. Our neighbour's innocent increase of wealth or power does not justify our invading him, tho' it should rouse our caution and diligence to encrease our own wealth and power, and to form alliances. If any neighbour indeed appears to be preparing himself for hostilities and conquest, tho' he has not yet committed any injuries; if he is possessed of any singular advantages by situation, or other causes, that states around him cannot be secured but by such continual expences of armies or garrisons as they cannot bear; they may have a right to insist upon something more than verbal securities against injuries, and compel the aspiring state to give it, by surrendering frontier-forts, or demolishing them, or by quitting some other part of their strength.

2. As among the members of a free state there may be potent reasons for preventing such immoderate acquisitions of a few, tho' made by innocent means, as may be dangerous to the whole body, there are the like reasons why neighbouring states should insist on proper securities for their safety from any one which is exceedingly increasing in power, or they may put a stop to its increase by force. But this is like the

extraordinary rights of necessity, which states cannot have recourse to, if by industry, good discipline, or any other inoffensive methods, they can preserve a proper ballance of power against their aspiring neighbour. An absolute necessity too in some cases may justify the use of force in demanding what cannot ordinarily be claimed as matter of perfect right \*.

CHAP. 10.

3. As men in natural liberty have a perfect right to assist any neighbour against injury, so have foreign states to assist any one that is unjustly attacked, or that has not force enough to compell an injurious neighbour to fulfil its just claims. Nay it is the duty and interest of all around to give this assistance; as the like injuries may be done to others, if the injurious state is allowed to enjoy its prey. This is more especially their interest when ambitious designs of conquest appear, tho' they are not yet turned toward ourselves.

*Defence of others against injury.*

IV. The time when hostilities may justly commence is assoon as an injurious state has shewed the hostile or injurious design, by violating any perfect right of ours, and refusing reparation when demanded, or denying to perform what we justly claim from it. It is just, as well as prudent, to prevent an enemy, and make his country the seat of the war; nor are we bound to stay till we are invaded.

*The just commencement and end of hostilities.*

\* It is thus that Grotius defends the wars made by the Israelites upon some nations which refused them a passage through their country upon the fairest offers of peace, and of abstaining from all injury. And yet no nation, without absolute necessity, has a perfect right to claim this

allowance. An army in the heart of a country may be master of it, unless a superior army be raised in its defence; the other hostile party will insist on the like right, and thus the neutral state may be made the seat of the war.

## BOOK III.

continued, is till the danger be repelled, all injuries and expences of war compensated, and every thing paid and performed which we had a perfect right to claim, and security obtained against like offences or injuries for the future. To continue violence, after all these are obtained or offered, is manifestly unjust, as it is cruel toward the conquered; and is so far from being useful to mankind, that it is highly pernicious, as was shown above about conquests.

*Force the undisputed method of warring.*

V. The most undisputable method of making war is by open force and violence against such as oppose us by violence; and this is naturally just, as far as it is requisite to obtain our right, or to distress the enemy so as he shall consent to just terms. Such violence or cruelty as is not naturally subservient to this purpose, or without which we could obtain our right effectually, and at no greater expence to ourselves, is truly unjust and detestable. Such is the murdering of hostages or captives in cold blood, and all barbarities toward women and children. Nay, granting that by such barbarities an enemy might sooner be moved to agree to just terms, yet they are naturally unjust toward innocents; and are horrid precedents, which may be turned against ourselves, or those in the justest cause.

*By tacit convention certain sorts precluded.*

Many civilized nations, by a long custom, which seem to import a tacit convention, have agreed to abstain from some dark methods of destruction, such as poisoning fountains which supply an hostile camp,

using poisoned arms to make all wounds mortal, and some few others. As the customs are humane, it is vicious and dishonourable to depart from them while the enemy is willing to observe them; as departing from them may increase mischiefs further than is necessary for the purposes of war, by destroying women, or children, or persons wounded, who however could have been of no service against us; and our enemy may gain as much by such artifices as we can. As to assassinating of hostile princes or generals, there is no custom of nations excluding it, providing it be not done by the corrupting of subjects, or such as are under bonds of fidelity, against their masters. It has often been practised by civilized nations against any hostile prince or general, and not condemned. But the bribing a subject to assassinate his own prince, or a soldier his own officer, is generally condemned.

It is to be exceedingly regretted that while some practices not so very pernicious seem to be generally condemned and counted infamous methods of war, yet a general custom has given impunity to some of the most horrid barbarities committed against enemies. No person is punished, or counted infamous in his own country, for murders of cold blood, rapes, butchering of women and children, or any cruelties committed against an enemy during a war. Nay should he fall into the enemies hands, he is not prosecuted for these crimes, as the enemy is restrained by fear of reprisals. There is all reason indeed to excuse great cruelties done in the heat of action, which a cool spec-

*Some horrid practices too much indulged by custom.*

BOOK III. tator may see to be unnecessary. This indulgence  
 ~~~~~ may be given to human weakness amidst fear and dangers. But for barbarities unnecessarily committed against enemies, when there was no present danger, and in cold blood, it would be honourable, and but a piece of justice in every nation, to inflict the severest punishments on their own subjects for such crimes, and to hear in their courts of justice the complaints of their enemies against them.

*How far fraud
 or stratagems are
 lawful.*

VI. There is some debate how far frauds are lawful in war, and here it is plain that deceiving our enemies, when we have a just cause of war, by any such signs as import no profession of communicating our sentiments to them are stratagems universally justified. Nay, the custom is much received of deceiving enemies even by other signs, such as import this profession when used to a friend. False narrations are generally practised whenever there is any hope of being believed; and men are not blamed as false or perfidious on this account by those who manage the publick affairs of nations. One may allege, that this custom, universally received, is a tacit remission of the right which otherways enemies would have to each others veracity in narrations. But it must ever be a disagreeable method to a candid mind, especially if joined to any professions of friendship.

*No deception by
 treaties can be
 justified.*

And as to all forms of contracts, truces, or treaties, the custom never was, nor ever can be received of deceiving an enemy by them; and such frauds ever will be deemed, as they truly are, highly criminal and

perfidious. Treaties are the only humane way by which wars can be brought to an end and peace restored, without the entire slaughter or destruction of one side; and breach of faith in them must take away all their use for the most salutary purposes to nations. There is a like obligation on enemies to observe all promises of safe conduct or passports given, that good men may be secured of the humanity due to them by all, and which is perfectly consistent with the most vigorous prosecution of the war.

VII. How the private fortunes of subjects are liable to the claims of compensation of damage done by their state, and the foundations of the right of reprisals, were explained upon the subject of conquests. We only observe here, 1. That every state is bound to restrain its own subjects from injuring any neighbouring state, or any of its subjects. 2. When such injuries are done openly, and no redress made by the governors of such injurious subjects, upon complaints made, this is always deemed a just cause of war; unless the governor shew that such subjects have shook off their allegiance, and are no longer amenable to their laws, and that they give them no protection; for no state is accountable for the depredations made by bands of pyrates who once were their subjects. 3. As subjects are bound to compensate damages done by their governors; when the injured cannot otherways obtain compensation, it is just that the injured state take the compensation due to it or its subjects in the easiest way it can, and if that is by seizing the goods of the

*The justice of
reprisals.*

BOOK III. subjects of the injurious state, let them have recourse
 ~~~~~ to their governors, for compensation of what they suffer through their injustice on a publick account.

*When the capture is complete.*

The custom is generally received, that moveable goods taken in war, and removed into the enemies forts, or carried to their fleets, and adjudged as legal prizes, are deemed the property, partly of the captors, partly of the state to which the captors are subject, according as their civil laws determine. And this change of property is acknowledged even in the state from which they were taken; so that if they are retaken, the old proprietor is deemed to have no claim; they belong partly to the captor, partly to the state, as civil laws appoint. This is a matter of arbitrary or positive appointment, with a view to encourage subjects on both sides to greater activity in depredations on the enemy.

*Laws of Nations respecting neutral state*

VIII. We come next to consider the laws of war which respect neutral powers; and as there are a great variety of customs received in this matter, we shall only briefly mention the general principles and maxims by which the chief questions may be solved. This head makes one great part of what is called the \* publick Law of Nations; some parts of which are obligatory as parts of the Law of Nature, and others

\* It is needless to run into logomachies, whether there be any *Law of Nations* distinct from the *Law of Nature*. One may perhaps divide the Law of Nature into two parts, the *private* and *publick*, the former about the rights and duties of individuals, the latter about those of states.

The publick, or the *Law of Nations*, may be subdivided into the *absolute* or *primary*, containing the rules founded on natural reason, and obligatory previous to agreements; and the *secondary* or *hypothetical*, founded on custom and tacit convention.

as matter of agreement or tacit convention, and very changeable. CHAP. 10.

The laws of war, with respect to neutral states, depend chiefly on these few maxims.

1. No neutral state should be obliged, without it inclines to it, to declare for either of the contending parties, or to favour either in the war, and thus expose itself to the hostilities of the other. There may be a strong obligation of duty, or gratitude, or finer justice; but, where there has been no express engagement by contract or treaty, a neutral state must be at liberty to act as it pleases and may continue its neutrality. The same holds as to the two contending parties in a civil war; a state formerly in friendship with this divided country is not obliged to declare for, or recognise, the justice of the cause of either. Nor is it to be deemed any breach of friendship by the side which proves victorious, that the foreign state gave no aid to it while the victory was doubtful, provided that it acted the same part toward the other.

In consequence of this a certain external right is ever allowed to be acquired by the captors to all moveables taken in war; and the title is deemed indefeasible if these goods are purchased by a neutral state or its subjects, so that they can never be reclaimed out of their hands by the old proprietors; nor is it deemed a departure from the neutrality that they buy such goods taken on either side as once were adjudged as prizes. The purchaser may not know how the goods were acquired. If they were to be reclaimed

*They should not be forced to declare on either side.*

*The external right to spoils taken in war, is a full property.*

BOOK III. by the old proprietors, and delivered to them; the neutral state would thus declare that the seizure was unjust and must lose the price payed, or declare war upon the captors. If they refused the demand of the old proprietor, while he was allowed to insist on his old right, this would be declaring against him and his country. Nay if spoils are sold to other subjects of the same state from which they were taken, either by the neutral purchaser, or by the enemy, (as trade is sometimes allowed by treaty during hostilities;) out of favour to the fair purchaser, as well as to the external right of the captor, the old proprietor cannot claim them. Were it otherways, all trade would be precarious either with the enemy or neutral states.

*No such right  
as to lands vio-  
lently possessed.*

But as to lands, cities, or provinces taken, as no purchaser can be presumed ignorant how the seller acquired them, there is no shadow of reason for allowing such a right in the captor. A neutral state by purchasing them would preclude the old proprietors, or the state, from recovering by force their old territory; or would force them to declare war against the purchaser. Such purchases therefore are always deemed contrary to the neutrality.

*Certain effects  
of violent posses-  
sion of lands, ci-  
ties, &c.*

There is indeed one external right justly understood as attending the violent possession of lands, cattles, or cities; that all services, rents, or other annual payments, due formerly by any person or corporation to the old proprietors or governors of them, are now validly payed to and discharged by the violent possessor; so that the old proprietor or governor,

if he recovers them again, cannot redemand the same CHAP. 10. services or payments; nor look upon such services or payments, during the violent possession, as any infidelity or hostility; unless they have been offered officiously, when they were not exacted by the assumed authority of the violent possessor.

But no deed of the violent possessor can release from any future rents, services, or payments, or discharge any such obligations, beyond the annual termly payments during his possession; so as to preclude the claim of the old proprietor or governor when he recovers his former possessions. If he has by force or by threatnings compelled a debtor, whether a private person or a corporation, to pay fully a debt due to the corporation now violently possessed, or to its governor in his publick capacity; and that without any collusion, or fraudulent agreement with the debtor, the debt is \* validly discharged.

2. "Neutrality can be preserved only by giving No aid should be given to either side, or equally to both. "help to neither side in the war, or equally to both." Hence if one side is allowed to enlist volunteers in the neutral state, both must be allowed. If troops are hired out they must be hired out to both, if both desire them. And privileges of trade continued to both as they were before the war broke out. Military stores must be furnished to neither without consent of the other, who may perhaps demand the like supplies;

\* See a famous case of this kind in Quintilian, *In 7. Orat.* v. 10. where Alexander, after the conquest of Thebes, released a debt due by the Thessalians to the Thebans, with the decision of the Amphyctiones.

BOOK III. ordinarily they are to be sent to neither. Nor can the  
 ~~~~~ neutral state send even common provisions to any city besieged, or to any island or coast guarded by an hostile fleet of the other side. Counterband goods, or such as are thus prohibited, may justly be seized on the coast, when it appears they were designed for the enemy.

How prior alliances bind to send supplies.

If a neutral state has been in an alliance offensive and defensive with both parties, and bound to send quota's of troops to their assistance, if the neutrality remains it can send troops to neither. If its interest allows it to quit the neutrality, it may justly send troops to that side which has the just cause. All contracts about giving aids in war have always this tacit condition that "the cause be just." No treaty can bind to assist in unjust violence.

Neutral states should enjoy all commerce with both in common merchandise.

3. A third obvious maxim is that "a neutral state should be precluded from no advantage it enjoyed by either side, on account of the war; except such as it made by commerce in military stores:" all other advantages of trade and navigation it should enjoy with both. Thus the goods of any neutral traders found aboard the ships taken and judged prizes, should not be forfeited. The neutral state had a right to freight ships from either side; and, as it had a like right to hire out its ships to both, tho' the enemies goods aboard neutral ships are justly taken, yet the neutral ships cannot be made a prize. Each side may have a right to examine the neutral ships, and find if any of the enemies goods be aboard: but they have

no right to seize either the ships, or any parts of the cargo which did not belong to the enemy.

There is one right, like those upon a plea of necessity practised and allowed; that either party in any sudden exigency may take any neutral ships in their ports, upon paying a reasonable freight for them, to transport troops or stores upon any expedition.

In like manner no neutral state should lose any right of mortgage upon the lands or territories taken by either side from the other.

4. Another maxim as to neutral states is “ that
“ they have a right to hinder either side from com-
“ mitting any hostilities against the other, within the
“ neutral territory or its harbours; and to give pro-
“ tection to any refugees from either side.” As the
neutral state is master of its own territory, its bays,
and harbours, it has a right to prevent hostilities of
either side within them; and it is plainly its interest
to do so, as they may be dangerous to itself or its
subjects. The taking of ships in its harbours may in-
terrupt or discourage the trade, which the neutral
state has a right to retain, with both parties. And
the discharging of artillery may be more pernicious to
others than those that are aimed at. It is the part of
a common friend to prevent all sorts of violence of
the contending parties, as far as he can; and every
state within its own bounds has a right to prevent
them. This right is allowed to extend as far as it
has a power of commanding by the guns of its forts.
Exercising force against enemies is always looked up-

*No hostilities
are allowed in the
neutral state.*

BOOK III. on among the *jura majestatis*, or parts of supreme power which no state has a right to within the bounds of another which is at peace with it.

*The protection
of deserters or
refugees.*

IX. As to refugees from either side, a neutral state has a right to protect them for the like reasons. No foreign prince has a right to exercise any jurisdiction, civil or criminal, within the bounds of another state. If he or his ambassadors are allowed to reside in a neighbouring state for some time, they retain all their powers and rights in their own country, but have none where they reside, except what is allowed them by this state; and by the custom of nations there seems to be allowed to them a civil jurisdiction over their own retainers, to decide any points of property debated among their own subjects. Nay this right is allowed to consuls, who represent not a prince or state, but are agents for merchants at a foreign court, and appointed as judges in civil causes by their prince over their countrymen. But as they have no jurisdiction, even in civil causes, where foreigners are concerned; and for criminal jurisdiction, it is not allowed either to a * prince or his ambassador over their own subjects or countrymen residing with them in another state, as criminal jurisdiction requires often the use of force.

*Customs received
as to criminals
and bankrupts.*

The right and custom of nations is pretty general in this matter. Foreign states are truly obliged by the

* Christina, Queen of Sweden, put to death, while she resided in France, one of her secretaries for betraying her counsels. The French justly resented it as an exercising force in their country.

Law of Nature to give no protection to any infamous criminal, or notoriously fraudulent bankrupt, who flees to them; they should deliver them up. And yet the state from which they fled has not a right to pursue them by force in the bounds of another country. If a state is zealous to bring them to justice, a commission should be demanded from the foreign state, and it is unjust to deny it upon proper security against doing any damage to its subjects; and then the force is exercised by the authority of the governors of that state. But as to smaller criminals, or common bankrupts, the custom received is on the merciful side toward them; they are generally protected, and seldom demanded to justice.

As to state-criminals; as frequently good men are on both sides in civil wars and state-factions, as well as in solemn wars, the general custom is very humane, that they should universally find protection in foreign states; and the refusal of delivering them up, or of allowing them to be pursued and taken, is never deemed a just cause of war, if, while they reside abroad, they are forming no new conspiracies or hostile attempts against the present governors of their country, who should be satisfied with their banishment, and loss of their fortunes, and of the hopes they had in their native land.

X. The natural and humane way of ending wars is by treaties of peace; the nature of which, the just terms of them, the obligations, and just exceptions, may be sufficiently understood from what was said

BOOK III. upon contracts in the former book, and upon the rights arising from the injuries of others; as all sovereign princes and states are with respect to each other in a state of natural liberty.

*The exception
of unjust force
precluded gene-
rally.*

The exception indeed of unjust force extorting a contract is less to be admitted here than among private persons, whether the wars are solemn or civil to which the treaty puts an end. Were this exception universally allowed, all treaties would be vain; no state would regard any promises or engagements of another; nor would contending factions have any faith in each other; since either side, whenever they inclined, could still have this pretence to evade their obligation, that the contract or promise was extorted by unjust violence; and thus all old contraversies would revive, notwithstanding any agreements or renunciations. No terms offered would stop hostilities. War must end only by the destruction or entire conquest of one side.

*But not in all
cases.*

On the other hand; some wars undertaken by princes and states are so manifestly unjust, without any shadow of right, which yet prove successful, that it would be hard to preclude a state, which had been compelled by such unjust violence to consent to the most oppressive and iniquitous terms, from all redress either for themselves or their posterity for ever, tho' they had the most favourable occasion of shaking off the unjust and cruel yoke. To do so would give the greatest encouragement to unjust violence, and make oppression everlasting without remedy.

We may perhaps justly distinguish, between vio-

lence really unjust, and yet founded upon such specious pleas and colours of right, as might have imposed upon men who truly intended to act justly according to the Law of Nature; and that violence which had no such colours of right: allowing a valid obligation to those treaties which were obtained by the former kind of violence; especially when it was conducted honourably, according to the humane customs of civilized nations, and when the treaties contain no terms manifestly inconsistent with the plain laws of humanity, and with the safety, and these natural rights of a people which are necessary to secure all valuable enjoyments of life. But for treaties extorted by violence manifestly and avowedly unjust, and containing terms quite inconsistent with equity, and all security or safety of the people defeated as to the natural enjoyments of rational creatures, they can produce no obligation.

No doubt after all the decisions men can give, contraverfies may still remain: What are these specious colours of right which plead for the validity of contracts extorted by unjust force? What sort of terms are thus inhumanely oppressive? where there is no common judge there is no refuge but to mens own consciences, and sense of humanity, and justice, and to wise arbitrators, or neutral mediators, under no attachments of interest to either side.

XI. There are many divisions of treaties; some are *personal*, entered into out of affection to the person of the prince, and subsisting only during his life. O

CHAP. 10.

No precise determination of many questions.

Divisions of treaties.

BOOK III. there are called *real*, when they are made with a prince or ruler, as he represents and acts in the name of the body politick, which never dies. The obligation of these is perpetual, where no limited term of years is expressed. Some are *equal*, binding to equal performances, or such as are proportional to the wealth of the states; and others unequal. Of the unequal again, some, tho' burdensome to one side more than the other, yet make no diminution of its sovereignty or independency. Such for example, as bind one side to refund the expences of the war, to deliver up ships, or frontier towns, or to quit certain branches of trade, or even to pay certain sums annually. Notwithstanding of such burdens, the state may exercise within itself, and with other nations, all parts of the supreme power; other unequal treaties diminish the sovereignty: thus if one consents that appeals shall lie in certain causes from its own courts to those of the other state, or that it shall not make war without consent of the other. The terms of these treaties suggest the obligations on both sides.

*Hostages why
disuse.*

In confirmation of treaties in former ages hostages were frequently given. But as they can give no security unless a nation were disposed to commit a great piece of barbarity, in punishing the innocent hostages for any perfidy of their country, to which they had no way contributed; the custom of demanding or giving hostages is laid aside.

*The rights of
ambassadors, &c.*

XII. Treaties and confederacies of all sorts are managed by ambassadors, envoys, and plenipotentiaries.

persons employed to transact such matters in the name of a state. The rights of all these persons, according to the Law of Nature, are the same whatever names or external dignities they may obtain, if they are sent to any state in the name of another, great or small, which is not dependent on the state to which they are sent. CHAP. 10.

This right, in the first place, belongs to all who are sent with any publick messages in peace or war, that their persons should not be violated; but they should either be allowed to reside in safety while they offer no violence, or, if this is refused, to return unmolested. The greatest enemy, even upon the justest provocation, is obliged to listen to proposals from the other side, as his right is not infinite; and there are certain proposals which when made he is obliged to accept of, and desist from hostilities. No proposals could be made if the persons, who carried them, were not allowed protection. *Their persons inviolable.*

A state indeed is not obliged by the Law of Nature to allow the ambassadors, envoys, or residents of other states to continue in its territory; such persons always act the part of spies if they are diligent in their trusts: and they may be refused access to it without hostile intention. But as the advantage is equal to both sides against each other, where they are mutually allowed; and as by their means many differences are speedily composed which otherways had broke out into wars; it is now the custom of all civilized nations to allow them mutually, and to give *No natural obligation to admit the residence of ambassadors, but it is the custom of all nations.*

BOOK III. them full protection while they commit no hostilities, or form no conspiracies against the states where they reside.

What privileges or immunities they have by the Law of Nature.

The Law of Nature ensures to them no other protection, previous to some custom importing a tacit convention, than that which every civilized state gives to its own subjects or to any private foreigner who resides with them for pleasure or commerce. An action would lie against them in the courts of the state where they reside for any debt or crime, as against any private foreigner. And if they were, and continue natural subjects of the state they are sent to, they are justly treated as its subjects still; tho' employed as factors for others. Their employment as it is of great dignity and importance, would indeed entitle them to greater deference and external marks of honour, than they could have claimed in their private capacity: but it gives them no further perfect right without some convention express or tacit.

What by the custom of nations.

But a pretty general consent of civilized nations has given a great number of other privileges and immunities to them, their families and retinues; the settling of which makes a considerable part of the * publick Law of Nations, as it is called, which is founded on tacit conventions, declared by general practice, and by the resentment expressed at any nation which violates it. And yet as to most of these laws any nation by a timely premonition of its neighbours that

* The curious may find them in Wiquefort's *Ambassador*, and Bynkerhoek *de fere Legati*, and other authors.

it neither insisted on such privileges to its own am-
bassadors, nor would give them to those of other na-
tions, might free itself from all obligation; some of
them indeed are founded on reasons of humanity; but
many others merely on capricious customs, and the
vanity of princes.

XIII. There are humane reasons for one custom, al-
most universally received of late, that “ambassadors,
“envoys and all who act for nations independent of
“the state to which they are sent, * are not subject
“on account of their residing in any state, to the
“courts of that state, in any action civil or criminal.”
Nothing more is allowed than barely the necessary de-
fence against any outrage of theirs, or any conspira-
cy. All right of judging and punishing is referred to
the prince or court to which they were formerly sub-
ject. There is an equitable reason for extending this
privilege beyond the ambassador’s person even to all
his proper family; such as his wife, children, secreta-
ries and necessary domesticks; since by the want of
them, or by any vexatious processes against them, he
might be distressed or hindered in his business. If
their conduct is offensive they may be ordered to with-
draw, and justice be demanded against them from the
state which sent them, the refusal of which would be
a just cause of war. The reason for the privilege is
this, the most vigilant ambassadors do generally most
oppose the interests of the courts where they reside,
and are the least popular in that country; and there-

*Ambassadors in
a state not sub-
ject to its courts*

* *Legatus non mutat forum.*

BOOK III. fore would have the worst prospect of a fair trial, or
 of a just sentence upon any civil action or criminal
 process against them.

At the same time, if an ambaffador trades where he resides, or incurs debts by contracts of merchandise, or by bonds; there is little natural reason why he should not be sued and compelled to do justice to the subjects of the state where he resides. If he is suspicious of the partiality of the courts, let him abstain from voluntary contracts. There is still less natural reason for the immunities of all gentlemen of his retinue in such cases. It would be highly proper that he gave a list of his domesticks upon his admission, or upon adopting any more into his family; that the state where he resides might judge how far it was proper to extend its protection to such numerous retinues.

*His house no
 sanctuary by the
 law of nature.*

In like manner, there is no natural reason for making his house a sanctuary to any but the necessary domesticks allowed him: much less that it should skreen any subjects of the state where he resides from the execution of justice, and thus limit the power of the state over its own subjects. But such claims have often been made by means of an unnecessary notion that the ambaffador represents the person of the prince who sent him, and should be treated as such; or represents a free and independent state, and must have a like independency, immunity from the power of the state he is sent to, for all who attend him of every character.

XIV. From this also arise the claims of superior CHAP. 10. dignity, and the precedence of the ambassadors of different nations. These are all arbitrary matters, depending on custom or convention. It would be as natural that ambassadors should take precedence according to their several personal dignities, if we could well compare the several personal dignities of men of quality, in different nations, with each other. And this indeed is as easy as settling the dignities of different princes. Names are of no avail in this matter. A duke of Russia or Venice and a duke in Britain, a marquis in Britain and one in France are of very different dignities. The kings of Britain were once of higher dignity than emperors of Constantinople, or some Western Emperors in Rome. All rights of precedence among independent princes and states, or their ambassadors, must depend on some agreement or old custom. Were we to follow natural reason, these ambassadors should have the highest dignity who represent the wisest and best constituted states or polities; as these are the most honourable bodies politick. Superior force, striking terror in all around, often engages nations to give up these matters of ceremony to the most potent. Absolute hereditary Monarchies, and Oligarchies, have the weakest pretences to dignity.

*The precedence
of ambassadors.*



C H A P. XI.

*The DURATION of the POLITICK UNION;
and the CONCLUSION.*

I. **T**HE duration of a political union, and of a citizen's obligation to his country may be determined by these considerations. 1. As this union is designed for the good of all, it is oppressive in any state, where it is in no danger of decay, to detain any small number of citizens, who have a rational prospect of a better condition elsewhere, while the state suffers no considerable loss by their departure. It must be a wretched plan of policy, or very unfaithfully administered, which can tempt any great numbers to desert it, contrary to so many strong natural ties; and in either case, if proper remonstrances cannot obtain a redress of severe grievances, the citizens have a right to leave it, as the natural conditions, either expressed or implied, upon which they associated are broken. To desert a good association, wisely administered, when it falls into any distress by foreign force, is highly criminal; and the state may restrain its subjects by violence, as they are sacredly bound to support it at all hazards.

*The duration
of the political
union.*

*When subjects
are free from the
bond.*

Men banished for ever, on account of crimes, are no longer subjects. But a temporary banishment or relegation into any remote province subject to the state's jurisdiction, does not take away all right of the state over such corrupt members.

II. While a state can protect all its members, it is CHAP. II. under the most sacred obligations to do it. It may indeed under the utmost necessity, when the whole cannot otherways be safe, bind itself by contract not to protect any further a subject, or a certain district, demanded by a victorious enemy. But this deed cannot preclude the subject, or the district, from taking any other refuge: their bond is dissolved. An hero perhaps to preserve a country would deliver up himself a sacrifice.

How far a state is bound to protect all its parts.

When the majority of a state consent to change the polity in some essential parts, upon which the safety and prosperity of the subjects depended, in compliance with an invader or usurper, or out of any superstition or folly; such as dissent have a right to withdraw with their effects into any other country; or to associate by themselves: nor can they be retained upon any pretence of the old contract, since the essential articles are changed without their consent. A man acts unjustly who dissents from any wise and useful change of the polity; and yet it would be hard to oblige him by force, without some great necessity, to remain a citizen.

Certain changes of polity free such as dissent.

But all real treaties formerly entered into with other nations retain their full force after the change, so do all publick debts and claims on both sides.

III. If a state is by force subdued to another, the majority of the conquered have no right to retain any of the old citizens who incline to remove. Any parts of the vanquished state may assert their liberty and in-

After a conquest the subjects are free.

BOOK III. dependency, or unite with any other state they incline.

~~~~~ The former bond is dissolved by the failing of an essential condition. It is indeed very unjust in any part to desert the body, while there is any hope of supporting it.

If a people once intirely conquered should upon any unexpected emergence speedily recover its independence, it is the duty of all its citizens who have entered into no new political bonds to return to their former union, if the terms of it were equitable. But if they were not, or if any parts have entered into new polities, by contracts against which they have no just exception; as the former bond was dissolved by the conquest; all their new transactions are obligatory, in which they acted justly according to the probabilities then appearing to them.

*A province long conquered, and recovering its independence, does not acquire all the old rights over other lands.*

If a people conquered for some centuries, and reduced into the form of a province, should afterwards find an opportunity of asserting themselves into independence again, and that with all justice; it would be \* ridiculous in them to claim any right in districts or provinces long associated to other states, or subsisting by themselves; upon any pretence that these states or districts were formerly associated with their ancestors or subject to them, when they were a free and flourishing state. The conquest dissolved all these bonds, and left these districts or provinces free to con-

\* See a long examination of the vain pretences of Charlemain and his successors to all the dignity and rights of the Roman emperors in virtue of an election by the

citizens of Rome in *Grotius De J. B. et P. l. 2. c. 8.* and in Gronovius and Barbeyraque's Observations.

sult their own safety. Such claims are still more ridiculous on this account that after a few centuries and the changes which happen upon conquests long continued, the people can have little other pretence of calling themselves the *same* with their predecessors in that land, than this that they live upon the same spot of ground where the antient state was. But it is owned by all that as the people or state may remain the same in a new climate far from their old lands; nay without any lands, when they are aboard their ships or marching through deserts; so the new possessors of the same lands may be a state or people quite different from the old. CHAP. II.

When a state is once entirely conquered without a probable prospect of recovering its independency, all the old conventions of the people about a political union are in the case of contracts entered into about what afterward becomes impossible to be executed on one side, and therefore do not bind the other. The same is the case of the contracts by which certain districts became provinces upon condition of protection from that state which now cannot protect itself.

III. While the political union subsists, the duties of citizens, which arise either from the general relation to their country and fellow-citizens, or from particular stations and offices, are known by considering the true ends of the union, the rights of their governors, and the laws of their country, or the nature of any special offices they bear in it. It is superfluous to

BOOK III. heap up common-place maxims, well known, but of difficult application to particular cases; a good man's heart will always be zealous for the interest of any innocent association for a publick interest, in which, by the Divine Providence, he is engaged; and will look upon this situation of his fortunes as the voice of God directing him to that part of his fellows who should be more peculiarly the objects of his affectionate concern. And he will always remember \*, that in any tolerable constitution, he and his fellow-subjects owe innumerable advantages to the civil polity, to the laws, and to the whole body; even all their civilized education, their safety, their continual protection from innumerable injuries, and almost all accommodations and pleasures of life. They ought therefore to study the preservation and improvement of this constitution, and the general interest of this body, of which Divine Providence has made them a part, and recommended it to their zeal by all the generous principles in their soul. No worldly interest of ours, not life itself, should be reputed too dear to be sacrificed for its preservation; since in it is included the safety and all external happiness of great multitudes, both in the present age, and in those which shall succeed.

*The* CONCLUSION.

*The admirable  
contrivance of  
our nature.*

IV. From these general principles of the publick law of nations, as from those of the private law respecting individuals, we must discern the wonderful footsteps of Divine Wisdom in the constitution of our

\* See *Plato's Crito.*

species. Since it is by following the very principles of CHAP. II. our nature, the affections and feelings of our hearts, in that regular subordination of the more limited to the more extensive, which our inward moral sentiments recommend, and by the delightful exercise of the powers of reason which we are naturally prone to, that we obtain and secure to ourselves and others both the noblest internal enjoyments, and the greatest external advantages and pleasures, which the instable condition of terrestrial affairs will admit.

But that we may not deceive ourselves with false hopes, imagining a more stable external happiness to be attainable by individuals or states than nature will allow, and thus displace our souls from the only solid foundation of rest, tranquillity, and joy, in the stable persuasion of a good Providence, governing all well, and securing true happiness to every worthy soul; in resignation and trust in it, and in the consciousness of our own conformity of dispositions to this supreme Excellence; it must be of consequence to attend well to the transitory, changeable, and perishing nature, of every thing external.

States themselves have within them the seeds of death and destruction; what in the temerity, imprudence, or superstition of the first contrivers; what in the selfish, ambitious, or other meaner passions of the governors, and their subjects, jarring with each other and among themselves; what in the oppositions of those seeming interests which such passions pursue; what in the weakness and inconstancy of human virtues; and

BOOK III. in the proneness of men to luxury and present pleasures, without attention to the consequences. These seeds, along with external force, and jarring national interests, have always occasioned the dissolution and death of every body politick, and will occasion it as certainly as the internal weakness of the animal body and external causes will at last bring it to its fatal period. Good men indeed study, by all the art they are masters of, to ward off and delay these catastrophes, as long as they can, from their friends or their country; such kind of offices are the most honourable and delightful employments they can have while they live. But he must little think of the order of nature who sees not that all our efforts will be defeated at last, whether for the preservation of individuals, or of the body politick.

*Their duration  
in the universe  
inconceivable.*

Nineveh, Babylon, Ctesiphon, Persepolis, the Egyptian Thebes, Carthage, once the seats of grand unwieldy empires, are now but obscure antiquated names: Athens, Sparta, Crete, Syracuse; the seats of ingenious arts and policy, are now the almost desolate seats of Barbarians. Here we have no continuing cities. Compare the short periods of their subsistence with the immense tide of duration which passed before they were known, or with that other boundless infinitude to ensue after they are gone and forgotten; and the most potent durable empires will appear transitory and but for a day.

*Existence in  
nature is de-  
stroyed, no being  
is stable, no  
thing.*

Consider all external things and enjoyments. We are spirits carrying about with us frail decaying putrifying carcases; that as yesterday were embryos, and shall in a few days be earth and bones. Our sensual

pleasures are mean, passing in a moment, and often CHAP. II:  
shameful. Our grandeur and wealth are imposture, played upon ourselves and others; an ostentation of happiness and security, while we have no other avenues to pleasure than the vulgar, and remain exposed along with them to all the same great calamities of life: to the sicknesses and death of such as are dearest to us, and their worse corruptions by ignorance, ingratitude and other mean dispositions of soul; to all the same pain and weakness both of body and mind; and, sooner or later, to that uncertain period which may surprize us every moment, when we must quit all our earthly possessions, return into that silence we were in before we existed, and our places shall know us no more. If we are remembered for a few years, it is but in a little corner of the world; to the rest of it we are as nothing: and, in a few more, both we and those who remembered us shall be forgotten for ever. Grant we were always remembered; what is that to us who know it not?

Nimrod, Ninus, Cyrus, Alexander, Caesar, Charlemain, Gengiscan, what sense of suffering have they Grandeur and fame are but vain. now, when many repute them odious monsters, the scourges, the plagues of mankind? What joy have they in being called by others heroes and demi-gods? These most obvious and certain reflections, frequently recalled, must abate those keen passions about worldly interests which spur on the ambitious to all oppressions, and raise these wretched contentions which disturb and at last destroy the best human polities.

They must have an effect yet better on an attentive mind. An omnipotent and good God governs the The hopes of a future state.

BOOK III. world. By the whole structure of our nature we feel  
 his approbation of virtue, his engagement on its side.

He has at the same time formed our species capable of those obvious reflections and extensive views into infinitude, which shew the meanness, the vanity, the emptiness of all worldly enjoyments; he has implanted in our hearts natural desires, nay ardent affections, toward a more noble and lasting happiness both for ourselves and our fellows, and that in the most extensive system; and recommended these affections to us, and all beneficent actions flowing from them, as our greatest dignity and perfection, while yet this world cannot gratify these desires. Our advancing in this perfection which he recommends makes a future everlasting state after death appear as a part in his administration necessary to make our hearts approve it; and necessary too to all generous solid joy of a rational creature, who has natural affections toward its kind. His providence has so ordered, that this hope, this desire is not peculiar to the wise, the learned, the civilized; but has ever been diffused among all mankind. Need we then distrust that omnipotent and bountiful hand, which satisfies the desires of every thing that liveth? No. Let us trust in him, and be doing good after his example: and, as we see that all states and cities upon earth are unstable, tottering, and presently to fall into ruins, LET US LOOK FOR ONE THAT HATH A SOLID FOUNDATION, ETERNAL, IN THE HEAVENS; WHOSE BUILDER AND MAKER IS GOD.



