



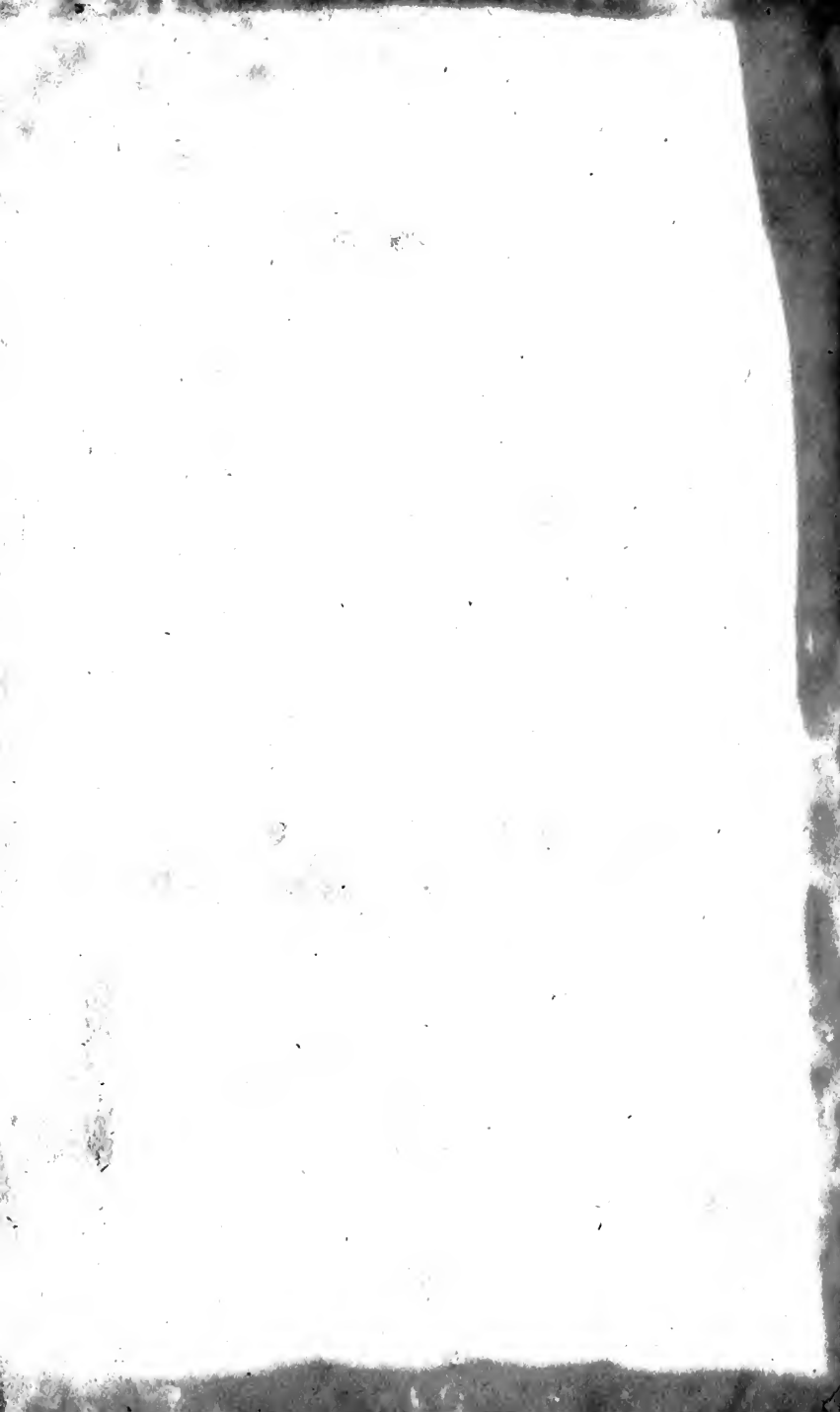
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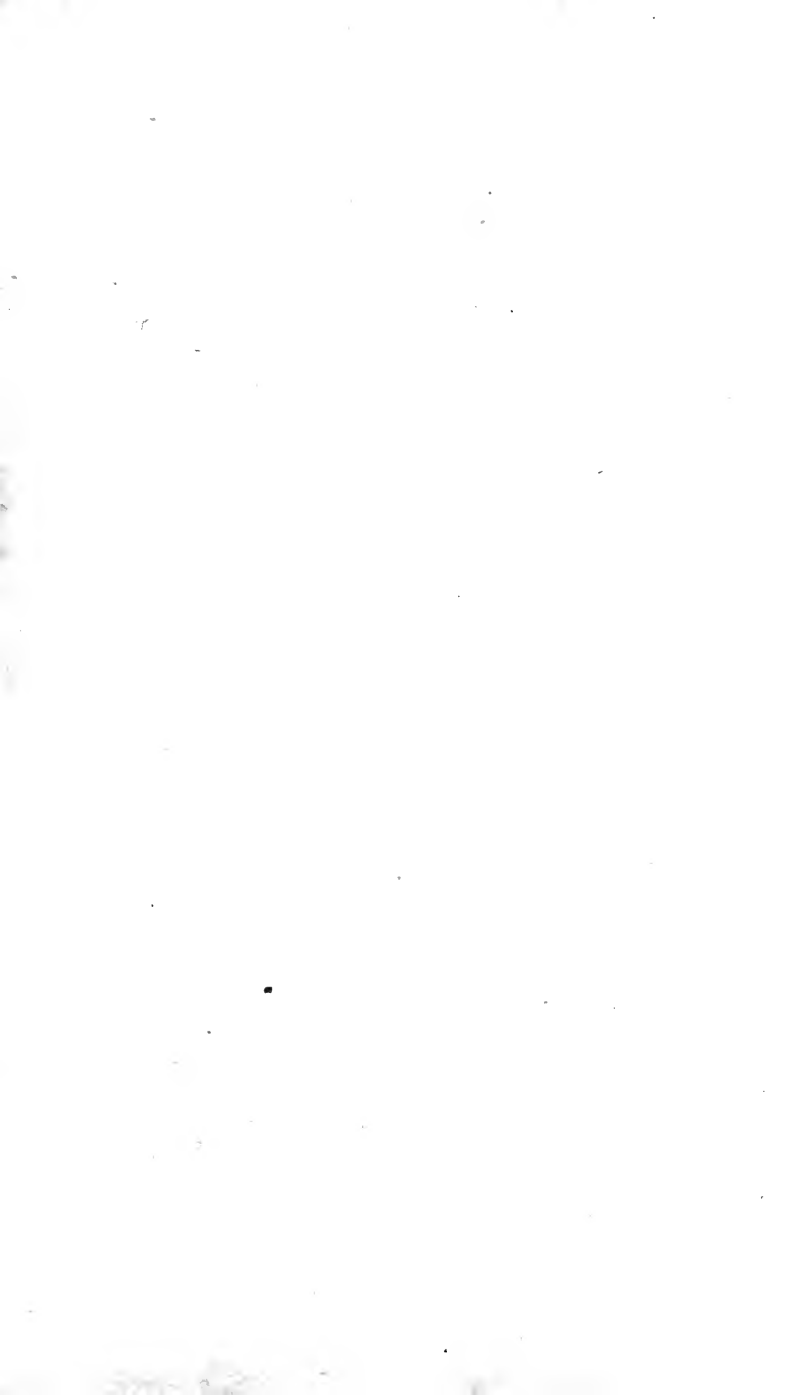
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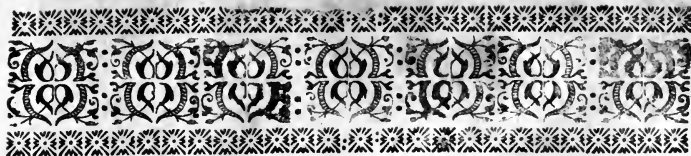
Nunquam aliud Natura, aliud Sapientia dicit.

Juv. Sat. XIV. 321.

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P. 8



To his Honoured Friend

Mr. *G E O R G E W H I T E*,

Of *London*, MERCHANT;

This T R A C T A T E

Concerning the

L A W of *N A T U R E*,

I S

Offered, Dedicated, Presented,

B Y

His humblest

and most obliged Servant,

A 3

The Translator.

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T O T H E
R E A D E R.



THE Translator having observed, in most of the Disputes wherewith the present Age is disquieted, frequent Appeals made, and that very properly, from Laws and Ordinances of a meaner Rank to the everlasting Law of Nature, gave himself the Pains to turn over several Writers on that Subject. He chanced, he thinks with great Reason, to entertain an Opinion, that this Author was the clearest, the fullest, and the most unprejudiced of any he met with: And hereupon, that he might the better possess himself of his Reasonings, he attempted to render the Work into

To the Reader.

Mother-Tongue, after he had first endeavoured to set several better Hands upon the Undertaking, who all for one Reason or other declined the Toil. He thought when 'twas done, it might be as acceptable to one or other to read it, as it had been to himself to translate it.

Concerning the Author, 'tis enough to say, that he has surely had as great Regard paid him from Personages of the highest degree, as perhaps ever was given to the most learned of Men; having been invited from his Native Country, first by the Elector Palatine, to be Professor of the Law of Nature and Nations in the University of Heidelberg; then by the King of Sweden to honour his new rais'd Academy, by accepting the same Charge therein, and afterwards being admitted of the Council, and made Historiographer, both to the same King, and to his Electoral Highness of Brandenburg, afterwards King of Prussia.

*Concerning this his Work, it is indeed only as it were an Epitome of the Author's large Volume of The Law of Nature and Nations: But as this Epitome was made and published by himself, the Reader cannot be under any doubt, but that he has here the Quintessence of
what*

To the Reader.

what is there deliver'd; what is par'd off being mostly Cases in the Civil Law, Refutations of other Authors, and some Notions too fine and unnecessary for a Manual. How good an Opinion the learned World has of this his Performance, is very evident from the many Editions there have been of it, not only in the Original Latin, but in the Modern Languages, publish'd in Sweden, Holland, France, Germany, and England.

*Since the first Publication hereof in 1673, at Lunden, the Author revis'd his larger Work, and put out a new Edition of it, with many Additions and great Improvements; and from thence this Work also has been amended and enlarged, by extracting these additional Chapters, and inserting them as compendiously as might be into their proper Places; which was first done in a German Translation, and afterwards in a Latin Edition, published by the Professor of Gießen, both in the Life-time of the Author, with his Knowledge, and by his Approbation; so that the Reader may be satisfied that these Additions, now first inserted into this Translation, are as genuine as the Rest of the Work; as he will find them as useful and necessary a Part, as any of the whole Book. Besides these, in
this*

To the Reader.

this Impression, some other Additions and Alterations have been found necessary to be made: For whereas in some Places the Author's Opinion was delivered in so brief or obscure a Manner, that his Meaning seemed difficult to be apprehended; again in other Places the Coherence and Connection of his Discourses did not sufficiently appear; to remedy the former of these Defects, all intricate Phrases and Expressions have been changed, and where even that was not sufficient to make the Author's Mind plain and clear, it is explained and illustrated by adding proper Instances and Examples; and then to repair the latter Defect, the Order of some of the Sections hath been changed, and proper and necessary Transitions to many of them have been added; the taking which Liberty, 'tis to be hoped, will ever appear most justifiable, since thereby the Rules of Method are better observ'd, and the Sense of the Author rendered more perspicuous than in the former Editions of this Translation.

*But farther, to make this Edition still more compleat and useful than the former, to each Section References are continually made to the large Work of The Law of Nature and Nations, and, as often as could be, to The Rights
of*

To the Reader.

of War and Peace ; that those who read this Epitome, and have a mind to see any Point therein more fully handled and illustrated, may be readily directed, where to have recourse to the Place where it is at large discoursed of, not only by this Author himself, but also by Grotius, an Author of equal Reputation for his judicious and learned Writings on Subjects of the same nature. Besides these References, as some of the Author's Opinions, laid down in this Treatise, have been controverted by some Writers, and defended by the Author in some other of his Works, the Reader is directed to those Places in them where these Cavils and Exceptions are taken notice of, and satisfactorily answered. But then, when any Exceptions can justly be made, and there is good Reason for differing from the Author's Opinion in any Point, the Reasons are given for so doing in some Notes at the Bottom of the Page ; which Notes, however, are neither many nor long, since it would be very absurd to run into Prolixity in Comments to a Work where Brevity is principally aim'd at ; into which therefore nothing ought to be admitted, but what is essentially and absolutely necessary to the Subject treated of. And on this Account also it is, that whereas the same Matters have, in the former Editions, been found

to

To the Reader.

to occur in more than one Place, in this Edition such superfluous Repetitions have been par'd off, by putting together what has been said on the same Point in different Places, and comprehending the whole under one Head or Section. And lastly, that nothing might be wanting to render this in all Points perfect, a Compleat Index is added.



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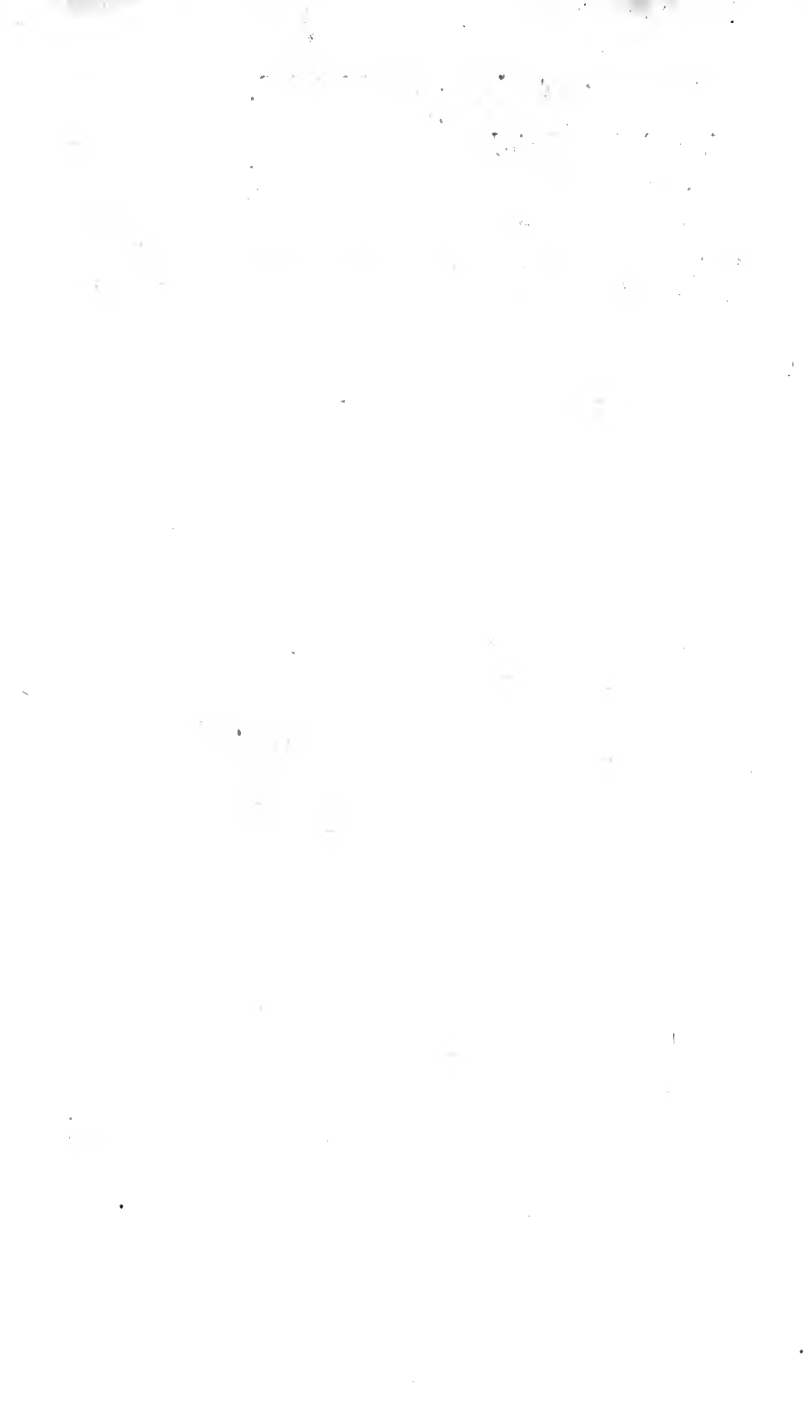
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THE





THE
AUTHOR'S
PREFACE.



AD not the *Custom* which The Author's Design.
has so generally obtain'd
among Learned Men, al-

most procured to it self
the Force of a *Law*, it might seem
altogether superfluous to premise a
Word concerning the Reason of the
* present Undertaking ; the Thing
it self plainly declaring my whole

* *Ann.* 1673. published in Suedish a Year after his
large *Work*.

b

Design

The AUTHOR'S

Design to be, the giving as *short*, and yet, if I mistake not, as *plain* and *perspicuous* a *Compendium* of the most material Articles of the *Law of Nature*, as was possible; and this, lest, if such as betake themselves to this Study should enter those vast Fields of Knowledge without having fully imbibed the Rudiments thereof, they should at first sight be terrified and confounded by the Copiousness and Difficulty of the Matters occurring therein. And, at the same time, it seems plainly a very expedient Work for the Publick, that the Minds, of Youth especially, should be early imbu'd with that *Moral Learning*, for which they will have such manifest Occasion, and so frequent Use, through the whole Course of their Lives.

And altho' I have always looked upon it as a Work deserving no
great

P R E F A C E.

great Honour, * to *Epitomize* the larger Writings of others, and more especially one's own; yet having thus done out of Submission to the commanding Authority of my Superiors, I hope no honest Man will blame me for having endeavoured hereby to improve the Understandings of *Young Men* more particularly; to whom so great Regard is to be had, that whatsoever Work is undertaken for their sakes, tho' it may not be capable of great Acuteness or splendid Eloquence, yet it is not to be accounted unworthy of any Man's Pains. Beside, that no Man, in his Wits, will deny, that these Principles thus laid down are more conducive to the understanding of *all Laws* in general, than any Elements of the *Law Civil* can be.

* See *Julius Rondonius pref. ad Erid. Scand. in Post-scripto & Comment. ad Pullum. Ven. Lips. p. 46, 47.*

And this might have sufficed for the present; but I am minded by some, that it would not be improper to lay down some few Particulars, which will conduce much to a right Understanding of the Constitution of the *Law of Nature*, and for the better ascertaining its just Bounds and Limits. And this I have been the more ready to do, that I might on this occasion obviate the Pretences of some over-nice Gentlemen, who are apt to pass their squeamish Censures on this Sort of Learning, which in many Instances, is wholly separate from their Province.

Three Sciences by which Men come to a knowledge of their Duty.

Now 'tis very manifest, that Men derive the Knowledge of their Duty, and what is fit to be done, or to be avoided in this Life, as it were, from *three Springs*, or Fountain-

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tain-Heads; to wit, From the *Light of Nature*; From the *Laws and Constitutions of Countries*; • And from the *Special Revelation of Almighty God*.

From the First of these proceed all those most common and ordinary Duties of a Man; more particularly those that constitute him a *sociable Creature* with the Rest of Mankind: From the Second are derived all the Duties of a Man, as he is a *Member* of any particular *City* or *Common-wealth*: From the Third result all the Duties of a *Christian Man*.

And from hence proceed *three* distinct *Sciences*: The *first* of which is of the *Law of Nature*, common to all Nations; the *second* is of the *Civil* or *Municipal Law* peculiar to each Country, which is or may be as manifold and various as there

The AUTHOR'S

are different States and Governments in the World; the *third* is *Moral Divinity*, as it is contra-district to that Part of Divinity, which is conversant in explaining the Articles of our Faith.

The difference between the Law of Nature, Civil Law and Moral Theology.

Each of these Sciences hath a peculiar Way of proving their Maxims, according to their own Principles. The *Law of Nature* asserts, that this or that Thing ought to be done, because from *right Reason* it is concluded, that the same is necessary for the Preservation of Society amongst Men.

The fundamental Obligation we lie under to the *Civil Law* is, that the *Legislative Power* has enacted this or that Thing.

The Obligation of *Moral Divinity* lies wholly in this; because
God,

P R E F A C E.

God, in the Sacred Scripture, has so commanded.]

Now, as the *Civil Law* presupposes the *Law of Nature*; as the more general Science; so if there be any thing contained in the *Civil Law*, wherein the *Law of Nature* is altogether silent, we must not therefore conclude, that the one is any ways repugnant to the other. In like manner, if in *Moral Divinity* some Things are delivered, as from Divine Revelation, which by our Reason we are not able to comprehend, and which on that Score are above the Reach of the *Law of Nature*; it would be very absurd from hence to set the one against the other, or to imagine that there is any real *Inconsistency* between these Sciences. On the other hand, in the Doctrine of the *Law of Nature*, if any things are to be presupposed, because so

The Maxims of these three Sciences in no wise oppose or contradictory to each other.

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much may be inferred from *Reason*, they are not to be put in Opposition to those Things which the *Holy Scripture* on that Subject delivers with greater Clearness; but they are only to be taken in an abstracted Sense. Thus, for Example, from the *Law of Nature*, abstracted from the Account we receive thereof in Holy Writ, there may be formed an *Idea* of the Condition and State of the *first Man*, as he came into the World, only so far as is within the Comprehension of *Human Reason*. Now, * to set those Things in opposition to what is delivered in Sacred Writ concerning the same State,

* See *L. N. N. l. II. c. 1. § 8. c. 11. § 2. Dissert. Acad. X. de statu Nat. § 3. Eris. Scand. pref. Rondini Apol. advers. Indicem Novitat. § 11, 12, 16. p. 20. seq. Specim. Controv. c. 3. § 1, 3. & p. 20. c. 4. § 16. p. 217, 258. sequ. Spicileg. Controv. c. 2. § 1. 13, 15. c. 3. § 1. p. 357, 380. sequ. Rondin. Dissert. Epist. § 1. p. 396. & Postscript. ad Seckendorff. Puffendorff. Epist. ad Amic. Erid. p. 133. Comment. super Pullo Lips. Ven. p. 11, 16, 36, 44, 45, 52, 54*

would

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would be the greatest Folly and Madness in the World.

But as it is an easie Matter to reconcile the *Civil Law* with the *Law of Nature*; so it seems a little more difficult to set certain Bounds between the same *Law of Nature* and *Moral Divinity*, and to define in what Particulars chiefly they differ one from the other.

Upon this Subject I shall deliver my Opinion briefly, not with any Papal Authority, as if I was exempt from all Error by any peculiar Right or Priviledge, neither as one who pretends to any Enthusiastick Revelation; but only as being desirous to discharge that Province which I have undertaken, according to the best of my Ability. And, as I am willing to hear all Candid and Ingenuous Persons, who can
inform

The AUTHOR'S

inform me better ; and am very ready to retract what I have said amiss ; so I do not value those Pragmatical and Positive Censurers and Busie-bodies, who boldly concern themselves with Things which no ways belong to them : Of these Persons we have a very Ingenious Character given by Phædrus : * They run about, says he, as mightily concerned ; they are very busie even when they have nothing to do ; they puff and blow without any occasion ; they are uncasie to themselves, and troublesome to every body else.

The difference between the Law of Nature and Moral Theology.

Now the Chief Distinction, whereby these Sciences are separated from one another, proceeds

* *Est Ardalionum quedam Roma Natio, Trepidè concursans, occupata in otio, Gratis anhelans, multa agendo nihil agens, Sibi molesta & aliis odiosissima.*

Phæd. Lib. II. Fab. 6.

from

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from the different Source or Spring whence each derives its Principles; and of which I have already discoursed. From whence it follows, if there be some things, which we are enjoined in Holy Writ either to do or forbear, the Necessity whereof cannot be discover'd by Reason alone, they are to be looked upon as out of the Cognizance of the Law of Nature, and properly to appertain to Moral Divinity.

1st. They differ in the Source from whence each derives its Principles.

Moreover, in Divinity the Law is considered as it has the Divine Promise annexed to it, and with Relation to the Covenant between God and Man; from which Consideration the Law of Nature abstracts, because the other derives it self from a particular Revelation of God Almighty, and which Reason alone could not have found out.

2d. Difference in the Manner whereby the Laws of them both are proposed.

But

The AUTHOR'S

3d. Difference in the End and Design of them both.

But the greatest Difference between them is this; that the main End and Design of the *Law of Nature* is included within the Compass of * this Life only, and so thereby a Man is informed how he is to live in Society with the Rest of Mankind: But *Moral Divinity* instructs a Man how to live as a

It is true that Revelation has, beyond all doubt, asserted and given full Evidence of the Immortality of the Soul, and of the Certainty of Rewards and Punishments in the World to come: It is also certain, that the fundamental and distinguishing Principle of Moral Theology, is the Hope of a blessed Eternity, promised to those who direct their Lives by Gospel Precepts. However, we must not therefore take from the *Law of Nature* all Regard to a future Life: For we may, by the meer Light of Reason, proceed so far at least, as to discover, that it's not improbable, that God will punish in another World, those who have wilfully violated the *Law of Nature*, and have thereupon suffered neither Human nor Divine Punishment in this Life; nay farther, that this Opinion is much more probable than the contrary one to it. If this be so, it is agreeable to the *Laws* of Prudence and good Sense, that no Man, for the sake of a short and transient Satisfaction, should expose himself even to a Possibility of being eternally miserable: And thus far the Fear of being punished in the Life to come, may very justly be said to appertain to the Sanction of the *Law of Nature*. See *L. N. N. lib. 2. c. 3. § 21.*

Christian ;

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Christian ; who is not only obliged to live honestly and virtuously in this World, but is besides in earnest Expectation of the Reward of his Piety after this Life ; and therefore he has his Conversation in Heaven, but is here only as a Stranger and a Pilgrim. For although the Mind of Man does with very great Ardency pursue after Immortality, and is extremely averse to its own Destruction ; and thence it was, that most of the Heathens had a strong Persuasion of the separate State of the Soul from the Body, and that then Good Men should be *rewarded*, and Evil Men *punished* ; yet notwithstanding such a strong Assurance of the Certainty hereof, upon which the Mind of Man can firmly and entirely depend, is to be derived only from the *Word of God*. Hence it is that the Dictates of the *Law of Nature* are adapted only to *Human Judicature*,

The AUTHOR'S

Judicature, which does not extend it self beyond this Life ; and it would be absurd in many respects to apply them to the *Divine Forum*, which concerns it self only about *Theology*.

4th Difference in respect to the Object of each of them.

From whence that also follows, that, because *Human Judicature* regards only * the external Actions of Man, but can no ways reach the Inward Thoughts of the Mind, which do not discover themselves by any outward Signs or Effects ; therefore the *Law of Nature* is for the most part exercised in forming the outward Actions of Men. But *Moral Divinity* does not content it self in regulating only the *Exterior Actions* ; but is more peculiarly intent in forming the *Mind*, and its

* *Eris. Scandic. Specim. Controvers.* c. 4. § 19. p. 262. *Spicileg.* c. 1. § 20. p. 355, &c. c. 11. § 10. p. 371. *Epist. ad Amicos.* p. 133.

internal

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internal Motions, agreeable to the good Pleasure of the Divnie Being; disallowing those very Actions, which *outwardly* look well enough, but proceed from an impure and corrupted *Mind*. And this seems to be the Reason why the Sacred Scripture doth not so frequently treat of those Actions, that are under certain Penalties by Human Laws, as it doth of those, which, as *Seneca* expresses it, * are out of the Reach of any such Constitutions. And this will manifestly appear to those, who shall carefully consider the Precepts and Virtues that are therein inculcated; altho', as even those Christian Virtues do very much dispose the Minds of Men towards the maintaining of mutual Society; so like-

* *Quam angusta innocentia est ad legem bonum esse?*
Quanto latius Officiorum patet quam Furis Regula?
Quoniam multæ Pietas, Humanitas, Liberalitas, Justitia,
Fides exigunt, quæ omnia extra Publicas Tabulas sunt?
Seneca de Ira, lib. 2. cap. 27.

The A U T H O R ' S

wise *Moral Divinity* does mightily promote the Practice of all the main Duties that are enjoy'd us in our Civil Department : So that, * if you should observe any one behave himself like a restless and troublesome Member in the Commonwealth, you may fairly conclude, that the Christian Religion has made but a very slight Impression on that Person, and that it has taken no Root in his Heart.

And from these Particulars, I suppose, may be easily discovered ; not only the certain Bounds and Limits which distinguish the *Law of Nature*, as we have defined it, from *Moral Divinity* ; but it may likewise be concluded, that the *Law of Nature* is no way repugnant to the Maxims of *sound Divinity* ; but is on-

* *Dissert. Acad. IV. de Systemat. Civit. § 7. & IX. de Concord. vera polit. cum Relig. Christ.*

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ly to be abstracted from some particular Doctrines thereof, which cannot be fathom'd by the Help of Reason alone. From whence also it necessarily follows, that in the Science of the *Law of Nature*, a Man should be now consider'd, as being deprav'd in his very Nature, and upon that Account, as a Creature, subject to many vile Inclinations: * For although none can be so stupid as not to discover in himself many Evil and inordinate Affections, nevertheless, unless we were inform'd so much by Sacred Writ, it would not appear, that this Rebellion of the Will was occasioned by the first Man's Transgression; and consequently, since the *Law of Nature* does not reach those Things which are above Reason, it would be very preposterous to derive it from

In regard to the Law of Nature we are to consider Man, in the depraved State he has been, since the first Transgression.

* *Specim. Controv. c. 1. § 2.*

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the State of Man, as it was uncorrupt before the Fall; * especially since even the greatest Part of the Precepts of the *Decalogue*, as they are deliver'd in Negative Terms, do manifestly presuppose the *deprav'd State* of Man. Thus, for Example, in the First and Second Commandment, it seems to be suppos'd, that Mankind was naturally prone to the Belief of *Polytheism* and to *Idolatry*. For if you should consider Man in his Primitive State, wherein he had a clear and distinct Knowledge of the Deity, as it were by a peculiar Revelation; I do not see how it could ever enter into the Thoughts of such a one, to frame any Thing to himself to which he could pay Reverence, instead of, or together with, the true GOD; or to believe any Divinity to reside in that which

* *Præfat. p. 1. ad Fur. Nat. & Gent. Postscript. Rondini ad Seckendorf. Apol. § 28. Specim. Controv. c. 4. § 12, 17. Spicileg. c. 11. § 1, 5, 6, 8, 14. Comment. ad Ven. Lips. p. 37.*

his

his own Hands had form'd; therefore there was no Necessity of laying an Injunction upon him in Negative Terms, that he should not worship other Gods; but this Plain Affirmative Precept would have been sufficient; *Thou shalt love, honour, and adore GOD, whom you know to have created both your self, and the whole Universe.* And the same may be said of the Third Commandment: For why should it be forbidden, in a Negative Precept, to blaspheme God, to such a one who had at the same time a clear and perfect Understanding of his Bounty and Majesty; and who was actuated by no inordinate Affections, and whose Mind did cheerfully acquiesce in that Condition, wherein he was placed by Almighty God? How could such a one be Guilty of so great Madness? But he needed only to have been admonish'd by this

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Affirmative Precept ; *That he should glorifie the Name of G O D.* But it seems otherwise of the Fourth and Fifth Commandments ; which, as they are Affirmative Precepts, neither do they necessarily presuppose the deprav'd State of Man, they may be admitted, Mankind being consider'd as under *either* Condition. But the thing is very manifest in relation to the other Commandments, which concern our Neighbour ; for it would suffice plainly to have enjoyn'd Man, consider'd as he was first created by G O D, that he should love his Neighbour, whereto he was beforehand inclin'd by his own Nature. But how could the same Person be commanded, that he should not *kill*, when Death had not as yet fall'n on Mankind, which enter'd into the World upon the account of Sin ? But now there is very great Need of such a Negative Command,

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Command, when, instead of loving one another, there are stir'd up so great Feuds and Animosities among Men, that even a great Part of them is owing purely to Envy, or an inordinate Desire of invading what belongs to another; so that they make no scruple, not only of destroying those that are innocent, but even their Friends, and such as have done them signal Favours; and all this, forsooth, they are not asham'd to disguise under the specious Pretence of Religion and Conscience. In like manner, what Need was there expressly to forbid *Adultery*, among those married Persons, whose mutual Love was so ardent and sincere? Or, what Occasion was there to forbid *Theft*, when as yet Covetousness and Poverty were not known, nor did any Man think that properly his own, which might be useful or profitable

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fitable to another? Or, to what purpose was it to forbid the bearing *False Witness*, when as yet there were not any to be found, who sought after Honour and Reputation to themselves, by Slandering and Aspersing others with false and groundless Calumnies? So that not unfitly, you may here apply the Saying of Tacitus, * *Whilst no corrupt Desires deprav'd Mankind, the first Men liv'd without Sin and Wickedness, and therefore free from Restraint and Punishment; and whereas they coveted nothing but what was their due, they were barr'd from nothing by Fear.*

And these Things being rightly understood, may clear the way for removing this Doubt; † whether

Whether
the Law
of Nature

* *Vetustissimi Mortalium, nullâ adhuc pravâ libidine, sine probro, et scelere, eoque sine pœna aut coercionibus agebant; & ubi nihil contra morem cuperent, nihil per metum vetabantur.*

Tacit. Annal. Lib. III. Cap. XXVI.

† *Eris. Scandic. Specim. Contr. l. 4. § 20. p. 263.*

the

P R E F A C E.

the Law was different, or the same, would have been the same it is now, had
 in the Primitive State of Nature, Man continu'd in his State of Innocence.
 before the Fall? Where it may be
 briefly answer'd. That the most
material Heads of the Law were the
 same in each State; but that many
particular Precepts did vary, accord-
 ing to the *Diversity* of the Condition
 of Mankind; or rather, that the same
 Summary of the Law was explain'd
 by *diverse*, but not *contrary* Precepts;
 according to the different State of
 Man, by whom that Law was to
 be observ'd. Our Saviour reduced
 the Substance of the Law to two
 Heads: *Love God, and Love thy*
Neighbour: To these the whole
Law of Nature may be referr'd, as
 well in the Primitive, as in the De-
 prav'd State of Man; (unless that
 in the Primitive State there seems
 not any, or a very small Difference
 between the *Law of Nature*, and
Moral Divinity.) For that Mutual
Society,

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Society, which we laid down as a Foundation to the *Law of Nature*, may very well be resolv'd into the Love of our Neighbour. But when * we descend to particular Precepts, there is indeed a very great Difference, both in relation to the Commands and Prohibitions.

And as to what concerns the Commands, there are many which have place in this State of Mankind, which seem not to have been necessary in the Primitive State: And that partly, because they presuppose such a Condition, as, 'tis not certain, could happen to that most happy State of Mankind; partly, because there can be no Notion of them, without admitting *Misery* and *Death*, which were unknown there: As for Instance, we are now enjoyn'd by the Precepts of the *Law of Nature*, not to deceive

* *Spicileg. c. 1. §. 17.*

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one another in Buying or Selling, not to make use of false Weights or Measures, to repay Money that is lent, at the appointed Time. But it is not yet evident, whether, if Mankind had continu'd without Sin, there would have been driven any Trade and Commerce, as there is now in the World; or whether there would then have been any Occasion for the Use of Money. In like manner, if such Kind of Communities as are now adays, were not to be found in the State of Innocence, there would be then likewise no Occasion for those Laws which are presuppos'd as requisite for the well-ordering and Government of such Societies. We are also now commanded by the *Law of Nature*. *To succour those that are in Want. To relieve those that are oppressed. To take care of Widows and Orphans.* But it would be to no purpose

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pose to have inculcated these Precepts to those who were no ways subject to Misery, Poverty, and Death. The *Law of Nature* now enjoyns us, *To forgive Injuries*; and, *To use our utmost Endeavours towards the promoting of Peace amongst all Mankind.* Which would be unnecessary among those who never offended against the Laws of Mutual Society. And this too is very evident in the Prohibitory Precepts which relate to the Natural, not Positive, Law. For although every Command does virtually contain in it self a Prohibition of the opposite Vice; (as, for Instance, he that is commanded to love his Neighbour, is at the same time forbidden to do such Actions, as may any ways thwart or contradict his Duty of Love :) Yet it seems superfluous that these things should be ordain'd by exprefs Commands, where there are no disorderly

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ly Inclinations to excite Men to the committing such Wrongs. For the Illustration of which, this may be taken notice of, that * *Solon* would by no Publick Law enact any Punishment for *Parricides*, because he thought that no Child could be guilty of so horrid an Impiety. In like manner we find an Account, in the † *History of the West-Indies*, concerning the People of *Nicaragua*; that in their Laws no Punishment was appointed for those who should kill the *Cacique*, by which Name they call their Princes; because, say they, there can be no Subject, who would contrive or perpetrate so base an Action. I am afraid it may favour too much of Affectation to enlarge any farther in the

* *Diog. Laert. lib. 1. § 59. Edit. Amstelod.*

† *Franc, Lopez, de Gomara, Hist. General. IndOccid. Cap. 207.*

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Proof of what is in it self so clear and evident. Yet I shall add this one Example, fitted to the meanest Capacity. Suppose there are two Children, but of different Dispositions, committed to the Care of a certain Person : One of which is Modest and Bashful, taking great delight in his Studies ; the other proves Unruly, and Surly ; giving himself over more to loose Pleasures, than to Learning. Now the Duty of both these is the same, To follow their Studies ; but the particular Precepts, proper to each, are different ; for it is sufficient to advise the Former to what Kind of Studies he must apply himself, at what Time, and after what Manner they are to be follow'd : But for as the Other, he must be enjoyn'd under severe Penalties, not to Wander abroad, not to Game,
not

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not to sell his Books, not to get others to make his Exercises, not to play the good Fellow, not to run after Harlots. Now if any one should undertake, in a set Discourse, to declaim against these things to him of the contrary Temper, the Child might very well enjoin him Silence, and bid him inculcate them to any Body else, rather than to him, who takes no Delight or Pleasure in such Practices. From whence I look upon it as manifest, that the *Law of Nature* would have a quite different Face, if we were to consider Man, as he was in his Primitive State of Innocence.

And now since the Bounds and Limits of this Science, whereby it is distinguish'd from Moral Divinity, are so clearly set down, it ought

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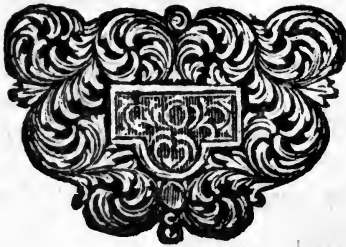
ought at least to have the same Privileges with other Sciences, as the Civil Law, Physick, Natural Philosophy, and the Mathematicks ; wherein if any Unskilful Person presume to meddle, assuming to himself the Quality of a Censor, without any Authority, he may fairly have that objected to him, which was formerly done by * *Appelles* to *Megabyzus*, who undertook to talk at random about the Art of Painting ; Pray, said he, be silent, lest the Boys laugh at you, who pretend to talk of Matters you do not understand.

Now, upon the whole, I am content to submit to the Judgment of Discreet and Intelligent Per-

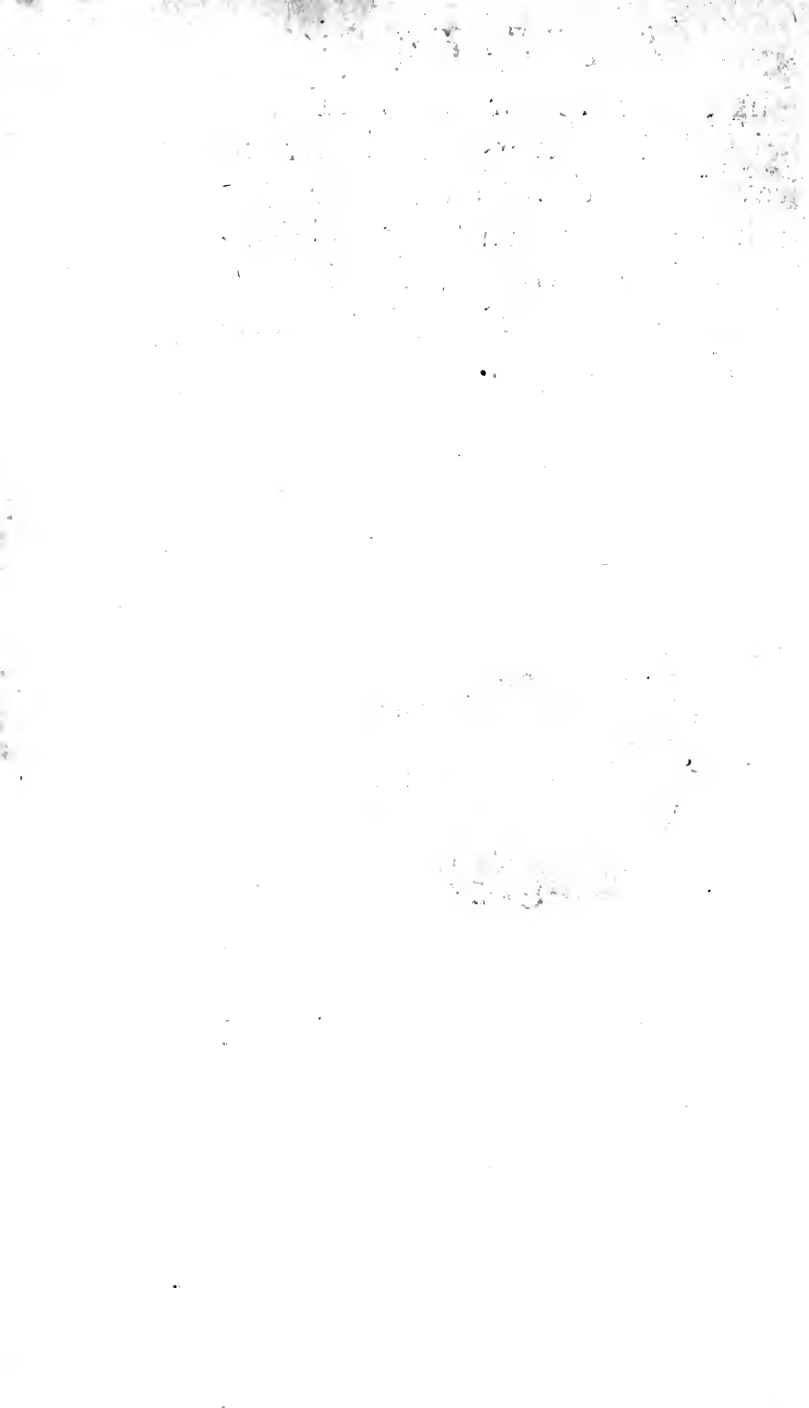
* Rather *Zenxis*, *Æl. V. H. II, 2.* *Plut. de. Adulat.*
sons ;

P R E F A C E

sons ; but as for Ignorant and Spiteful Detractors, 'tis better to leave 'em to themselves, to be punish'd by their own Folly and Malice ; since according to the Ancient Proverb, *The Ethiopian cannot change his Skin.*



T H E

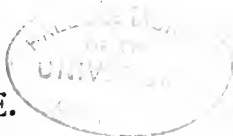




THE
Whole Duty of MAN,

According to the

LAW OF NATURE.



BOOK I. CHAP. I.

Of Human Actions in general, the Principles of 'em, and how to be accounted for, or imputed.

WHAT we mean here by the Word ^{I.} DUTY, is, *That * Action of a Man, which is regularly order'd according to ty is. some prescrib'd Law, which he is oblig'd to obey.*
To the Understanding whereof it is necessary to
premise

* The ancient *Stoicks* call'd *Actions* by the Greek Word *εὐδαιμονία*, and by the Latin *OFFICIUM*, and in English we use the Word *OFFICE* in the same Sense, when we say, *Friendly Offices*, &c. but then the Definition hereof given by the Philosophers, is too loose and general, since thereby they understood nothing but an
B *Action*

premise somewhat, as well touching the Nature of a *Human Action*, as concerning *Laws* in general.

II.
*What a
Human
Action.*

By a *Human Action* we mean not every *Motion* that proceeds from the Faculties of a Man; but such only as have their Original and Direction from those Faculties which God Almighty has endow'd Mankind withal, distinct from Brutes; that is, such as are undertaken by the Light of the *Understanding*, and the Choice of the *Will*.

III.
*Human
Capacity.
Knowing
and Chus-
ing*
L. N. N.
l. i. c. 1.
§ 2. c. 3.
§ 1.

FOR it is not only put in the Power of Man to *know* the various Things which appear in the World; to *compare* them one with another, and from thence to form to himself new *Notions*; but he is able to look forwards, and to consider *what* he is to do, and to carry himself to the Performance of it, and this to do after some certain *Manner*, and to some certain *End*; and then he can collect what will be the Consequence thereof. Beside, he can make a *Judgment* upon Things already done, whether they are done agreeably to their Rule. Not that all a Man's Faculties do exert themselves continually, or after the same manner, but some of them are stir'd up in him by an internal Impulse; and when rais'd, are by the same regulated and guided. Neither beside has a Man the same Inclination to every Object; but some he Desires, and for others he has an Aversion: And often, though

Action conformable to Reason. As may appear from a Passage of Cicero (*de Fin. Bon. & Mal. L. 3. c. 17.*) *Quod autem ratione actum sit, id OFFICIUM appellamus.* See also *De Offic. l. 1. c. 3.* & *Diogenes Laertius Lib. VII. Sect. 107, 108.*

an Object of Action be before him, yet he *suspends* any Motion towards it ; and when many Objects offer themselves, he *chuses* one and *refuses* the rest.

As for that Faculty therefore of comprehending and judging of Things, which is called the *Understanding* ; it must be taken for granted, first of all, * That every Man of a mature Age, and entire Sense, has so much Natural Light in him, as that, with *necessary* Care, and due Consideration, he may rightly comprehend, at least those *general Precepts* and *Principles* which are requisite in order to pass our Lives here honestly and quietly ; and be able to judge that these are congruous to the Nature of Man. For if this, at least, be not admitted within the Bounds of the *Forum Humanum*, [or Civil Judicature] Men might pretend an invincible Ignorance for all their Miscarriages ; † because no Man *in foro humano* can be condemn'd for having violated a Law which it was above his Capacity to comprehend.

IV.
Human
Under-
standing.
L. N. N.
l. i. c. 3.

* This is evident from the Example of the *Heathen*, and the Holy Scriptures are express in this Point ; for thus they say : *For when the Gentiles, which have not the Law* (Written or Revealed, as was that of *Moses*) *do by NATURE the things contained in the Law, these having not the Law are a Law unto themselves : Which shew the Work of the Law written in their Hearts, their Conscience also bearing Witness, and their Thoughts the mean while accusing, or else excusing one another ;* (that is, when they do ill, they condemn themselves in their own Conscience, and on the contrary, when they do well, they have in themselves an inward Approbation and Satisfaction : From whence it plainly appears they have Ideas of Good and Evil.) *Rom. ii. 14, 15.*

† *L. N. N. l. i. c. 3. § 3. Apol. § 21. Erid. Scand. p. 37.*

V. THE *Understanding* of Man, when it is *rightly instructed* concerning that which is to be done or omitted, and this so, as that he is able to give certain and undoubted Reasons for his Opinions, is wont to be call'd CONSCIENCE RIGHTLY INFORM'D: That is, govern'd by sure Principles, and settling its Resolutions conformably to the Laws. But when a Man has indeed entertain'd the *true Opinion* about what is to be done or not to be done, the Truth whereof yet he is not able to make good by *Reasoning*; but he either drew such his Notion from his Education, way of Living, Custom, or from the Authority of Persons wiser or better than himself; and no Reason appears to him that can persuade the contrary, this uses to be call'd *Conscientia probabilis*, CONSCIENCE ground'd upon PROBABILITY. And by this the greatest part of Mankind are govern'd, it being the good Fortune of few to be able to enquire into, and to know, the Causes of Things.

VI. AND yet it chances often, to some Men especially in singular Cases, that Arguments may be brought on *both* sides, and they not be Masters of sufficient *Judgment* to *discern* clearly which are the strongest and most weighty. And this is call'd a * DOUBTING CONSCIENCE. In which Case this is the Rule: *As long as the Understand-*

* A *scrupulous Conscience*, proceeding mostly from Weakness and Superstition, is only to be help'd by better Information. Here our Author's Definition of *Conscience* may be noted, that it is an Act of the Mind judging of what a Man has omitted or done, according to some *Rule* to which he was rightly oblig'd. Nay, in strict Sense, to *act* against *Conscience* is no other than wittingly and willingly to do Evil.

ing is unsatisfied and in doubt, whether the thing to be done be good or evil, the doing of it is to be deferr'd. For to set about doing it before the Doubt is answer'd, implies a sinful Design, or at least a Neglect of the Law.

MEN also oftentimes have *wrong Apprehensions* of the matter, and take that to be true which is false; and then they are said to be in an *Error*; and this is called *Vincible Error*, when a Man by applying due Attention and Diligence might have prevented his falling thereinto; and it's said to be *Invincible Error*, when the Person, with the utmost Diligence and Care that is consistent with the common Rules of Life, could not have avoided it. But this sort of *Error*, at least, among those who give their Minds to improve the Light of Reason, and to lead their Lives regularly, happens not in the *common Rules* of living, but only in *peculiar Matters*. For the Precepts of the Law of Nature are plain; and that Legislator who makes positive Laws, both does and ought to take all possible Care, that they may be understood by those who are to give Obedience to them. So that this Sort of *Error* proceeds only from a supine *Negligence*. But in *particular Affairs* 'tis easie for some Error to be admitted, against the Will, and without any Fault of the Person, concerning the Object and other * Circumstances of the Action.

WHERE

* Such Circumstances are the *Manner*, the *Intention*, the *Instrument*, the *Quality* of the Thing done, &c. Thus, for Example, A Man may happen to kill another without any Thought of doing so; he may mistake him for an Enemy, may give him Poison when he thinks what

WHERE Knowledge simply is wanting as to the Thing performed or omitted, such Defect of Knowledge is call'd *Ignorance*.

VIII.
Of Ignorance, and the various Kinds of it.
L. N. N.
l. 1. c. 3.
§ 10.

THIS *Ignorance* may be two Ways consider'd, either with respect to its *Origin*, or with respect to its *Influence on the Action*. With reference to this latter, *Ignorance* is of two Sorts, one being the Cause of the Thing ignorantly done, the other not; on which account the first of these is call'd *Efficacious Ignorance*, the other *Concomitant*.

EFFICACIOUS Ignorance is the Want of such Knowledge as, had it not been wanting, would have hindred the Action: Such was *Abimelech's Ignorance*, *Gen. xx. 4, 5.* who, had he known *Sarah* to have been *Abraham's Wife*, had never entertain'd any Thoughts of taking her to himself. *Concomitant Ignorance* is the Want of such Knowledge, as had it not been wanting, would not have hindred the Fact: As suppose a Man should kill his Enemy by a chance Blow, whom he would otherwise have kill'd, had he known him to have been in that particular Place.

IGNORANCE with respect to its *Origin* is either *Voluntary* or *Involuntary*. *Voluntary Ignorance* is either *contracted* by mere negligence, idleness and unattention; or else *affected*, that is, proceeding from a direct and formal Contempt of the means of informing our selves in what we were able, and what it was our Duty to come to the knowledge of. *Involuntary Ignorance* consists in the want of knowing such Things, as it was neither in our Power, nor a part of our Duty to come to the knowledge of.

he gives him is wholsom Liquor. Tho' we may believe Actions so circumstantiated to be innocent, yet no Man can innocently assert, that Murder or Poisoning are lawful.

This

This likewise is of two Sorts: The former is, when in doing a Thing a Man is not able to overcome the Ignorance from which it proceeds, and yet is in Fault for falling into that Ignorance; which is the Case of Drunken Men. The latter is, when a Man is not only ignorant of such Things as could not be known before the Action, but is also * free from any Blame upon the account of his falling into that Ignorance, or his continuing in it.

THE other Faculty, which does peculiarly distinguish Men from Brutes, is called the *Will*; by which, as with an internal Impulse, Man moves himself to Action, and chooses that which best pleases him; and rejects that which seems unfit for him. Man therefore has thus much from his *Will*: First, that he has a Power to act *willingly*, that is, he is not determin'd by any intrinsic *Necessity* to do this or that, but is himself the Author of his own Actions: Next, that he has a Power to act *freely*, that is, upon the Proposal of one Object, he may *act* or not *act*, and either entertain or reject; or if divers Objects are propos'd, he may *choose* one and *refuse* the rest. Now whereas among human Actions some are undertaken for their *own* Sakes, others because they are subservient to the attaining of somewhat *further*; that is, some are as the *End*, and others as *Means*: As for the *End*, the *Will* is thus far concern'd, That being once known, this first *approves* it, and then moves

IX,
The Will,
unforced
and free.
L. N. N.
l. I. c. 4.

* There is no other but this last sort of Ignorance that is really involuntary and invincible, and capable entirely to excuse Men in doing any prejudicial Acts; for it is Men's own Faults that they fall into any of the fore-mentioned sorts of Ignorance.

vigorously towards the *achieving* thereof, as it were, driving at it with more or less earnestness; and this *End* once *obtain'd*, it sits down quietly and *enjoys* its Acquist with Pleasure. For the *Means*, they are first to be approv'd, then such as are most fit for the Purpose are *chosen*, and at last are *apply'd* to Use.

X. BUT as Man is accounted to be the *Author* of his *own* *Actions*, because they are voluntarily undertaken by himself: So this is chiefly to be observ'd concerning the Will, to wit, that its *Spontaneity*, or natural Freedom, is at least to be asserted in those *Actions*, concerning which a Man is wont to give an Account before any human Tribunal. For *where* an absolute *Freedom* of *choice* is wholly taken away, *there* not the Man who *acts*, but he that *imposed* upon him the Necessity of so doing, is to be reputed the *Author* of that *Action*, to which the other unwillingly ministred with his Strength and Limbs.

XI. FARTHERMORE, though the Will do always desire *Good* in general, and has continually an aversion for *Evil* also in general; yet a great *Variety* of *Desires* and *Actions* may be found among Men. And this arises from hence, that all Things that are Good and Evil do not appear *purely* so to Man, but *mixt* together, the good with the bad, and the bad with the good; and because different Objects do particularly affect divers Parts, as it were, of a Man; for instance, some regard that good Opinion and Respect that a Man has for himself; some affect the outward Senses; and some that Love of himself, from which he desires his own Preservation. From whence it is, that those of the first

The Will
spontaneous
chargeable
with the
Action.
L. N. N.
l. 1. c. 4.
§ 2.

The Will
variously
affected.
L. N. N.
l. 1. c. 4.
§ 4.

first Sort appear to him as *reputable* ; of the second as *pleasant* ; and of the last as *profitable* : And accordingly as each of these have made a powerful Impression upon a Man, it brings upon him a peculiar Propensity towards that way ; whereto may be added the particular *Inclinations* and *Aversions* that are in most Men to some certain Things. From all which it comes to pass, that upon any Action several *Sorts* of *Good* and *Evil* offer themselves, which either *are* true or *appear* so ; which some have more ; some less Sagacity to *distinguish* with solidity of Judgment. So that 'tis no wonder that one Man should be carried eagerly on to that which another perfectly abhors.

BUT neither is the Will of Man always found to stand *equally* poised with regard to every Action, that so the Inclination thereof to this or that Side should come only from an *Internal Impulse*, after a due Consideration had of all its Circumstances ; but it is very often pusht on one way rather than another by *some outward Movements*. For, that we may pass by that universal Propensity to Evil, which is in all Mortals (the Original and Nature of which belong to the Examination of another * *Forum* ;) first, a *peculiar Disposition of Nature* puts a particular kind of *byass* upon the Will, by which some are strongly inclin'd to certain *sorts* of Actions ; and this is not only to be found in single *Men*, but in whole *Nations*. This seems to proceed from the Temperature of the Air that surrounds us, and of the Soil ; and from that Constitution of our Bodies which either was deriv'd to us in the Seed of our *Parents*, or was occasion'd in us by our *Age*, *Diet*, the want or enjoyment of *Health*,

XII.

The Will byass'd by Natural Inclinations.

L. N. N. l. r. c. 4. § 5.

* The Judgment of the Divines.

the

the Method of our Studies, or *way of Living*, and Causes of that sort ; beside the various *formations* of the *Organs*, which the *Mind* makes use of in the Performance of its several Offices, and the like. And here, beside that a Man may with due Care very much *alter* the *Temperament* of his Body, and *repress* the Exorbitances of his natural *Inclination*, it is to be noted, that how much Power soever we attribute hereto, yet it is not to be understood to be of that Force as to hurry a Man into such a Violation of the *Law of Nature*, as shall render him obnoxious to the *Civil Judicature*, where evil *Desires* are not animadverted on, * provided they break not forth into external *Actions*. So that after all the Pains that can be taken to repel Nature, if it takes its full Swinge, yet it may so far be restrain'd as not to produce *open Acts* of Wickedness ; and the *Difficulty* which happens in vanquishing these Propensities is abundantly recompens'd in the *Glory* of the Conquest. But if these Impulses are so strong upon the Mind, that they cannot be contain'd from breaking forth, yet there may be found a Way, as it were to draw them off, without Sin.

XIII. THE frequent *Repetition* of Actions of the same kind does also *incline* the Will to do certain Things ; and the Propensity which proceeds from hence is called *Habit* or *Custom* ; for it is by this that any Thing is undertaken readily and willingly ; so that the Object being presented, the Mind seems to be forced thither-

By Custom
or Habit-
tude.
L. N. N.
l. i. c. 4.
§ 6.

* *Hugo Grotius de Jure Belli & Pacis, Lib. 11. c. 20. § 18.*

ward, or if it be absent, the same is earnestly desirous of it. Concerning which this is to be observ'd, That as there appears to be no *Custom*, but what a Man may, by applying a due Care, *break and leave off*; so neither can any so far put a force upon the Will, but that a Man may be able at any Time to restrain himself from any *external Acts* at least, to which by that he is urged. And because it was in the Persons *own Power* to have contracted this *Habit* or not, whatsoever easiness it brings to any Action, yet if that Action be *good*, it loses nothing of its Value therefore, as neither doth an *evil* Thing abate ought of its Pravity. But as a *good Habit* brings *Praise* to a Man, so an *ill* one shews his *Shame*.

IT is also of great Consideration, whether the Mind be in a *quiet and placid* State, or whether it be affected with those peculiar Motions we call the *Passions*. Of these it is to be known, that how violent soever they are, a Man with the right Use of his *Reason* may yet conquer them, or at least contain them so far within Bounds, as to hinder them from producing those Actions they prompt Men to do. * But whereas of the *Passions* some are rais'd from the Appearance of *Good*, and others of *Evil*; and do urge either to the procuring of somewhat that is *acceptable*, or to the avoiding of what is *mischievous*, it is agreeable to Human Nature, that *these* should meet among Men more *favour* and *pardon*, than *those*; and that according to such degrees as the Mischief that excited them was

XIV.

By *Passion.*

L. N. N.

l. i. c. 4.

§ 7.

* *Apo'og. Sect. 22. in Erid. Scandic. p. 39.*

more hurtful and intolerable. For to *want* a *Good* not altogether necessary to the Preservation of Nature is accounted more *easy*, than to *endure an Evil* which tends to Nature's Destruction.

XV. FARTHERMORE, as there are * certain
By intoxication. Maladies, which take away all Use of the *Reason* either perpetually or for a time : So 'tis customary in many Countries, for Men on purpose to procure to themselves a certain kind of *Disease* which goes off in a short time, but which very much confounds the Reasoning Faculty. By this we mean *Drunkenness* ; proceeding from certain kinds of Drink, and Fumes, which hurry and disturb the Blood and Spirits, thereby rendring Men very prone to *Lust, Anger, Rashness* and immoderate *Mirth* ; so that many by *Drunkenness* are set as it were beside themselves, and seem to have put on *another Nature*, than that which they were of, when *sober*. But as this does not always take away the *whole* Use of *Reason* ; so, as far as the Person does *willingly* put himself in this State, it is apt to procure an *Abhorrence* rather than a *favourable Interpretation* of what is done by its Impulse.

XVI. Now of Human Actions, as those are call'd
Actions Involuntary, mixt. *Voluntary*, which proceed from, and are directed by the Will ; so if any thing be done *wittingly*, altogether against the Will, these are call'd *Involuntary*, taking the Word in the narrow
 L. N. N. § 8.
 l. i. c. 4.
 § 11.

* The Effect of these sort of Maladies, and of *Drunkenness* is not, to speak properly, a giving to the Will a bent and inclination to this or that thing, so much as an entire destroying the Principle of Human Actions ; because Men under these Circumstances know not any thing of what they do.

rowest sense ; for taking it in the largest, it comprehends even those which are done through *Ignorance*. But *Involuntary* in this place is to signify the same as *forc'd* ; that is, when by an external Power which is stronger, a Man is compell'd to use his Members in any Action, to which he yet signifies his Dissent and Aversion by Signs, and particularly by counterstriving with his Body. Less properly those Actions are also called *Involuntary*, which by the Imposition of a great Necessity are *chosen* to be done, as the lesser Evil ; and for the Acting whereof the Person had the greatest Abomination, had he not been set under such Necessity. These Actions therefore are call'd *Mixt*. With *Voluntary Actions* they have this in common, that in the present State of Things the Will *chuses* them as the lesser Evil. With the *Involuntary* they are after a sort the same, as to the Effect, because they render the Agent either not at all, or not *so heinously* blameable, as if they had been done spontaneously.

THOSE Human Actions then which proceed from, and are directed by the *Understanding* and the *Will*, have particularly this natural Propriety, * that they may be *imputed* to the Doer ; that is, that a Man may justly be said to be the Author of them, and be oblig'd to render an *Account* of such his Doing ; and the *Consequences* thereof, whether good or bad, are chargeable upon him. For there can be no truer Reason why any Action should be *imputa-*

XVII.
Voluntary
Actions
imputable.
 L. N. N.
 l. 1. c. 5.
 § 5.

* L. N. N. l. 1. c. 5. §. 3. *Spicileg. Jur. Nat.* §. 12. in *Erid. Scandic.* Page 343.

ble to a Man, than that he did it either mediately or immediately *knowingly* and *willingly*; or that it was in his Power to have done the the same or to have let it alone. Hence it obtains as the prime Axiom in Matters of Morality which are liable to the Human *Forum*: That *every Man is accountable for all such Actions, the Performance or Omission of which were in his own Choice.* Or, which is tantamount, That *every Action that lies within a Man's Power to perform or omit, is chargeable upon him who might or might not have done it.* So on the contrary, *no Man can be reputed the Author of that Action, which neither in it self nor in its cause, was in his Power.*

XVIII. FROM these Premisses we shall deduce some particular *Propositions*, by which shall be ascertain'd, what every Man ought to be *accountable* for; or, in other Words, which are those Actions and Consequences of which any one is to be charged as *Author*.

The first Conclusion. NONE of those *Actions* which are done by another Man, nor any *Operation* of whatsoever other things; neither any *Accident*, can be *imputable* to any Person, but so far forth as it was in his Power, or as he was oblig'd to guide such *Action*. For nothing is more common in the World, than to *subject* the Doings of one Man to the Manage and Direction of another. Here then, if any thing be perpetrated by one, which had not been done, if the other had performed his *Duty* and exerted his *Power*; this *Action* shall not only be chargeable upon him who *immediately* did the Fact, but upon the other also who *neglected* to make use of his *Authority* and *Power*. And yet this is to be understood with some restriction;

Conclusions from the Premisses.

The first Conclusion. L. N. N. 1. 1. c. 5. § 6.

striction ; so as that *Possibility* may be taken *morally*, and in a *large* Sense. For no *Subjection* can be so *strict*, as to extinguish *all* manner of *Liberty* in the Person subjected ; but so, that 'twill be in his Power to resist and act quite contrary to the Direction of his *Superior* ; neither will the State of *Human Nature* bear, that any one should be perpetually affix'd to the side of another, so as to observe *all* his Motions. Therefore when a *Superiour* has done every thing that was requir'd by the *Rules* of his *Directorship*, and yet somewhat is acted amiss, this shall be laid only to the charge of *him* that *did* it. Thus, whereas *Man* exercises Dominion over other *Animals*, what is done by them to the detriment of another, shall be charged upon the *Owner*, as supposing him to have been wanting of due *Care* and *Circumspection*. So also all those Mischiefs which are brought upon another, may be *imputed* to that Person, who when he *could* and *ought*, yet did not take out of the way the Cause and Occasion thereof. Accordingly it being in the Power of Men to *promote* or *suspend* the Operations of many *Natural Agents*, whatsoever Advantage or Damage is wrought by these, *they* shall be accountable for, by whose *application* or *neglect* the same was occasion'd. Beside, sometimes there are extraordinary Cases, when a Man shall be charged with such Events as are above human Direction, as when *God* shall do particular *Works* with regard to some *single* Person. [So the Pestilence in *Israel* may be charg'd upon *David* for numbring the People ; 2 *Sam.* xxiv. or the three Year's Drought to the Prayers of *Elijah*, 1 *Kings* xvii. and the like.] These and such

such Cases being excepted, *no Man is responsible but for his own Actions.*

XIX. *WHATSOEVER* Qualifications a Man has or has not, which it is not in his Power to exert or not to exert, must not be imputed to him, unless so far as he is wanting in Industry to supply such Natural Defect, or does not rouse up his native Faculties.

The second Conclusion.
L. N. N.
l. i. c. 5.
§ 7.

So, because no man can give himself an *Acuteness of Judgment* and *Strength of Body*; therefore no one is to be *blam'd* for Want of either, or *commended* for having them, except so far as he *improv'd*, or *neglected* the cultivating thereof. Thus *Clownishness* is not blameable in a *Rustic*, but in a *Courtier* or *Citizen*. And hence it is, that those *Reproaches* are to be judg'd extremely absurd, which are grounded upon *Qualities*, the Causes of which are not in our Power, as, *Short Stature*, a *deform'd Countenance*, and the like.

XX. *FARTHER*, We are not chargeable for those Things, which we do thro' *Invincible Ignorance*.

The Third Conclusion.
L. N.
N. l. 1.
c. 5. § 10.

Because we have nothing but the *Light of our Understanding* to direct our *Actions* by; and in this case it is supposed that the *Agent* neither had, nor *possibly* could have, this *Light* for his *Direction* at that time, and that it was not his own *Fault* that made it not *possible* for him then to come at proper *Knowledge*. When we say not *possible* for him to know, we must be understood in a *Moral* not a *Physical* Sense; that is, it was not possible to come to this *Knowledge* by the usual and common *Means*, by using his best *Care* and *Attention*, and by giving such *Diligence*, *Precaution*, and *Circumspection*, as in all reason may be thought sufficient for the attaining such *Knowledge*.

Ignorance

Ignorance of a Man's *Duty*, or of those *Laws* from whence his *Duty* arises, or *Error* about either of them, does not excuse from blame. For whosoever imposes *Laws* and *Services*, is wont and ought to take care that the Subject have notice thereof. And these *Laws* and *Rules* of *Duty* generally are and should be order'd to the *Capacity* of such *Subject*, if they are such as he is obliged to *know* and *remember*. Hence, he who is the *Cause* of the *Ignorance* shall be bound to answer for those *Actions* which are the *Effects* thereof.

HE who, not by his own fault, wants an *Opportunity* of doing his *Duty*, shall not be accountable, because he has not done it. An *Opportunity* of doing our *Duty* comprehends these four requisite *Conditions*: 1. That an *Object* of *Action* be ready: 2. That a proper *Place* be had, where we may not be hindred by others, nor receive any *Mischief*: 3. That we have a fit *Time*, when *Business* of greater *Necessity* is not to be done, and which is equally seasonable for those *Persons* who are to concur with us in the *Action*: and 4. Lastly, That we have natural *Force sufficient* for the performancer. For since an *Action* cannot be atchiev'd without these, 'twould be absurd to blame a *Man* for not acting, when he had not an *Opportunity* so to do. Thus, a *Physician* cannot be accus'd of *Sloth*, when no body is sick to employ him. Thus, no *Man* can be *liberal*, who wants himself. Thus he cannot be reprov'd for *burying* his *Talent* who having taken a due care to set himself in an useful *Station*, has yet miss'd of it: tho' it be said, * *To whom much is given, from*

* The Words of our Blessed Saviour, *Luc. xii. 48.*

him much shall be requir'd. * Thus we cannot blow and sup all at once.

XXIII. *No Man is accountable for not doing that which exceeded his Power, and which he had not Strength sufficient to hinder or accomplish.* Hence that Maxim, *To Impossibilities there lies no Obligation.* But this Exception must be added, Provided, that by the Person's own Fault he has not impaired, or lost that Strength which was necessary to the Performance; for if so, he is to be treated after the same manner, as if he had all that Power which he might have had: Otherwise it would be easie to elude the Performance of any difficult Obligation, by weakening one's self on purpose.

XXIV. *NEITHER* can those things be imputable, which one acts or suffers by *Compulsion*. For it is supposed, that 'twas above his power to decline or avoid such doing or suffering. But we are said after a twofold manner to be *compell'd*; one way is, when another that's stronger than us *violently forces* our Members to do or endure somewhat; the other, † when one more powerful shall *threaten* some grievous Mis-

* Our Author, who frequently makes use of *Plautus*, does without doubt in this place allude to the *Mosellaria*, Act. 3. Sc. 2. v. 104, 105.

Simul flare sorberéque haud facile

Est: ego hic esse & illuc simul haud potui.

† The Author seems here to give too great an Allowance to this second sort of *Compulsion*. It must indeed be owned, that it greatly lessens the Offence, especially in Courts of Human Judicature; but then it frees us not from Imputation intirely in the Sight of God. The Example our Author gives of the Sword or Ax reaches not the Case, for they are Instruments meerly passive:

But

Mischief (which he is immediately able to bring upon us) unless we will, as of our *own* accord, apply our selves to the doing of this, or abstain from doing that. For in these cases unless we are *expressly obliged* to take the Mischief to our selves which was to be done to another, he that sets us under this *Necessity*, is to be reputed the *Author* of the Fact; and the same is no more chargeable upon us, than a *Murder* is upon the Sword or Ax which was the *Instrument*.

But on the other hand, a Person who is no other ways forced but by the Menaces of some great Mischief, without any physical or irresistible Violence, acts with some degree of Willingness, and gives a sort of a Concurrence to an Action which he plainly knows to be ill, when he is thus constrained to do it. There is but one Case wherein, with a safe Conscience, we may obey the injurious Orders of a Superior, in order to avoid the Mischiefs he menaces us with in case of a Refusal; and that is, when the Person, on whom the Mischief is to fall by our Compliance with the injurious Orders of a Superior, does himself consent that we should avoid the Mischief threatned to us, by doing the Action commanded, altho' it be injurious to him, and rather contents himself to suffer such Injury, than to expose us to the Violence of the Person menacing: But this also must be understood only of such Cases as the Person has it in his Power to give Consent, namely, when the Injury he consents to suffer is the Violation only of such a Right as is in the power of the suffering Person to quit; otherwise this Case holds not good; for should any one, for example, consent that I should act the Command of another to kill him, such consent would not acquit me of the Guilt of Murder, should I by the Menaces of any one be constrained to take away his Life. See *L. N. N. lib. I. cap. V. § 9. & lib. VIII. cap. 1. § 6.*

XXV. THE Actions of those who *want* the Use of their *Reason* are not imputable; because they cannot distinguish clearly what they do, and bring it to the Rule. Hitherto appertain the Actions of *Children*, before their reasoning Faculties begin to exert themselves. For though they are now and then chid or whipt for what they do; yet it is not from hence to be concluded, that their Actions are really Crimes, or that in strictness they deserve this punishment for them; which they receive not as from Justice, but in Prudence to prevent their growing troublesome to others, and lest they contract ill Habits in themselves when they are little, and so keep them when they are grown up. So also the Doings of *Franticks*, *Crack-brains*, and *Dotards* are not accounted *Human Actions*, nor *imputable* to those who contracted such incapacitating Disease, without any *fault* of their *own*.

XXVI. LASTLY, A Man is not chargeable with what he seems to do in his *Dreams*; unless by *indulging himself* in the *Day-time* with idle Thoughts, he has deeply impressed the *Ideas* of such Things in his Mind; (tho' Matters of this Sort can rarely be within the Cognizance of the *Human Forum*.) For indeed the *Fansie* in Sleep is like a Boat adrift without a Guide; so that 'tis impossible for any Man to order what Ideas it shall form.

XXVII. BUT concerning the *Imputation* of another Man's Actions, it is somewhat more distinctly to be observ'd, that sometimes it may so happen, that an Action ought not at all to be charged upon him that *immediately* did it, but upon another who made use of this only as an

Instru-

Instrument. But it is more frequent, that it should be imputed *both* to *him* who perpetrated the thing, and to the *other*, who by doing or omitting something, shew'd his *concurrence* to the Action. And this is chiefly done after a three-fold manner; either, 1. As the other was the *principal* Cause of the Action, and this *less principal*. Or, 2. As they were both *equally* concern'd. Or, 3. As the other was *less principal*, and he that did the Act was *principal*. To the first Sort belong those who shall *instigate* another to any thing by their Authority; those who shall give their necessary *Approbation*, without which the other could not have acted; those who *could* and *ought* to have hindred it, but did not. To the second Class appertain, those who *order* such a thing to be done, or *hire* a Man to do it; those who *assist*; those who afford *barbour* and *protection*; those who had it in their *Power*, and whose *Duty* it was to have succour'd the wronged Person, but refus'd it. To the third Sort are refer'd such as are of * *counsel* L. N. N. to the Design; † those that *encourage* and com-^l 1. c. 5. mend § 14.

* That is, when, for example, a Man advises another to steal this or that thing, shewing him at the same time the properest Manner to take it without discovery, the favourablest Time of conveying himself into the House where it is, the Place where the thing is repositied, the best Way of getting off with it, and the like Particulars; but this is not meant of simply advising any one in general terms to steal for his Support rather than starve. L. N. N. lib. I. cap. V. § 14.

† That is, provided this Advice, these Encouragements and Commendations contribute to make him do the criminal Act; for in such case only the Imputation lies; otherwise the Person thus counselling and encouraging is only

mend the Fact before it be done ; and such as *incite* Men to sinning by their *Example*, and the like.

only guilty of the ill Intention which he had. *Lib.* III. *cap.* I. § 4.

C H A P. II.

Of the RULE of Human Actions, or of LAWS in general ; and the different Qualifications of those Actions.

I. **B**ECAUSE all *Human Actions* depending upon the *Will*, have their Estimate according to the concurrence thereof ; but the *Will* of every Person not only differs in many respects from that of all others, but also alters and changes it self, becoming different in the same Person at one time from what it was before at another ; therefore to preserve Decency and Order among Mankind, it was necessary there should be some *Rule*, by which they should be regulated. For otherwise, if, where there is so great a *Liberty* of the *Will*, and such *Variety* of *Inclinations* and *Desires*, any Man might do whatsoever he had a mind to, without any regard to some *stated Rule*, it could not but give occasion to vast *Confusions* among Mankind.

The Necessity of a Rule.

L. N. N.
l. 2. c. 1.

THIS

THIS Rule is call'd LAW ; which is, * A Decree by which the Superior obliges one that is subject to him, to accommodate his Actions to the Directions prescrib'd therein. II. Law, defined. L. N. N. l. 1. c. 6.

THAT this Definition may the better be understood, it must first be enquired, What is an Obligation ; whence is its Original ; who is capable of lying under an Obligation ; and who it is that can impose it. By Obligation then is usually meant, A moral Bond, whereby we are ty'd down to do this or that, or to abstain from doing them. That is, hereby a kind of a Moral Bridle is put upon our Liberty ; so that though the Will does actually drive another way, yet we find our selves hereby struck as it were with an internal Sense, that if our Action be not perform'd according to the prescript Rule, we cannot but confess we have not done right ; and if any Mischief happen to us upon that Account, we may fairly charge our selves with the same ; because it might have been avoided, if the Rule had been follow'd as it ought. § 4. III. Obligati- on. L. N. l. 1. c. 6. § 5.

AND there are two Reasons why Man should be subject to an Obligation ; one is, because he is endow'd with a Will, which may be divers ways directed, and so be conform'd to a Rule : the other, because Man is not exempt from the Power of a Superior. For where the Faculties of any Agent are by Nature form'd only for one Way of acting, there 'tis to no purpose to expect any thing to be done of choice : and to such a Creature 'tis in vain to prescribe IV. Man ca- pable of being obli- ged. L. N. N. l. 1. c. 6. § 6.

* On this Head consult H. Grotius de Jure Belli & Pacis, l. 1. c. 1. § 9.

any *Rule* ; because 'tis incapable of *understanding* the same, or *conforming* its Actions thereto. Again, if there be any one who has no *Superior*, then there is no *Power* that can of right impose a Necessity upon him ; and if he perpetually observes a certain Rule in what he does, and constantly abstains from doing many things, he is not to be understood to act thus from any *Obligation* that lies upon *him*, but from his own *good pleasure*. It will follow then, for any one to be capable of lying under *Obligation*, it is necessary, that on the one hand he have a *Superior*, and on the other, that he be both capable of understanding the Rule prescrib'd him by his Superior, and also endu'd with a *Will* which may be *directed* several ways ; and yet which (when the Law is promulg'd by his Superior) knows he cannot rightly depart therefrom. And with all these *Faculties*, 'tis plain, Mankind is furnish'd.

V. A N *Obligation* is superinduced upon the Will of Men properly by a *Superior* ; that is, not only by such a one as being *greater* or *stronger*, can punish Gainfayers : but by him who has *just Reasons* to have a Power to restrain the Liberty of our Will at his own Pleasure. Now when any man has either of these, as soon as he has signify'd what he would have, it necessarily stirs up, in the Mind of the party concern'd, *Fear* mixt with *Reverence* ; the first arises from the consideration of his Power, the other proceeds from those Reasons on which the Authority of our Superior is founded ; by which we are convinc'd, that had we nothing to fear from him, yet we ought to conform our Actions to his Will. For he that can give me no
other

Who can
oblige.

L. N. N.

l. i. c. 6.

§ 9.

other Reason for putting me under an Obligation against my Will, beside this, that he's too *strong* for me, he truly may so terrifie me, that I may think it better to *obey* him for a while than suffer a *greater Evil*: but when this *Fear* is over, nothing any longer hinders, but that I may act after my *own Choice* and *not his*. On the contrary, he that has nothing but *Arguments* to prove that I should obey him, but wants *Power* to do me any Mischief, if I deny: I may with Impunity slight his Commands, except one more potent take upon him to make good his despis'd Authority. Now the *Reasons* upon which one Man may *justly* exact *Subjection* from another, are two: First, if he have been to the other the *Original* of some extraordinary *Good*; and if it be plain, that he designs the others *Welfare*, and is *able* to provide better for him than 'tis possible for *himself* to do; and on the same Account does actually lay *claim* to the Government of him: Secondly, if any one does *voluntarily* surrender his Liberty to another, and subject *himself* to his Direction.

FARTHERMORE, that a Law may exert VI.
its Force in the Minds of those to whom it is *The Legis-*
promulged, it is requir'd, that both the *lator and;*
Legis- *the true*
lator and the Law also be known. For no Man *meaning*
can pay Obedience, if he know not *whom* he *of the*
is to *obey*, and *what* he is to *perform*. Now the *Law to be*
Knowledge of the *Legislator* is very easy; be- *known.*
cause from the Light of Reason 'tis certain the *L. N. N.*
same must be the *Author* of all the *Laws* of *l. 1. c. 6.*
Nature, who was the *Creator* of the *Universe*: § 14.
Nor can any Man in *Civil Society* be ignorant
who it is that has *Power* over him. Then
for

for the *Laws* of *Nature*, it shall be hereafter declar'd how we come to the Knowledge of them. And as to the *Laws* of a Man's *Country* or *City*, the Subject has notice given of them by a *Publication* plainly and openly made. In which these two Things ought to be ascertain'd, that the *Author* of the Law is he, who hath the *supreme Authority* in the Community; and that *this* or *that* is the true Meaning of the *Law*. The *First* of these is known, if he shall promulge the Law with his *own Mouth*, or deliver it under his *own Hand*; or else if the same be done by such as are *delegated* to that purpose by him, whose Authority there is no Reason to call in question, if it be manifest, that such their acting belongs to that *Office* they bear in the Publick, and that they are *regularly placed* in the Administration thereof; if these Laws are brought in use at judicial Proceedings, and if they contain nothing *derogatory* to the *Sovereign's Power*. That the *Latter*, that is, the true *Sense* of the *Law* may be known, it is the Duty of those who promulge it, in so doing to use the greatest *Perspicuity* and *Plainness*; and if any thing *obscure* do occur therein, an *Explanation* is to be sought of the *Legislator*, or of those who are *publicly constituted* to give judgment according to the Laws.

VII.

Two parts
of a perfect
Law.
L. N. N.
l. i. c. 6.
§ 14.

OF every *perfect Law* there are two Parts: One, [Precept] whereby it is directed *what* is to be *done* or *omitted*: the other, [the Sanction] wherein is declared what *Punishment* he shall incur, who *neglects* to do what is commanded, or *attempts* that which is prohibited. For as, through the Pravity of Human Nature ever inclining to things forbidden, it is to no purpose

pose to say, *Do this*, if no Punishment shall be undergone by him who disobeys; so it were *absurd* to say, *You shall be punish'd*, except some Cause preceded, by which a Punishment was deserv'd. Thus then all the force of a Law consists in signifying what the *Superior requires* or *forbids* to be done, and what *Punishment* shall be inflicted upon the Violators. But the Power of *obliging*, that is, of imposing an intrinsick Necessity; and the Power of *forcing*, or, by the proposal of Punishments *compelling* the Observation of Laws, is properly in the Legislator, and in him to whom the Guardianship and Execution of the Laws is committed.

WHATSOEVER is enjoyn'd by any Law, ought not only to be in the Power of him to perform on whom the Injunction is laid, but it ought to contain somewhat *advantagious* either to him or others. For as it would be *absurd* and *cruel* to exact the doing of any thing from another, under a Penalty, which it is and always was beyond his Power to perform; so it would be silly and to *no purpose* to put a Restraint upon the natural Liberty of the Will of any man, if no one shall receive any Benefit therefrom.

BUT though a Law does strictly include all the *Subjects* of the Legislator who are *concern'd* in the Matter of the same, and whom the same Legislator at first *intended* not to be exempted: yet sometimes it happens that particular persons may be clear'd of any obligation to such Law: and this is call'd *Dispensing*. But as he *only* may dispense, in whose Power it is to *make* and *abrogate* the Law; * so great Care is

VIII.
It ought
to com-
mand
things
possible and
beneficial.

IX.
Power of
Dispen-
sing.
L. N. N.
l. i. c. 6
§ 17.

* See *Grotius de Jure Belli & Pacis*, L. 2. c. 20. Sect. 21. &c.

to be taken, lest by too frequent Dispensations, and such as are granted without very weighty Reasons, the Authority of the Law be shaken, and occasion be given of Envy and Animosities among Subjects.

X. *Equity.* YET there is a great Difference between *Equity* and *Dispensing*: *Equity* being a *Correction* of that in which the Law, by reason of its General Comprehension, was deficient: or an apt Interpretation of the Law, by which it is demonstrated, that there may be some peculiar Case which is not compriz'd in the *Universal Law*, because if it were, some Absurdity would follow. For it being impossible that all Cases, by Reason of their infinite Variety, should be either foreseen or explicitly provided for; therefore the Judges, whose Office it is to apply the general Rules of the Laws to special Cases, ought to except such from the Influence of them, * as the Lawgiver himself would have excepted if he were present, or had foreseen such Cases.

XI. *Actions allowable, good and bad.* Now the Actions of Men obtain certain Qualities and Denominations from their relation to and agreement with the Law of Morality. And all those Actions, concerning which the Law has determin'd nothing on either side, are call'd *allowable*, [indifferent] or *permitted*. Here we may observe, that in Civil Life, where it is impossible to come to perfect Exactness in all points, even † those things are said

* See Grotius de Jure Belli & Pacis, L. 2. c. 20. Sect. 26, 27.

† See Grotius de Jure Belli & Pacis, Lib. 3. cap. 4. § 2.

to be *allowable*, upon which the Law has not assign'd some *Punishment*, though they are in themselves repugnant to *Natural Honesty*. We call those Actions which are *consonant* to the Law *good*, and those that are *contrary* to it *bad*: But that any Action should be *good*, 'tis requisite, that it be exactly agreeable in every * point to the Law; whereas it may be *evil* if it be deficient in one Point only.

As for *Justice*, it is sometimes the Attribute of *Actions*, sometimes of *Persons*. When it is attributed to *Persons*, 'tis usually defin'd to be, A constant and perpetual *Desire* of giving every one their own. For he is called a *just* Man, who is delighted in doing righteous Things, who studies Justice, and in all his Actions endeavours to do that which is right. On the other side, the *unjust* Man is he that neglects the giving every Man his own, or, if he does,

XII.
Justice of
Persons.
L. N. N.
l. 1. c. 7.
§ 6.

* The Points here spoken of mean the *Quality*, or the *Intention of the Agent*; the *Object*, the *End* pursued thereby, and other like Circumstances of the Action. Thus, though an Action may in every respect answer the Direction of the Law, it may be nevertheless charged on the Doer as a bad Action, especially in the Sight of God, not only when it was done upon an ill Principle with a vicious Intention, but also when it was done through Ignorance, or on some other Motive different from what the Law prescribes. I say it may be accounted a bad Action *in the Sight of God*; for the outward Obedience of the Laws sufficiently answering the Ends of Civil Society, which is the Aim only of Politick Legislators, they never concern themselves with the Intention of the Agent, whether it be just or unjust, provided the External Act has nothing in it but what is conformable to the Law. See *L. N. N. L. I. Cap. VII. § 3, 4. and Lib. I. Cap. VIII. § 2, 3.*

'tis

'tis not because 'tis due, but from expectation of Advantage to himself. So that a *just Man* may sometimes do unjust Things, and an *unjust Man* that which is just. But the *Just* does that which is right, because he is so *commanded* by the Law; and never commits any unjust Acts but only through *Infirmity*; whereas the *wicked Man* does a just Thing for fear of the *Punishment* which is the Sanction of the Command, but such unjust Acts as he commits proceed from the *Naughtiness* of his *Heart*.

XIII.
Of *Actions*.
L. N. N.
l. 1. c. 7.
§ 7.

BUT the *Justice of Actions* not only consists in their due Conformity to Law, but it includes in it likewise a right Application of them to those Persons to whom the Action is perform'd: So that we apprehend that *Action* to be *just*, which, with full Design and Intention, is apply'd to the Person to whom it is due. Herein therefore the *Justice* of Actions differs from their *Goodness* chiefly, that the latter simply denotes an Agreement with the Law; whereas *Justice* also includes the Regard they have to those * *Persons* upon whom

* Good Actions might have been more properly distinguished with respect to the three Objects they may have; which are, *G O D*, *our Neighbour*, and *our selves*. (see § 13. of the following Chapter.) Such good Actions, as have *G O D* for their Object, are comprehended under the general Name of *P I E T Y*. Such good Actions as have for their Object *other Men*, are signify'd by the Name of *J U S T I C E*. And those good Actions which have only a direct respect to *our selves*, may be contain'd in the Term *Moderation*, or *T E M P E R A N C E*. This Division of good Actions being the most Simple and Natural one, is also the most Ancient one. See *L. N. N. Lib. II. Cap. III. § 24.*

they are exercis'd. Upon which Account Justice is call'd a *Relative Virtue*.

MEN do not generally agree about the Division of *Justice*. The most receiv'd Distinction is, into *Universal* and *Particular*. The first is, when *every Duty* is practis'd and *all right* done to others, * even that which could not have been extorted by Force, or by the Rigor of Law. The latter is, when *that Justice* only is done a Man, which in his own right he could have *demand'd*; and this is wont to be again divided into † *Distributive* and *Commutative*

XIV.
Division of
Justice.
L. N. N.
l. 1. c. 7.
§ 8.

* The Duties here meant, by *such as could not have been extorted by Force or Law*, are such as are not absolutely necessary for the Preservation of Mankind, and for the Support of Human Society in general, although they serve to embellish it, and render it more commodious. Such are the Duties of *Compassion*, *Liberality*, *Benevolence*, *Gratitude*, *Hospitality*, and in one word all that is contain'd under that comprehensive Name of *Charity*, or *Humanity*, as it is oppos'd to rigorous *Justice* properly so call'd, the Duties of which, generally speaking, have their Foundation in Agreement. I say *generally speaking*; for tho' there be no Agreement made, we lie under an indispensable Obligation to do wrong to no one, to make good the Damage any one has sustain'd by us, to look upon each other as Equals by Nature, &c. But here we ought to observe, that in case of extream Necessity, the *Imperfect Right* that others have to these Duties of Charity from us, becomes a *Perfect Right*; so that Men may by force be oblig'd to the performance of these Duties at such a time, tho' on all other Occasions the Performance of them must be left to every Man's Conscience and Honour. See *L. N. N. lib. 1. cap. 7. § 7. lib. 3. cap. 4. § 6.*

† This Division is not compleat, because it comprehends no other Duties but what Men are oblig'd to the performance of towards others, by virtue of an Engagement

tive. The *Distributive* takes place in Contracts made between Partners in Fellowship, concerning fair Partition of Loss and Gain according to a rate. † The *Commutative* is mostly in Bargains made upon even hand about Things and Doings relating to Traffick and Dealing.

XV.
Injustice
what.
 L. N. N.
 l. i. c. 7.
 § 14.

KNOWING thus, what *Justice* is, 'tis easie to collect what is *Injustice*. Where it is to be observ'd, that such an unjust Action is call'd *Wrong-doing*, which is premeditatedly undertaken, and by which a Violence is done upon somewhat which of absolute Right was another Man's due, or, which by like Right he one way or other stood possess'd of. And this Wrong may be done after a threefold Manner: 1. If that be deny'd to another which in his own right he might demand (not accounting that which from Courtesie or the like Virtue may be another's due): Or, 2. If that be taken away from another, of which by the same right, then valid against the Invader, he was

ment enter'd into to that purpose; but there are Duties that our Neighbour may in strict justice demand at our hands, independently on all such Engagement or Agreement. See the preceding Note. I should rather approve of Mr. Budæus's Division of this *Particular*, or *Strict Justice* (*Elem. Pract. Phil. par. II. Cap. II. § 46.*) into Justice as it is exercised between *Equals and Equals*, and as it is exercised between *Superiors and Inferiors*. The Former of these is subdivided into as many different Sorts as there are Duties, which one Man may demand in strictness the performance of from every other Man, consider'd as such, and one Citizen from every other Member of the same Body. The Latter of these comprehends as many different Sorts as there are kinds of Societies wherein some command and others obey.

† See *Grotius de Jure Belli & Pacis*, l. i. c. 1. § 8.

in

in full possession: Or, 3. If any Damage be done to another, which we had not Authority to do to him. Beside which, that a Man may be charged with *Injustice*, it is requisite that there be a naughty *Mind* and an evil *Design* in him that acts it. For if there be nothing of these in it, then 'tis only call'd *Misfortune*, or an *Error*; and that is so much slighter or more grievous, as the Sloth and Negligence which occasion'd it was greater or less.

L A W S, with respect to their Authors, are distinguished into *Divine* and *Humane*; that proceeds from God, and this from Men. But if Laws be considered, as they have a necessary and universal Congruity with Mankind, they are then distinguisht into *Natural* and *Positive*.

* *Natural Law* is that which is so agreeable with the rational and sociable Nature of Man, that honest and peaceable Society could not be kept up amongst Mankind without it, Hence it is, that this may be sought out, and the knowledge of it acquired by the light of that *Reason*, which is born with every Man, and by a consideration of *Human Nature* in general. *Positive Law* is that which takes not its rise from the common condition of Human Nature, but only from the good pleasure of the Legislator: This likewise ought to have its Foundation in *Reason*, and its End ought to be some *Advantage* to those Men, or that Society, for which it is designed. Now the Law *Divine*, is either *Natural* or *Positive*; but all *Human Laws*, strictly taken, are *Positive*.

XVI.
Laws distinguisht.
Natural and Positive.
L. N. N.
l. 1. c. 6.
§ 18.

* See Grotius de Jure Belli & Pacis, Lib. I. Cap. I.
§ 10.

C H A P. III.

Of the Law of Nature in general.

I. **T**HAT Man, who has throughly examined the *Nature* and *Disposition* of Mankind, may plainly understand what the *Law Natural* is, the *Necessity* thereof, and which are the *Precepts* it proposes and enjoyns to Mankind. For, as it much conduces to him who would know exactly the *Polity* of any *Community*, that he first well understand the *Condition* thereof, and the *Manners* and *Humours* of the Members who constitute it: So to him who has well studied the common *Nature* and *Condition* of *Man*, it will be easie to discover those *Laws* which are necessary for the Safety and common Benefit of Mankind.

II. **T**HIS then Man has in common with all the *Animals*, who have a Sense of their own Beings; that he accounts nothing dearer than *Himself*; that he studies all manner of ways *his own Preservation*; and that he endeavours to *procure* to himself such things as seem *good* for him, and to *avoid* and *keep off* those that are *mischievous*. And this Desire of *Self-Preservation* regularly is so strong, that all our other *Appetites* and *Passions* give way to it. So that whensoever an *Attempt* is made upon the Life of any man, though he escape the danger threatned, yet he usuallyresents it so, as to retain a *Hatred* still, and a desire of *Revenge* on the Aggressor.

BUT

BUT in one particular, *Man* seems to be III. set in a worse condition than that of *Brutes*, Society ab- that hardly any other Animal comes into the solutely world in so great weakness; so that 'twould be necessary. a kind of Miracle, if any man should arrive L. N. N. at a mature Age, without the aid of some bo- § 8. dy else. For even now, after so many helps found out for the *Necessities* of *Human Life*; yet a many Years careful Study is required before a Man shall be able of himself to get *Food* and *Raiment*. * Let us suppose a Man come to his full Strength without any oversight or instruction from other Men; suppose him to have no manner of Knowledge but what springs of it self from his own natural Wit; and thus to be placed in some Solitude, destitute of any Help or Society of all Mankind beside. Certainly a more miserable Creature cannot be imagined. He is no better than *dumb*, *naked*, and has nothing left him but *Herbs* and *Roots* to pluck, and the *wild Fruits* to gather; to quench his thirst at the next *Spring*, *River*, or *Ditch*; and to shelter himself from the Injuries of the Weather, by creeping into some *Cave*, or covering himself after any sort with *Moss* or *Grass*; to pass away his tedious life in *Idleness*; to start at every Noise, and be afraid at the sight of any other Animal; in a Word, at last to perish either by *Hunger*, or *Cold*, or some

* L. N. N. l. II. c. 1. § 8. c. 2. § 2. *Dissert. Acad. ult. p. 458. Eris. Scandic. in Apol. p. 20. seq. Specim. Controv. c. 3. p. 217. c. 4. § 161. p. 258. Spicileg. Controv. c. 3. § 1. p. 379. Ful. Rondin. Dissert. Epist. § 1. seq. p. 396. Comment. super in-venusto Ven. Lipsiens. pull. p. 11, 16, 36, 44, 46, 52, 54.*

wild *Beast*. It must then follow, that whatsoever Advantages accompany Human Life, are all owing to that *mutual Help* Men afford one another. So that, next to *Divine Providence*, there is nothing in the world more *beneficial* to Mankind than *Men themselves*.

IV. AND yet, as *useful* as this Creature is, or may be, to others of its kind, it has many Faults, and is capable of being *equally noxious*; which renders mutual Society between Man and Man not a little dangerous, and makes *great Caution* necessary to be used therein, lest *Mischief* accrue from it instead of *Good*. In the first place, a stronger *Proclivity* to injure another is observ'd to be generally in *Man*, than in any of the *Brutes*; for they seldom grow outrageous, but through *Hunger* or *Lust*, both which Appetites are satisfi'd without much Pains; and that done, they are not apt to grow furious, or to hurt their Fellow-Creatures, without some *Provocation*. Whereas Man is an Animal always *prone* to *Lust*, by which he is much more frequently instigated, than seems to be necessary to the Conservation of his Kind. His *Stomach* also is not only to be *satisfied*, but to be *pleas'd*; and it often desires more than Nature can well digest. As for *Raiment*, Nature has taken Care of the *rest* of the Creatures that they don't *want* any: But *Men* require not only such as will answer their *Necessity*, but their *Pride* and *Ostentation*. Beside these, there are many *Passions* and *Appetites* unknown to the *Brutes*, which are yet to be found in *Mankind*; as, an unreasonable *Desire* of possessing much *more* than is *necessary*, an earnest pursuit after *Glory* and *Pre-eminence*; *Envy*, *Emulation*, and

Out-

IV.

Men to
Men incli-
nable to
do hurt.

L. N. N.

1. 2. c. 1.

§ 6 l. 7.

c. 1. § 4.

Outwings of Wit. A Proof hereof is, that most of the Wars with which *Mankind* is harass'd, are rais'd for Causes altogether unknown to the *Brutes*. Now all these are able to provoke *Men* to hurt one another, and they frequently do so. Hereto may be added the great *Arrogance* that is in many *Men*, and *Desire* of *insulting* over others, which cannot but exasperate even those who are naturally meek enough; and from a Care of preserving themselves and their Liberty, excite them to make Resistance. Sometimes also *Want* sets *Men* together by the Ears, or because that Store of Necessaries which they have at *present* seems not *sufficient* for their *Needs* or *Appetites*.

MOREOVER, *Men* are more able to do one another Harm than *Brutes* are. For tho' they don't look formidable with *Teeth*, *Claws*, or *Horns*, as many of *them* do; yet the *Activity* of their *Hands* renders them very effectual Instruments of Mischief; and then the Quickness of their *Wit* gives them *Craft*, and a Capacity of attempting that by Treachery which cannot be done by open Force. So that 'tis very *easy* for one *Man* to bring upon another the *greatest* of all *Natural Evils*, to wit, *Death* itself.

BESIDE all this, it is to be consider'd, that among *Men* there is a vast *Diversity* of *Dispositions*, which is not to be found among *Brutes*; for among *Brutes*, all of the same Kind have the like *Inclinations*, and are led by the same inward *Motions* and *Appetites*: Whereas among *Men*, there are so many *Minds* as there are *Heads*, and every one has his *singular* Opinion; nor are they all acted with *simple* and *uniform* Desires, but with such as are *manifold* and *variously mixt*

V.

And very
capable
of it.

VI.

And likely
so to do.
L. N. N.
l. 2. c. 1.
§ 7.

toge her. Nay, *one* and the *same* Man shall be often seen to *differ* from *himself*, and to *desire* that at *one* Time which at *another* he extremely *abhorred*. Nor is the Variety less discernable, which is now to be found in the almost *infinite* Ways of living, of directing our Studies, or Course of Life, and our Methods of making use of our Wits. Now, that by Occasion hereof Men may not dash against one another, there is need of wise *Limitations* and careful *Management*.

VII. So then Man is an Animal very desirous of his own *Preservation*; of *himself* liable to many *Wants*; *unable* to Support himself without the Help of *other* of his Kind; and yet wonderfully fit in *Society* to promote a *common Good*: But then he is *malicious*, *insolent*, and easily *provok'd*, and not less *prone* to do Mischief to his Fellow than he is *capable* of effecting it. Whence this must be inferr'd, that in order to his Preservation, 'tis absolutely necessary, that he be *sociable*, that is, that he *join* with those of his Kind, and that he so *behave* himself towards them, that they may have no justifiable Cause to do him *Harm*, but rather to *promote* and *secure* to him all his Interests.

VIII. THE Rules then of this Fellowship, which are the Laws of *Human Society*, whereby Men are directed how to render themselves useful Members thereof, and without which it falls to pieces, are called the *Laws of Nature*.

IX. FROM What has been said, it appears, that this is a *fundamental Law of Nature*, That EVERY MAN OUGHT, AS MUCH AS IN HIM LIES, TO PRESERVE AND PROMOTE SOCIETY:

TY:

TY: That is, the *Welfare of Mankind*. * And ^{where the} since he that designs the *End*, cannot but be ^{End is so.} supposed to design those *Means* without which ^{L. N. N.} the *End* cannot be obtain'd, it follows that all ^{l. 2. c. 3.} such Actions as tend generally and are absolutely necessary to the Preservation of this *Society*, are *commanded* by the *Law of Nature*; as, on the contrary, those that disturb and dissolve it are forbidden by the same. All other Precepts are to be accounted only *Subsumptions*, or *Consequences* upon this Universal Law, the Evidence whereof is made out by that Natural Light which is engrafted in Mankind. § 15.

Now though these *Rules* do plainly contain in themselves that which is for the general *Good*; yet that the same may obtain the Force of *Laws*, it must necessarily be presuppos'd, that there is a *GOD*, who governs all Things by his Providence, and that He has enjoyn'd us Mortals, to observe these *Dictates* of our Reason as *Laws*, promulged by him to us by the powerful Mediation of that Light which is born with us. Otherwise we might perhaps pay some obedience to them in contemplation of their *Utility*, so as we observe the Directions of Physicians in regard to our Health, † but not as *Laws*, to

X.
A God and
Providence.

L. N. N.
l. 2. c. 3.
§ 19.

* See Grotius de Jure Belli & Pacis in Prolegomenis passim. L. N. N. l. 2. c. 3. § 14. seq. Element. Jurispr. univ. l. 2. observ. 14. Eris. Scandic. Apol. p. 46, 75. Specim. Controvers. c. 4. p. 231. sequ. Spicileg. Jur. Nat. c. 1. § 14. p. 348. seq. c. 2. § 8. p. 366. c. 3. § 13. p. 389. seq. Venet. Lipsiens. pul. p. 11. & passim.
† Grotius de Jure Belli & Pacis, Lib. 1. Cap. 1. § 10.

the Constitution of which a *Superior* is necessary to be supposed, and *that* such a one as has actually undertaken the Government of the other.

XI. But, that God is the Author of the *Law of Nature*, is thus demonstrated (considering Mankind only in its *present* State, without enquiring whether the *first* Condition of us Mortals was *different* from this, nor *how* the Change was wrought.) Whereas our Nature is so framed, that Mankind cannot be preserv'd without a *sociable Life*, and whereas it is plain that the *Mind of Man* is capable of all those Notions which are *subservient* to this purpose; and it is also manifest, that Men not only, like the other Creatures, owe their *Original* to God, but that He *governs* them, (let their Condition be as it will) by the Wisdom of his *Providence*. Hence it follows, that it must be supposed to be the *Will of God*, that Man should make use of those Faculties with which he is peculiarly endow'd beyond the Brutes, to the *Preservation* of his own Nature: and consequently, that the Life of Man should be different from the lawless Life of the *Irrational Creatures*. And since this cannot otherwise be achiev'd, but by an Observance of the *Law Natural*, it must be understood, that there is from God an obligation laid upon Man to pay Obedience hereto, as a Means not *invented* by the Wit, or *imposed* by the Will of Men, nor capable of being *changed* by their Humours and Inclinations; but *expressly* ordain'd by God himself in order to the *accomplishing* this End. For he that obliges us to pursue such an *End*, must be thought to oblige us to make use of those

God the
Author of
the Law
of Nature.
L. N. N.
l. 2. c. 3.
§ 20.

those *Means* which are necessary to the attainment thereof. And that the *Social Life* is positively enjoy'd by God upon *Men*, this is a Proof, that in no other *Animal* is to be found any Sense of *Religion* or Fear of a *Deity*, which seems not so much as to fall within the Understanding of the ungovernable Brute; and yet it has the power to excite in the minds of *Men*, not altogether profligate, the tenderest Sense; by which they are convinced, that by sinning against this *Law Natural*, they offend him who is Lord of the Soul of Man, and who is to be fear'd, even where we are secure of any Punishment from our Fellow-Creatures.

THOUGH it be usually said, that we have the Knowledge of this Law from *Nature* it self, yet this is not so to be taken, as if there were implanted in the Minds of Men just *new born*, plain and distinct Notions concerning what is to be *done* or *avoided*. But Nature is said thus to teach us, * partly because the Knowledge of this Law may be attain'd by the help of the *Light of Reason*; and partly because the general and most useful Points thereof are so *plain* and *clear*, that they at first sight force the Assent, and get such root in the minds of Men, that nothing can eradicate them afterwards; let wicked Men take never so much pains to blunt the edge and stupifie themselves against the Stings of their *Consciences*. And in this Sense we find in Holy Scripture, that this Law is said to be *written in the hearts of Men*. So that having

XII.
*This Law
how writ-
ten in
Man's
Heart.*

Rom. ii.
15.

* *L. N. N. lib 2, c. 3. § 13. seq. Epis. Scandic. Apol. § 24 p. 40. Epist. ad Amicos.*

from

from our Childhood had a Sense hereof instill'd into us, together with other Learning in the usual Methods of Education, and yet not being able to remember the *punctual time* when first they took hold of our Understanding and possess'd our Minds; we can have no other opinion of our knowledge of this Law; but that it was *connate* to our Beings, or born together and at the *same time* with our selves. The Case being the same with every Man in learning his *Mother Tongue*.

XIII. THOSE *Duties*, which from the Law of *Division of Nature* are incumbent upon Man, seem most aptly to be *divided* according to the *Objects* about which they are conversant. With regard to which they are ranged under three principal Heads; the *first* of which gives us Directions how by the single Dictates of right Reason Man ought to behave himself towards *God*; the *second* contains our Duty towards *our selves*; and the *third* that towards *other Men*. But though those Precepts of the Law Natural, which have a relation to *other Men*, may primarily and directly be derived from that *Sociality*, which we have laid down as a Foundation; yet even the Duties also of Man towards *God* may be * indirectly deduc'd from

* But these Duties, as well as those which regard our selves, have another more immediate and direct Foundation, which makes part of the general Principles of the Law of Nature. For it is not necessary that all those Duties, the Necessity and Reasonableness of which may be collected from the Light of Reason only, should be deduced from this one Fundamental Maxim. It may more justly be said, that there are three grand Principles of

from thence, upon this Account, that the strongest Obligation to mutual Duties between Man and Man arises from *Religion* and a Fear of the *Deity*; so as that Man could not become a *sociable* Creature if he were not imbu'd with *Religion*; and because *Reason* alone can go no farther in *Religion* than as it is useful to promote the common Tranquillity and Sociality or reciprocal Union in this Life: For so far forth as Religion procures the Salvation of Souls, it proceeds from peculiar Divine Revelation. But the Duties a man owes to *Himself* arise jointly from *Religion*, and from the Necessity of *Society*. So that no Man is so Lord of himself, but that there are many things relating to *himself*, which are not to be disposed altogether according to his Will; partly because of the Obligation he lies under of being a religious Adorer of the *Deity*, and partly that he may keep himself an useful and beneficial Member of *Society*.

of Natural Right, that is, *RELIGION*, which comprehends all the Duties of Man towards God; the *LOVE OF OUR SELVES*, which contains all those Duties which we are bound to do, with respect only and directly to our selves; and *SOCIABILITY*, from whence results all that is due from us to our Neighbour. These are fruitful Principles, which, tho' they have a great Affinity and Respect to each other, are yet very different at the bottom, and ought wisely to be considered and regarded, so that an equal and just Balance may, as much as possible, be preserv'd between them. See *L. N. N.* lib. 2. cap. 3. § 15.

C H A P. IV.

Of the Duty of Man towards GOD,
or, concerning Natural Religion.

I. *Natural Religion, its Parts.* **T**HE Duty of Man towards GOD, so far as can be discover'd by Natural Reason, is comprehended in these two; that we have true Notions concerning him, or know him aright; and then that we conform all our Actions to his Will, or obey him as we ought. And hence Natural Religion consists of two sorts of Propositions, to wit, **Theoretical* or Speculative, and *Practical* or Active.

II. *That God is. L. N. N. l. 2. c. 4. § 3.* AMONGST those *Notions* that every Man ought to have of GOD, the *first* of all is, that he firmly believe his *Existence*, that is, that there is indeed some *supreme* and *first Being*, upon whom this Universe depends. And this has been most plainly demonstrated by learned and wise Men from the *Subordination* of Causes to one another, which must at last be found to have their Original in somewhat that was before them all; from the necessity of having a *first Mover*; from the Consideration of this great *Machin*, the World, and from the like Arguments. Which if any Man denies him-

* See *Monf. Le Clerc's Pneumatologia*, § 3. and *Monf. Budens's Discourse, de Pietate Philosophica*, being the fourth Discourse in his *Selecta Jura Naturæ & Gentium*.

self to be able to *comprehend*, he is not therefore to be excus'd for his Atheism. For all Mankind having been perpetually, as it were, possess'd of this Persuasion, that Man who undertakes to oppose it, ought not only solidly to *confute* all those Arguments that are brought to *prove* a God, but should advance *Reasons* for his own Assertion, which may be *more plausible* than those. And since by this Belief of the *Deity* the Weal of Mankind may be supposed to have been *hitherto* preserv'd, he ought to shew that Atheism would *better* answer that End than sober Religion and the Worship of God. Now seeing this can by no means be done, the Wickedness of those Men who attempt any way to eradicate this Persuasion out of the Minds of Men, is to be above all things abominated, and restrain'd by the severest Punishments.

THE Second is, that *God is the Creator of this Universe*. For it being manifest from Reason, that none of these Things could exist of *themselves*, it is absolutely necessary that they should have some supreme *Cause*; which *Cause* is the very same that we call GOD,

III.
God the
Creator of
the World.
L. N. N.
l. 3. c. 4.
§ 4.

AND hence it follows, that those Men are cheated, who every now and then are putting upon us *Nature*, forsooth, as the original Cause of all Things and Effects. For, if by that Word they mean that *Energy* and *Power of Acting* which we find in every Thing, this is so far from being of any force to prove there is *no God*, that it proves him to be the *Author of Nature it self*. But if by *Nature* they would have us understand the *Supreme Cause* of all Things, this is only out of a profane Nicety

to

to avoid the receiv'd and plain Appellation of GOD.

THOSE also are in a great Error, who believe that any thing can be GOD, which is the Object of our *Senses*, and particularly the *Stars*, among the rest. For the *Substance* of these argues them all to derive their Beings from somewhat else, and not to be the *first Things* in Nature.

NOR do they think less unworthily of God, who call him the * *Soul of the World*. For the Soul of the World, let them conceive of it as they please, must signify a *Part* of the World; and how can a *Part* of a Thing be the *Cause* of it, that is, be something *before* it self? But if by the *Soul* of the World, they mean that *first* and *invisible Being*, from which all Things receive their Vigour, Life, and Motion, they only obtrude upon us an *obscure* and *figurative* Expression for one that is *plain* and *obvious*. From hence also it appears, that the *World* did not exist from *all Eternity*; this being contrary to the Nature of that which has a *Cause*. And he that asserts, that the *World is Eternal*, denies that it had any *Cause* of its being, and consequently denies God himself.

IV.
God governs the
World.

THE Third is, that GOD governs the whole *World*, and particularly *Mankind*; which plainly appears from the admirable and constant *Order* which is to be seen in this Universe; and 'tis to the same *moral Purpose* whether a

* See the Continuation of *various Thoughts about Comets, &c.* by Mr. Bayle.

Man deny that GOD is, or that he *rules* and *regards the Affairs of Men*; since either of them destroy all Manner of Religion. For let him be never so *excellent* in himself, 'tis in vain to fear or worship him, if he be altogether regardless of us, and neither *will* nor *can* do us either Good or Hurt.

THE Fourth is, that *no Attribute can belong to God, which implies any manner of Imperfection*. For it would be absurd, (He being the *Cause* and *Source* of all Things) for any Creature of his to think it self able to form a notion of any *Perfection*, of which he is not fully possess'd. Nay, His *Perfection* infinitely surmounting the Capacity of so mean a Creature, it is most reasonable to express the same in *negative* rather than in *positive* Terms. Hence nothing is to be attributed to God that is *finite* or *determinate*; because what is *finite* has always somewhat that is *greater* than it self: And whatsoever is *determinate*, or subject to *Figure* and *Form*, must suppose *Bounds* and *Circumscription*: Neither can He be said to be *distinctly* and *fully comprehended* or conceiv'd in our Imagination, or by any Faculty of our Souls; because whatsoever we can comprehend fully and distinctly in our Minds, must be *Finite*. And yet, when we pronounce God to be *Infinite*, we are not to think we have a full *Notion* of Him; for by the word *Infinite* we denote nothing in the Thing it self; but only declare the Impotence of our Understandings, and we do, as it were, say, that we are not able to comprehend the Greatness of his Essence. Hence also it is, that we cannot rightly say of God that he has any *Parts*,

as

V.

God infinitely perfect.

as neither that *He* is *All* any thing ; for these are Attributes of things *finite* ; nor that he is contain'd in any *Place*, for that denotes Limits and Bounds ; nor that *He moves* or *rests*, for both those suppose *Him* to be in a place : So neither can any thing be properly attributed to *God* which intimates *Grief*, or any *Passion*, such as *Anger*, *Repentance*, *Mercy*. I say *properly* ; because when the inspir'd Writers sometimes use such Expressions, speaking of the Almighty, they are not to be understood in a proper Sense, but as accommodating their Language to the common Apprehensions and Capacities of Men ; so that we are not to understand hereby that *God* receives the same Impressions from external Objects that *Man* receives, but only by way of similitude, as to the *Event* or *Effect* ; thus *God* is said to be angry with, and to be offended at Sinners, not that such Passions or Affections can possibly be in the Divine Nature, but because he will not suffer those who break his Laws to go unpunish'd. Nor may we say of *Him* ought that denotes the *Want* or Absence of any Good, as *Appetite*, *Hope*, *Concupiscence*, *Desire* of any thing ; for these imply *Indigence* and consequently *Imperfection* ; it not being supposable that one should desire, hope, or crave any thing of which he does not stand in some need. And so when *Understanding*, *Will*, *Knowledge*, and acts of the Senses, *Seeing*, *Hearing*, &c. are attributed to *God*, they are to be taken in a much more sublime Sense, than we conceive them in our selves. For the *Will* in us is a *rational Desire* ; but *Desire*, as it is said afore, presupposes the *Want* or *Absence* of something that

that is agreeable and necessary. And *Understanding* and *Sense* imply some Operation upon the Faculties of Man, wrought by exterior Objects upon the Organs of his Body and the Powers of his Soul; which being Signs of a Power depending upon some other Thing, demonstrate it not to be *most perfect*.

LASTLY, it is utterly repugnant to the Divine Perfection to say there are *more Gods* than *one*; for, beside that the admirable Harmony of the World argues it to have but *one* Governour, God would not be *infinite*, if there were more Gods of equal Power with himself, and not depending upon Him; for it involves a Contradiction to say, There are *many Infinites*. Upon the whole then, 'tis most agreeable to Reason, when we attempt to express the *Attributes* of God, either to make use of Words of a *Negative* signification, as *Infinite*, *Incomprehensible*, *Immense*, *Eternal*, *i. e.* which had no Beginning nor shall have End; or *Superlative*, as *most Excellent*, *most Powerful*, *most Mighty*, *most Wise*, &c. or *Indefinite*, as *Good*, *Just*, *Creator*, *King*, *Lord*, &c. and this in such a Sense as we would not think our selves to express *What* he is, but only in some sort to declare our *Admiration* of Him, and profess our *Obedience* to Him; which is a token of an humble Soul, and of a Mind paying all the Veneration it is capable of.

THE Propositions of *Practical* Natural Religion are partly such as concern the *Internal*, and partly the *External* *Worship* of God. The *Internal* *Worship* of God consists in *honouring* Him. Now *Honour* is a high Opinion of another's *Power* conjoin'd with *Goodness*: And

the Mind of Man is obliged, from a Consideration of this his Power and Goodness, to fill it self with all that Reverence towards him, of which its Nature is susceptible. Hence it is, that it is our Duty to *love* him, as the Author and Bestower of all Manner of Good ; to *hope* in him, as from whom only all our Happiness for the future does depend ; to *acquiesce* in his Will, he doing all things for the best, and giving us what is most expedient for us ; to *fear* him, as being most powerful, and the offending whom renders us liable to the greatest Evil ; Lastly, in all things most humbly to *obey* him, as our Creator, our Lord, and our best and greatest Ruler.

- VII. THE *External Worship* of God is chiefly shewn in these Instances :
- External
Worship of
God.*
1. WE must *render Thanks to God for all those manifold Blessings he has so bountifully bestow'd upon us.*
 2. WE must conform, as far as we possibly can, all our Actions to his Will ; that is, we must *obey all his Commands.*
 3. WE must *Admire and Adore his infinite Greatness.*
 4. WE must *Offer up to him our Prayers and Supplications,* to obtain from him those Benefits we stand in need of, and to be delivered from those Evils we are in fear of. Indeed our Prayers are Proofs of our *Trust* and *Hope* in Him, and our Hope is a plain Acknowledgment of the Power and Goodness of him in whom it is placed.
 5. WHEN we find it necessary to take an Oath, we must *swear by no other Name than the Name of God ;* and then we must *most religiously*

giously observe what we have engaged our selves to in calling GOD to witness; and this we are indispensably obliged to, from the Consideration of God's infinite Knowledge and his Almighty Power.

6. WE must never speak of GOD but with the highest Respect and utmost Reverence. Such a Behaviour is a Proof of our Fear of GOD; and Fear is an Acknowledgment of his Power over us, whom we dread. Hence then it follows, that the Holy Name of GOD is not to be mention'd in our Discourse upon unnecessary and trifling Occasions, since this would be great Disrespect; That we ought not to swear at all but upon great and solemn Occasions; for calling GOD to witness upon Matters of small Weight and Moment, is a great Abuse of his Holy Name. That we engage not our selves in over-nice and curious Enquiries and Disputes about the Nature of GOD, and the Methods of his Providence: This would be to magnify and exalt our own Capacities, and vainly to imagine, that the unsearchable Nature and Providence of GOD could be comprehended within the narrow Limits of our shallow Reason.

7. Whatsoever is done for the Sake of GOD, or in Obedience to his Will, ought to be the most excellent in its Kind, and done after such a Manner, and with such Circumstances, as are most proper to express the profound Honour and Veneration we have for Him.

8. We must serve and worship him, not only in private, but also in publick, in the sight of Men; for to do any thing in secret only, seems to hint as if we were ashamed to act it openly; but Worship publickly paid, not only gives Testimo-

ny of our own Devotion, but excites others by our Example to do the like.

9. AND Lastly, We are to use our utmost Endeavour to *observe the Laws of Nature*; for as it is the greatest Affront to slight the Commands of God, so, on the contrary, Obedience to his Laws is more acceptable than any Sacrifice; and we have proved, that the *Law of Nature* is the *Law of God*.

VIII.
Eternal
Salvation
not acqui-
red by Na-
tural Re-
ligion a-
lone.

AND yet, after all, it must be confest, that the Effects of this *Natural Religion*, nicely consider'd, and with regard to the *present State of Mankind*, are concluded within the Prospect of *this Life*; but that it is of no Avail towards procuring *eternal Salvation*. For *Human Reason*, left alone to it self, knows not that the *Pravity*, which is so discernable in our Faculties and Inclinations, proceeded from Man's *own Fault*, and that hereby he becomes obnoxious to the *Wrath* of God, and to *eternal Damnation*: So that with the Guidance of *this* only, we are altogether ignorant of the Necessity of a *Saviour*, and of his *Office* and *Merit*; as well as of the *Promises* made by God to Mankind, and of the several *other* Matters thereupon depending, by which alone, it is plain from the holy Scriptures, that everlasting Salvation is procured to mortal Men.

IX.
Religion
the firmest
Bond of
Society.

IT may be worth the while, yet a little more distinctly to consider the Benefits which through *Religion* accrue to Mankind; from whence it may appear, that * *It is in truth*

* L. N. N. lib. 7. cap. 4. § 8. Eris. Scand. § 6. p. 7. Epist. ad Schetzer. p. 84. Append. p. 108. seq. Spicileg. Controv. § 16. p. 350. Exam. Doctrin. § 2. quæst. 316. Discuss. Calumn. Beckmann. p. 169.

the utmost and firmest Bond of Human Society. For in the Natural Liberty, if you take away the *Fear* of a *Divine Power*, any Man who shall have confidence in his own *Strength*, may do what Violences he pleases to others who are weaker than himself, and will account *Honesty*, *Modesty*, and *Truth* but as empty Words; nor will he be persuaded to do that which is right by any Arguments, but from a Sense of his own *Inability* to act the contrary. Moreover, lay aside *Religion*, and the *Internal Bonds* of Communities will be always slack and feeble; the *Fear* of a temporal *Punishment*, the *Allegiance* sworn to Superiours, and the *Honour* of observing the same, together with a *grateful Consideration* that by the Favour of the supreme Government they are defended from the Miseries attending a *State of Nature*; all these, I say, will be utterly insufficient to contain unruly Men within the Bounds of their Duty. For in this case that Saying would indeed have place, * *He that values not Death, can never be compell'd*; because to those who fear not *God* nothing can be more formidable than *Death*. He that can once bring himself to despise *this*, may attempt what he pleases upon those that are set over him; and to tempt him so to do, he can hardly want some *Cause* or *Pretence*; as, either to free himself of the Uneasiness he seems to lie under by being subject to another's Command, or that himself may enjoy those Advantages which belong to him that possesses the Government; especially when

* ————— *Cogi qui potest, nescit mori.*

Seneca Hercul. fur. ver. 425.

he may easily persuade himself, that his Enterprize is just, either because He that at present sits at the Helm of Government is guilty of Mal-Adminiftration, or that himself thinks he could manage it by many degrees to better purpose. An *Occasion* too cannot long be wanting for such Attempts, either from the Prince's Want of Circumspection in the care of his Person, (and indeed in such a State of Things * who shall guard even the Guards themselves?) or from a powerful Conspiracy, or, in time of foreign War, from a Defection to the Enemy. Beside *private* Men would be very prone to wrong one another; for the Proceedings in *human Courts* of Judicature being govern'd by *Proofs* of Matter of Fact, all those *Wickednesses* and *Villanies* which could be *secretly* acted and without Witnesses, if any thing were to be gain'd by them, would be accounted *Dexterities of Wit*, in the practice of which a Man might enjoy some Self-satisfaction. Again, no Man would be found that would do Works of *Charity* or of *Friendship*, except with probable Expectation of Glory or Profit. From whence it would follow, that, supposing no Punishment from above, one Man not being able to place any solid Confidence in the Troth of another, they must every one always live anxiously in a mutual *Fear* and *Jealousy*, lest they be cheated or harm'd each by his Neighbour. The *Governours* also would have as little Inclination, as

* ——— *Pone seram, cobibe, sed quis custodiet ipsos Custodes?*

the Governed, to Actions that are *brave* and *honourable*; for those that govern not being obliged by any Tie of Conscience, would put all Offices, and even Justice itself to sale; and in every thing seek their own *private Profit* by the Oppression of their Subjects; from whom they being always fearful of a *Rebellion*, they must needs know, there can be no surer Means to preserve themselves, than by rendring them as *heartless* and as *weak* as possible. The *Subjects* also, on the other side, standing in fear of the Violences of their Rulers, would always be seeking Opportunities to *rebel*, tho' at the same time they must be mutually distrustful and fearful of each other. The same would be the Case of *married Persons*; upon any slight Quarrel, they would be suspicious lest one should make away the other by Poison or some such *clandestine* Way; and the whole Family would be liable to the like Danger. For it being plain, that without *Religion* there could be no *Conscience*; it would not be easy to discover such *secret Villanies*; they being such as mostly are brought to light by the incessant pricking of the *Conscience*, and *internal Horrors* breaking forth into outward Indications. From all which it appears, how much it is the Interest of Mankind, that all Means be used to check the spreading of *Atheism* in the World; and with what *vain Folly* those Men are possess'd, who think to get the Reputation of being notable *Politicians*, by being seemingly inclin'd to *Looseness* and *Irreligion*.

C H A P. V.

Of the Duty of a Man towards Himself.

I.
Man lia-
ble to Ob-
ligation to
Himself.

ALTHOUGH the *Love of himself* be so deeply fix'd in the Mind of Man, as to put him always under a Sollicitous Care of Himself, and upon Endeavours by all means to procure his own Advantage; so as, upon Consideration *hereof*, 'twould seem superfluous to find out *Laws* to oblige him to the same: * yet in *other* Respects it is necessary, that he be bound to the Observation of some certain *L. N. N. Rules* touching *Himself*. For, not being born *l. i. c. 4.* for himself alone, but being therefore furnish'd with so many excellent *Endowments*, that he may set forth his *Creator's* Praise, and be rendred a fit Member of *Human Society*; it follows hence, that it is his *Duty*, to cultivate and improve those Gifts of his Creator which he finds in himself, that they may answer the End of their *Donor*; and to contribute

* The Duties of every Man, which directly and solely respect himself, have their immediate Foundation in that *LOVE* which every Man by Nature hath *OF HIMSELF*; which was before laid down as one of the grand Principles of Natural Right, and which not only obliges a Man to preserve himself, as far as possibly he can, without prejudice to the Laws of Religion or Sociality; but also to put himself into the best Condition he can, and to obtain all the Happiness of which he is innocently capable. *See L. N. N. Lib. II. Cap. III. § 15.*

all that lies in his Power to the Benefit of *Human Society*. Thus, though true it is, that the *Ignorance* of any Man is *his own* Shame and *his own* Loss; yet we accuse not the Master of Injustice, who chastises his Scholar for *Negligence* in not learning those Sciences of which he is capable.

AND since Man consists of two Parts, a *Soul* and a *Body*, whereof the first supplies the Part of a *Director*, the other that of an *Instrument* or *subordinate Minister*; so that our Actions are all performed by the Guidance of the *Mind*, and by the Ministration of the *Body*; we are hence obliged to take care of both, but especially the former.

II.
The general Obligation that every one lies under to take care of his Soul.

THE *Care of the Soul* consists, in general, in the right Formation of the Mind and Heart; that is, not only in framing to our selves true and just Opinions concerning all those Things to which our Duties bear any reference, and in making a true Judgment of, and setting a right Value upon, those Objects which commonly excite our *Appetites*; but also in regulating the Dispositions of our Minds; in reducing and conforming them to the Dictates of right Reason; in employing our Time and Pains in the Prosecution of honest Arts and Sciences; and, in one word, in getting our selves possess'd of all those Qualities which are necessary for us to lead an *honest* and a *sociable* Life.

AMONG all the *Opinions* then, which it highly concerns all Men firmly to settle in their Minds, the chief are those which relate to ALMIGHTY GOD, as the great Creator and Governour of the Universe, such as are represented in the foregoing Chapter.

III.
Particular Duties to which this Care of our Soul obliges us.

The

1. To settle in our selves right Opinions of Religion.
L. N. N.
l. 1. c. 4.
§ 7.

The full Persuasion of these *great Truths* being not only the principal Ground of *the Whole Duty of Man to God*, but the Foundation of all those Virtues which we are to exercise toward our Neighbour, and the true Source of all that Quiet of Conscience and Tranquillity of Mind, which is one of the greatest Blessings of Life. Since no sober and considering Man can deny these Truths, we must diligently avoid and utterly reject all those Opinions, which contain in them any thing *contrariant* to Principles so important. By which I mean not only *Atheism* and *Epicurism*, but all other Sentiments which are prejudicial to Human Society, or destructive of good Manners; such being incompatible with true Religion, and overturning the very Foundation of the Morality of Human Actions; of which kind there are many Instances.

THE first I shall mention is the Stoical Conceit of *Fate* or *Destiny*, and (which nearly resembles it) *Judicial Astrology*; by which it being supposed, that all things happen in the World by an internal and inevitable Necessity, Men must be looked upon as the simple Instruments only of their own Actions; for which, consequently, they are no more accountable upon this Presumption, than a Clock is answerable for the Motion of its Wheels.

ANOTHER Opinion there is very nearly allied to this, which supposes the unalterable Consequences of Causes, and of Effects; or the great Chain of Things, established by the Creator, to stand by such an Immoveable Decree, that even GOD has left Himself no Liberty of interposing in particular Cases.

MOST

MOST pernicious likewise is that Conceit, which makes GOD allow a kind of Market of Sins, so as to suffer them to be bought off with Money, to be commuted for with Offerings, with the Observance of some vain Ceremonies, or the Utterance of some set Forms of Speech, without Amendment of Life, and an honest Endeavour to become Good Men. To this may be joyned, the sottish Imagination of such, who fancy that Almighty GOD is delighted with such Inventions of Men, such Institutions and Ways of Living, as are disagreeable to Human and Civil Society, as it is regulated by the Dictates of Reason and the *Laws of Nature.*

ALL superstitious Notions, such as debase and dishonour the Divine Nature and Worship, are carefully to be avoided, as contrary to true Religion.

THE same thing must be said of the Notions of those Men, who imagin that the bare Exercise of Piety towards GOD in Acts of Devotion, as they are called, is sufficient, without any Regard had to Honesty of Life, or to those Duties which we are to practise towards our Neighbour. Nor is the Conceit of others less Impious, who fancy, that a Man may be able, not only to fulfil his own Duty towards GOD, but even exceed what is required of him, and thereby transfer some of his Merits on others; so that one Person's Negligence in his Duty, may be supply'd from the Works of *Supererogation*, that is, the Over-righteousness of another. Of the same Stamp is that shameful Opinion of some others, that imagine, that the Wickedness of some
 Actions

Actions is overlooked and excused by GOD, on the Account of the Dexterity, the Humour, or the Gallantry of the Persons who do them; as if such Sins pass'd only as Jests and Trifles in the Cognifance of Heaven. No less wicked is it to believe, that those Prayers can please GOD, by which a Man desires, that others may suffer an undeserved Evil, for the occasioning or promoting an Advantage to himself; or to imagine, that Men may treat, in the worst manner they please, such as are of a different Persuasion from them in Religious Matters. Not to mention some other such like Opinions, which carry indeed the Presence of Piety, but in reality tend to the Destruction of Religion and Morality.

IV. WHEN we have thus arm'd our Minds against all false Opinions of the Divine Nature and Worship, the main Concern behind is, for a Man accurately to examine his own Nature, and to study to *know himself*.

FROM this Knowledge of himself, rightly pursued, a Man is brought acquainted with his own Original; he comes to know perfectly his Condition here, and the Part he is to bear in the World. Hereby he will perceive, that he does not exist of himself, but owes his Being and Life to a Principle infinitely superior to him; that he is endowed with Faculties far more noble than he sees enjoy'd by the Beasts about him; and farther, that he was not born by himself, nor purely for his own Service, but that he is a Part of Human kind. From thus knowing a Man's self he must necessarily conclude, that he lives in Subjection to Almighty GOD, that he is obliged, according to the Measure

2. To arrive at a true Knowledge of our selves.

The Duties that result from such a knowledge.

L. N. N.
l. 2. c. 4.
§ 5.

Measure of the Gifts he hath received from his Maker, to serve and honour Him; and moreover, to behave himself towards his Equals in such a manner, as becomes a Sociable Creature. And in as much as GOD hath bestowed on him the Light of Reason and Understanding, to guide him in the Course of his Life, it evidently follows, that he ought to make a right Use of it: And consequently *not to act at random, without End or Design, but, whatever he undertakes, to propose thereby to himself some particular End, in its self both possible and lawful, and to direct his own Actions suitably to that End; as also to use such other Means as he shall find proper for the compassing it.* Again, from hence it follows, that since Truth and Right are always uniform and without alteration, so a Man ought always to form the same Judgments of the same Things, and when he hath once judged truly, to be always constant in his Mind and Resolution. Farther it follows, that a Man's Will and Appetite ought not to get the Superiority over his Judgment, but follow and obey it, never making resistance to its Decrees; or, which amounts to the same thing, *Men ought to form no Judgments but upon mature Deliberation, nor ever to act against their Judgments so formed.*

BESIDES, by considering and knowing L. N. N. himself, a Man will rightly apprehend his own l 2. c. 4. Strength and Power: He will find that it is § 7. of a finite nature, having certain Limits beyond which it can never extend it self; and therefore, that there are many Things in the World which he can no ways manage or compass, many that he can no ways hinder or resist;

sist, and other Things again not absolutely above Human Power, but which may be prevented and intercepted by the Interposition of other superior Powers. Again, another Sort of Things there are, which though we cannot compass by our bare Strength, yet we may, if it be assisted and supported by Dexterity and Address.

WHAT seems to be most free from outward Restraint, and most within our own Power is our *Will*; especially so far as it is concerned in producing and exerting Actions suitable to our Species of Being, as we are reasonable Creatures. Hence it follows, that *every Man ought to make it his main Care and Concern, rightly to employ all his Faculties and Abilities, in conformity to the Rules of right Reason.* For this is the Standard by which we are to rate the Worth of every Person, and to measure his intrinsical Goodness and Excellency.

As to other Matters which lie without us, before he enters upon the Pursuit of them, *A Man should diligently examine, Whether they do not surpass his Strength? Whether they tend to a lawful End? and, Whether they are worth the Labour which must be spent in obtaining them?* When, upon mature Deliberation, he is resolved to engage in any such Affairs, a wise Man will indeed use his best Efforts to bring his Design about; but if he finds those Endeavours ineffectual, he will not strive against the Stream, and drive on his Designs with vain Hope, but quit his Pursuit without Grief or Anger at his Disappointment. From these Considerations this further Consequence may be drawn; That Man, as he is guided only by the Light of Rea-

Reason, ought principally to aspire after that Happiness in this World, which arises from the prudent Government of his Faculties, and from those Assistances and Supports which the Divine Providence he knows will afford him in the universal Administration of things. Hence he will not leave things to meer Hazard and Chance, while there is room for Human Caution and Foresight. But then, since human Foresight is very weak in discovering future things, which are so far from being under our Guidance, that they frequently fall out beyond our Hopes and Expectations: Hence it is plain, that we ought neither too securely to trust to our present Condition, nor to spend too much Care and Anxiety on what is to come: and for the same reason, Insolence in Prosperity and Despair in Adversity are to be both avoided, as equally dangerous and equally absurd.

ANOTHER necessary Improvement of our Mind and Understanding is, *To be able to set a just Price on those Things which are the chief in moving our Appetites.* For, from this Knowledge it is that the degree of Desire is to be determined, with which we may seek after them.

AMONG these, that which bears the greatest sway, and appears with most splendor, and which most forceably moves Elevated and Noble Souls, is the Opinion of Worth and Excellency; an Opinion from whence springs what we usually call *Glory* or *Honour*: In respect to which we are to form and temper our Minds in the following manner.

WE must use our utmost Care and Endeavour to procure and preserve that kind of *Esteem* that

V.
3. To regulate the measure of our Desires in proportion to the Just value of the things we desire.
How we ought to seek for Honour or Esteem.
L. N. N.
1. 2. c. 4.
§ 9.

that is *simply* so called, that is, the Reputation of being Good and Honest Men ; and if this Reputation be assaulted by the Lies and Calumnies of Wicked Men, we are to use all possible Pains to wipe them off ; but if that be not in our Power, we are to comfort our selves with the Testimony of a good Conscience, and with the Assurance, that our Integrity is still known to GOD.

As for that *Esteem*, which is oft-times called *Intensive*, or *Esteem of Distinction*, but more commonly *Honour* or *Glory*, we are no otherwise to pursue it, than as it redounds from such worthy Actions as are conformable to Right Reason, and productive of the Good of Human Society ; but even then good Heed is to be taken, that hereby our Mind do not swell with Arrogance and Vain-glory. If at any time we have no Opportunity, or want an Occasion of shewing our Worth, without being able to procure one, we must bear this ill Fortune with Patience, since there is nothing in it that can be charged upon our Default. To value our selves upon, and make our boasts of what is empty, vain, and trifling, is most impertinent and ridiculous ; but it is abominably Wicked, as well as extremely Foolish, to aspire to Fame and to Honours by evil Arts, and by Deeds repugnant to Reason ; and to desire Preheminence above others, only to be able to insult over them, and to make them obnoxious to our Pleasure.

VI.
In what
manner
we may
desire
Riches.

THE *Desire of outward Possessions, Riches, and Wealth*, does also prevail greatly in the Minds of Men ; and no wonder, since Men have not only need thereof for their own
Sup-

Support and Preservation in the World, but also often lie under an indispensable Duty to provide them for others. But then, because our Wants are not infinite, but lie in a very narrow Compass, and since Nature is not wanting in a plentiful Provision for the Necessities of her Sons; and lastly, since all that we can heap together must, at our Death, fall to others; we must moderate our Desire and our Pursuit of those Things, and govern our selves in the Use of them according to the just Occasions of Nature, and the modest Demands of Temperance and Sobriety. We must do no dishonest or base Thing for the procuring them; we must not increase them by fordid Avarice, nor squander them away by profuse Prodigality, nor in any ways make them subservient to vicious and dishonest Purposes. Farther, since Riches are of a very perishable Nature, and may be taken from us by many Accidents and Casualties, we must, with respect to 'em, put our Mind in so even a Temper, as not to lose it self if it should happen to lose them.

THE Desire of *Pleasures* does as strongly excite the Minds of Men as that of *Honour* or *Riches*: In reference to these we must observe, that there are *Innocent Pleasures* and *Criminal Pleasures*. The latter of which must be always avoided; but it is by no means a Fault to enjoy the former, provided it be done with moderation, and in conformity to the Rules of Temperance and Sobriety. As there is no Fault to avoid, as much as may be, unnecessary Grief and Pain, because they tend to the Destruction of the Body; so Reason, on the other side, is so far from forbidding us the Enjoyment of

VII.
In what manner we may desire Pleasures.
 L. N. N.
 l. 2. c. 4.
 § 11.

moderate Recreation and innocent Pleasure, that it directs us to entertain our Senses with such Objects as are, in this manner, agreeable and delightful to them, since hereby the Mind is unbent and refresh'd, and render'd more active and vigorous. But then, in the Enjoyment of these lawful and innocent Gratifications, great Care is to be taken, that we enjoy them to such a Degree only, that we be not thereby weakened and enervated ; that neither the Vigour of the Body or Soul be thereby lessen'd ; that they waste not nor consume our Wealth, when it might be better and more usefully laid out ; and that they steal not our Time from better and more necessary Employments. Lastly, This must be an inviolable Rule, that no Pleasure must be purchased at so dear a Rate, as the Neglect or Transgression of our Duty ; nor ought any to be receiv'd that brings after it Loss, Disgrace, Sorrow, or Repentance.

VIII.

4. *We ought to subject our Passions to the Government of our Reason.*

L. N. N.

l. 2. c. 4.

§ 11.

LASTLY, The chief Care incumbent on us, in order to improve and well cultivate our Mind, is, to use the utmost Diligence, *To gain the Mastery over our Passions* ; to maintain the Sovereignty of our Reason over the Motions and Affections of our Minds ; the greatest Part of which, if they gain the Ascendant, and grow masterless, do not only impair the Health of the Body, and the Vigour of the Soul, but cast such a Cloud on the Judgment and Understanding, as to wrest them violently from the Ways of Reason, and of Duty. So that the natural Principle of Prudence and Probity amongst Men, may be justly said to be found-
ed

ed in calming and cooling the Passions. But let us briefly speak of them in particular.

JOY is in it self a Passion most agreeable to Nature ; but strict Care is to be taken, that it break not out on improper Occasions, that it shew not itself in Matters vain or trifling, base or indecent.

SORROW, like a Canker, wastes both the Body and Soul : it is therefore as much as possible to be remov'd and expell'd, nor ever to be admitted, even moderately, unless when by the Ties of Humanity, we are obliged to express our Concern, or Pity at the Misfortunes, or at the Deaths of others ; and as it is requisite to the great Duty of Repentance.

LOVE is a Passion of a benevolent and friendly Nature to Mankind ; but yet it is to be so wisely managed and moderated, that it be not fix'd upon an unworthy Object ; that we take not unlawful Ways to satisfy its Demands ; that it keep within due Bounds, so as not to degenerate into Disease and Disquiet, if the beloved Object is not to be obtained.

HATRED is a Passion pernicious, as well to the Person who employs it, as to those against whom it is employ'd ; it is therefore diligently to be quenched and stifled, lest it betray us to Injuries, and Breach of Duty against our Neighbours. And when any Persons do really deserve our Aversion, we must even then take care not, on their Account, to create Uneasiness and Disquiet to our selves.

ENVY is a most deform'd Monster, sometimes producing ill Effects in others, but always in the Envious Person, who, like Iron can-

kered with Rust, not only defiles, but destroys himself continually.

H O P E, although in it self a Passion mild, easy, and gentle, yet is it also to be brought under due Regulation. We must be careful not to direct it to Things vain or uncertain; nor, by placing it on Objects out of our Reach, and beyond our Power, make it tire it self to no purpose.

F E A R, as it is a dangerous Enemy to Men's Minds, so is it a Passion altogether useles and unprofitable. It is indeed by some esteemed the Parent of good Caution, and consequently, the Occasion of Safety; but this good Caution may owe it self to a much better Principle, it may arise without the Assistance of Fear, from a wary Circumspection, and a Prudence alike untouched with Anxiety or with Consternation.

A N G E R is the most violent, as well as the most destructive of all the Passions, and is therefore to be resisted with our utmost Strength and Endeavour. It is so far from exciting Men's Valour, and confirming their Constancy in Dangers, as some alledge, that it has a quite contrary Effect; for it is a Degree of Madness, it renders Men blind and desperate, and runs them headlong into their own Ruin.

D E S I R E O F R E V E N G E is nearly related to *Anger*; which, when it exceeds a Moderate Defence of our selves and Concerns, and a just Assertion of our Rights against the Invaders of them, turns, beyond Dispute, into a Vice.

IX. *How far the Study of Arts* IN such Duties as we have reckoned up doth that Culture of the Mind chiefly consist, which all Men are indispensably obliged to look after:

But

But there is still behind a more peculiar Culture and Sci-
ences is
necessary. and Improvement of the Mind, consisting in L. N. N.
1. 2. c. 4. the various Knowledge of Things, and *the Study of Arts and Sciences*. This Knowledge, it is true, cannot be said to be absolutely necessary § 13.

to the Discharge of our Duty in general, but yet must by all be allowed to be exceedingly useful to supply the Necessities and promote the Conveniencies of Human Life, and therefore by every one to be followed, according as his own Capacity and Occasion will permit.

No one disputes the *Usefulness of those Arts*, which supply the Necessities, or contribute to the Convenience of Human Life.

As to *Sciences*; some may be stiled *Useful*; others *Curious*, and others again *Vain*,

In the Number of *useful Sciences*, I reckon *Logick*, which teaches to reason justly, closely, and methodically; those *Sciences which have any respect to Morality, Physick, and all such Parts of Mathematicks as lay the Foundation of those practical Arts*, which serve to procure and augment the Necessaries or Conveniencies of Life.

By *Curious, or Elegant Sciences*, I understand such as are not indeed of so necessary Use, as to render the Life of Man less sociable, or less convenient upon the Want of them; but yet such as serve to gratify and please an innocent Curiosity, to polish and adorn our Wit, and to embellish and render our Understanding more compleat: Such *Sciences* are, *Natural and Experimental Philosophy, the more fine and subtile Parts of Mathematicks, History, Criticism, Languages, Poetry, Oratory, and the like.*

By *Vain Sciences*, I mean such as are made up of false and erroneous Notions, or are employ'd about frivolous, trifling, and unprofitable Speculations; such are *the Amusements of old Philosophers, the Dreams of Astrologers, and the Subtilties of the School-men.*

To employ Labour and Pains in these last Sort of Studies is highly unworthy any Man, and an unpardonable Waste of his Time. But whosoever would not deserve to be accounted an usefess Lump on Earth, a Trouble to himself and a Burthen to others, ought, as far as he has Means and Opportunity, to employ himself in some of the aforementioned *Arts and Sciences.* Every one at least ought, in a proper Time, *to take upon himself some honest and useful Employment,* agreeable to his natural *Inclinations,* suitable to the *Abilities* of his *Body and Mind, Extraction,* and *Wealth*; or according as the just *Authority* of his *Parents,* the *Commands* of his *Superiours,* or the *Occasion* and *Necessity* of his own *private Circumstances* shall determine.

X.
*Wherein
consists
the Care
of the
Body.*

ALTHO' the Care of our Soul, which we have been explaining, is the most difficult, as well as the most necessary Part of our Charge in this Life, yet ought we by no means to neglect *the Care of our Body*; these two constituent Parts of us being so strictly united and ally'd to each other, that no Injury or Hurt can come to the one, but the other must likewise bear its Part in the Suffering.

WE must therefore, as far as possible, continue and increase the *natural Strength* and *Powers* of our Bodies, by convenient *Food* and proper *Exercise*; not ruining them by any *Intemperate*

perate Excess in Eating or Drinking; nor waisting and consuming them by unnecessary or immoderate *Labours*, or by any other Abuse or Misapplication of our *Abilities*. And upon this Account, *Gluttony*, *Drunkenness*, the immoderate Use of *Women*, and the like, are to be avoided: And besides, since unbridled and exorbitant *Passions*, not only give frequent Occasion to disturb *Human Society*, but are very hurtful even to the Person *himself*; we ought to take care with our utmost to quell *them*, and subject *them* to Reason. And because many Dangers may be escap'd, if we encounter 'em with *Couragé*, we are to cast off all *Effeminacy* of the Mind, and to put on *Resolution* against all the terrible Appearances that any Event may set before us.

AND yet, because no Man could give *himself* Life, but it must be accounted as the bounteous Favour of *God*, it appears, that Man is by no means vested with such a Power over his own *Life*, as that he may put an *End* to it when he pleases; but he ought to tarry, till he is call'd off by Him who placed him in this Station. Indeed, since Men both can and ought to be serviceable to one another, and since there are some Sorts of Labour, or an Overstraining in any, which may so waste the Strength of a Man, that old Age and Death may come on much sooner than if he had led an easy and painless Life; there is no doubt but that a Man may, without any Contravention to this Law, chuse that Way of living which may with some probability make his Life the *shorter*, that so he may become more useful to Mankind. And whereas sometimes the Lives of *many* will be

XI.
Whether a Man has the Power of his own Life.

lost, except some Number of Men expose themselves to a Probability of losing their own on their behalf; in this Case the lawful *Governour* has Power to lay an Injunction on any *private* Man under the most grievous Penalties, not to decline by Flight such Danger of losing his Life. Nay farther, he may of *his own Accord* provoke such Danger, provided there are not *Reasons more forcible* for the contrary; and by thus Adventuring he has hopes to save the Lives of *others*, and those *others* are such as are worthy so dear a Purchase. For it would be silly for any Man to engage his Life together with another to *no purpose*; or for a Person of *Value* to die for the Preservation of a *paltry Rascal*. But for any other Cases, there seems nothing to be required by the *Law of Nature*, by which he should be persuaded to prefer another Man's Life before his own, but that all things rightly compared, every Man is allowed to be *most dear to himself*. And indeed all those who voluntarily put an end to their own Lives, either as *tir'd* with the many *Troubles* which usually accompany this Mortal State; or from an *Abhorrence* of *Indignities* and *Evils* which yet would not render them scandalous to *Human Society*; or thro' *Fear*, or *Pains*, or *Torment*, by enduring which with Fortitude, they might become useful Examples to others; or out of a vain *Ostentation* of their *Fidelity* and *Bravery*; All these, I say, are to be certainly reputed *Sinners against the Law of Nature*.

XII.
Self-De-
fence mo-
derated.

BUT whereas it often happens that this *Self-Preservation*, which the tenderest Passion and exactest Reason thus recommends to Mankind, does seem to interfere with our Precepts concerning

cerning Society, then when our own Safety is brought into Jeopardy by another, so far that either we must perish, or submit to some very grievous Mischief, or else we must repel the Aggressor by force and by doing him Harm; Therefore we are now to deliver, *With what Moderation the Defence of our selves is to be tempered.* This Defence of our selves then will be such as is, either *without any Harm* to him from whom we apprehend the Mischief, by rendring any Invasion of us formidable to him and full of Danger; or else by *hurting or destroying* him. Of the *former way*, [whether (in *private Men*) by *keeping off* the Assailant, or by *Flight, &c.*] there can be no Doubt but that 'tis lawful and altogether blameless.

BUT the *latter* may admit of Scruple, because Mankind may seem to have an *equal Loss*, if the *Aggressor* be killed, or if I lose *my Life*; and because one in the same Station with my self will be destroyed, with whom it was my Duty to have lived in *Civil Society*: Beside, that a *forcible Defence* may be the Occasion of *greater Outrages*, than if I should betake my self to flight, or patiently *yield* my Body to the Invader. But all these are by no means of such Weight as to render this Sort of Defence unlawful. For when I am dealing fairly and friendly with *another*, it is requisite that he shew himself ready to do the *like*, or else he is not a fit Subject of such good Offices from me. And because the End of the Law of Society is the *Good of Mankind*, therefore the Sense thereof is to be taken, so as effectually to preserve the Welfare of every *Individual* or particular Man. So that if another Man make an *At-*
tempt

XIII.

We may
repel force
by force,
even so far
as to kill
an unjust
Aggressor.
L. N. N.
1. 2. c. 5.
§ 2.

tempt upon my Life, there is no Law that commands me to *forgoe* my own Safety, that so he may practise his Malice with *Impunity*: And he that in such case is *hurt* or *slain*, must impute his Mischief to his own *Wickedness*, which set me under a Necessity of doing what I did. Indeed otherwise, whatsoever *Good* we enjoy either from the Bounty of *Nature*, or the Help of our own *Industry*, had been granted to us in vain, if we were not at liberty to *oppose* the Violences of Ruffians, who would wrongfully ravish all from us; and *honest* Men would be but a ready Prey for *Villains*, if they were not allowed to make use of *Force* in defence of themselves against the others Insults, * Upon the whole then, it would tend to the *Destruction* of Mankind, if *Self Defence* even with *Force* were prohibited to us.

XIV. NOT however that hence it follows, that as soon as any *Injury* is threatned us, we may *Extremities last to be used.* *presently* have recourse to *Extremities*; but we must first try the *more harmless Remedies*; for L. N. N. 1. 2. c. 5. § 3. instance, we must endeavour to keep out the Invader by cutting off his Access to us; to withdraw into strong Places; and to admonish him to desist from his outrageous Fury. And it is also the Duty of a prudent Man to put up a *slight Wrong*, if it may conveniently be done, and to *remit* somewhat of his Right, rather than, by an unseasonable Opposition of the Violence, to expose himself to a *greater Danger*; especially if that Thing or Concern of

* See *Grotius de Jure Belli & Pacis, Lib. I. & Chap. 2. Lib. II. c. 1. § 3. & seq.*

ours upon which the Attempt is made, be such as may easily be made amends for or repaired. * But in Cases where by these or the like means I cannot secure my self, in order to it I am at liberty to have recourse even to *Extremities*.

BUT that we may clearly judge, whether a Man contains himself within the Bounds of an *unbleameable Defence of himself*, it is first to be examined, whether the Person be one who is in a State of *Natural Liberty* or *subject to no Man*, or one who is obnoxious to some *Civil Power*. In the *first* Case, if another shall offer Violence to me, and cannot be brought to change his malicious Mind and live quietly, I may repel him even by *killing* him. And this not only when he shall attempt upon my *Life*, but if he endeavour only to *wound* or *hurt* me, or but to *take away* from me my Goods, without meddling with my Body. For I have no Assurance but from these *lesser Injuries* he may proceed to *greater*; and he that has once professed himself my Enemy (which he doth whilst he injures me without Shew of Repentance) gives me, as far as 'tis in his Power to give, a full Liberty of proceeding against him, and resisting him in such manner as I shall find most necessary for my own Safety. And indeed the *Sociality* necessary to Human Life would become unpracticable, if a Man may not make use even of *Extremities* against him who shall irreclaimably *persist* in the Commission tho' but of *meaner Wrongs*. For at that rate the most *modest* Persons would be the

XV.
Self-De-
fence how
far justifi-
able in a
supposed
state of
Natural
Liberty.

* *Grotius de Jure Belli & Pacis, Lib. 1. cap. 1.*
con-

continual Laughing-stock of the vilest Rakehels.

XVI *How the Right of Self-defence is limited in a State of Civil Society.* BUT in *Civil Society*, those who are Subjects to the *Civil Power*, may then only use Violence in the Defence of themselves, when the Time and Place will not admit of any Application to the Magistrate for his Assistance in repelling such Injuries by which a Man's Life may be hazarded, or some other most valuable Good which can never be repaired, may be manifestly endangered.

§ 4. AS for the time when Men may put in practice their *just Right of Self-defence*, it may be learnt from the following Rules.

XVII. *Of the Time when in a State of Nature Self-defence may be allowable.* ALTHO' every one, under that Independence in which all Men are supposed to be in a *State of Nature*, may and ought to presume, that all Men are inclined to perform towards him all those Duties which the *Law of Nature directs*, until he has evident Proof to the contrary: Nevertheless, since Men have *natural Inclinations* to that which is ill, no one ought to rely so securely on the Integrity of another, as to neglect taking all necessary Precautions to render himself secure, and placed, as far as may be, out of the Reach of other Men's ill Designs. It is but *common Prudence* to stop up all Avenues against those from whom we apprehend Hostilities, to be provided with serviceable Arms, to raise Troops, to get Succour and Assistance, in case of need, by Alliances and Confederacies, to have a watchful Eye over the Actions and Behaviour of those whom we have reason to apprehend to be our Enemies; and, in a word, to use all other Precautions of this Nature, which appear necessary

necessary to prevent our being surprized or found unprovided. The Jealousy and Suspicion which we ought to have of each other, from our Knowledge of the Pravity of Human Nature, will justify our acting thus far; but then it must stop here: it must not put us upon using Violence to our Neighbours, under pretence of disabling them from injuring us, and of preventing their making a mischievous Use of that superior Power we see them have; especially if we find that this Increase of Power in them, and their Superiority over us, was the Product of their innocent Industry, or the Gift of Providence, and not the Result of Injury and Oppression.

* N A Y, if our Neighbour, whom we see powerful enough to hurt us, should shew an Inclination to use that Power mischievously, by actually injuring others, yet shall not this justify our Assaulting him by way of prevention, till we have good Evidence, that he designs us also Mischief; unless we are under some prior Engagement or Alliance, to support the Persons we see thus injuriously attacked by a superior Power. In this Case we may with greater Vigour oppose the Invader, and take the Part of our injured Ally; since we have very good Reason to apprehend, that when by his superior Power he has oppressed him, he will apply the same Force against us; and that the first Conquest he makes is to be the Instrument of another that he intends.

* See *Grotius de Jure Belli & Pacis, Lib. 2. cap. 1. § 17, &c. and c. 22. § 5.*

BUT when we have evident Proof that another does actually intend, and has taken proper Measures to do us an Injury, altho' he has not openly declared such his Intention ; then we may fairly put our selves on our Defence, and anticipate the Aggressor before he compleats the Preparations he is making to do us the designed Mischief : Provided notwithstanding we have endeavoured, by friendly Advice, to move him to lay aside his ill Purposes so long, that there remains no Hopes of his being prevailed upon to do so by fair and gentle Means : In using which friendly Advice and gentle Means, care must be taken, that it be not done when it may prove a Prejudice and a Disadvantage to our own Affairs. He who first forms the Design to do an injurious Act, and first makes Preparation to bring it about, is to be accounted the Aggressor ; altho' it may perhaps so fall out, that the other using greater Diligence, may prevent him, and so commit the first open Acts of Hostility. It is not absolutely necessary to a justifiable *Self-defence*, that I receive the first Stroke, or that I only ward off and avoid the Blows that are aimed at me.

BUT farther : In a *State of Nature* of which we are speaking, a Man has not only a Right to repel a present Danger with which he is menaced, but also, after having secured himself from the Mischief intended him, he may pursue his Success against the Aggressor, till he has made him give him *satisfactory Security of his peaceable Behaviour for the time to come*. Concerning which Caution and Security, the following Rule may be usefully observed : *If a Man having injured me, shall presently after, repenting of what he had done, come voluntarily and ask my Pardon,*

pardon, and offer Reparation of the Damage; I am then obliged to be reconciled to him, without requiring of him any farther Security than his Faith and Promise to live hereafter in Peace and Quietness with me. For when of his own accord any Person takes such measures, it is a satisfactory Evidence, that he has altered his Mind, and a sufficient Argument of his firm Resolution to offer me no Wrong for the future. *But if a Man having injured me, never thinks of asking Pardon, or of shewing his Concern for the Injuries he has done me, till he is no longer in Condition to do them, and till his Strength fails him in prosecuting his Violences; such an one is not safely to be trusted on his bare Promises, his Word alone being not a sufficient Warrant of the Sincerity of his Protestations.* In such Case, in order to our farther Security, we must either cut off from him all Power of doing Mischiefs, or else lay upon him some Obligation of greater Weight and Force than his meer Promise, sufficient to hinder him from appearing ever after formidable to us.

BUT among Men who live in a Community, XVIII. the Liberties for *Self-defence* ought not to be near so large. For here, tho' I may know for certain, that another Man has *armed* himself in order to set upon me, or has openly *threatned* to do me a Mischiefs; this will by no Means bear me out in *assaulting* him; but he is to be *inform- ed* against before the Civil Magistrate, who is to require *Security* for his good Behaviour. The Use of *Extrémities* in repelling the Force being then only justifiable, when I am *already* set upon, and reduced to such *Streights*, that I have no Opportunity to require the *Protection* of the Magistrate, or the *Help* of my Neighbours; and even

XVIII.
When and how far a Man may defend himself with arm'd force in a State of Civil Society.

even then I am not to make use of *Violence*, that by the Slaughter of my Adversary I may *revenge* the Injury, but only because without it my *own Life* cannot be out of *Danger*.

Of the
Time
when in a
State of
Civil Soci-
ety Self-
defence
may be
allowable.

Now the Instant of *Time*, when any Man may with Impunity *destroy* another in his own Defence, is, when the Aggressor, being *furnish- ed* with Weapons for the Purpose, and *shewing* plainly a *Design* upon my Life, is got into a *Place* where he is very capable of doing me a *Mischief*, allowing me some time, in which it may be necessary to prevent rather than be prevented; although in *foro humano* a little *Exceed- ing* be not much minded in regard of the great Disturbance such a *Danger* must be thought to raise in the Spirit of Man. And the *Space of Time* in which a Man may *use Force in his own De- fence*, is so long as till the Assailant is either *re- pulsed*, or has *with-drawn* of his own accord, (whether in that Moment *repenting* of his wicked Design, or for that he sees he is like to *miss* of his Aim) so that for the present he cannot hurt us any more, and we have an Opportunity of retiring into a *Place of Safety*. * For as for *Revenge* of the Wrong done, and *Caution* for future Security, that belongs to the Care of the *Civil Magistrate*, and is to be done only by his Authority.

XIX. FARTHERMORE, both in a *State of Nature*, and in a *Civil State*, it is lawful for every Man to defend himself, if the *Precautions* before- mentioned be taken against him who attempts

* *Grotius de Jure Belli & Pacis, Lib. 2. Cap. 1.*
§ 5.

to take away his Life ; whether it be *designedly*, *Right of*
 and with a *malicious Intention*, or *without any* *Self-de-*
particular Design against the Party assaulted : *fence a-*
 As suppose a Mad-man, or a Lunatick, or one *gainst one*
 that mistakes me for some other Person who is *that af-*
 his Enemy, should make an Attempt on my *saults him*
 Life, I may justifiably use my Right of *by mistake.*
Defence ; for the Person from whom the At- *L. N. N.*
 tempt comes, whereby my Life is hazarded, *1. 2. c. 5.*
 hath no Right to attack me, and I am by no
 means obliged to suffer Death unnecessarily ; on
 which account it is altogether unreasonable that
 I should prefer *his* Safety to *my own*.

NEVERTHELESS through true it is, that we *XX.*
 ought not to take away another Man's *Life*, when *How the*
 it is possible for us after a more convenient way *most just*
 to avoid the Danger we are in ; yet in confide- *Self-de-*
 ration of that *great Perturbation of Mind*, which *fence*
 is wont to be occasion'd upon the Appearance of *ought to*
imminent Mischiefs, it is not usual to be *be mana-*
rigorous in the Examination of these Matters ; *ged : and*
 for it is not likely that a Man *trembling* under *of Duels.*
 the *Apprehension* of Danger, should be able to
 find out so exactly all those *Ways of escaping*,
 which to one who *sedately* considers the Case may
 be plain enough. Hence, though it is *Rashness*
 for me to come out of a *safe* Hold to him who
 shall *challenge* me ; yet, if another shall set
 upon me in an *open* Place, I am not streight
 obliged to betake my self to *Flight*, except
 there be at hand such a Place of *Refuge* as I
 may withdraw into without Peril : Neither am
 I always bound to *retire* ; because then I turn
 my defenceless Back, and there may be hazard
 of falling ; beside, that having once lost my
 Posture, I can hardly recover it again. But as

the Plea of *Self-defence* is allow'd to that Person who shall thus encounter Danger, when he is going about his lawful *Business*, whereas if he had staid at Home he had been safe enough ; so it is denied to him who being challenged to a *Duel*, shall by appearing *set himself* in that Condition, and except he kill his Adversary, himself must be slain. * For the *Laws* having *forbidden* his venturing into such *Danger*, any *Excuse* on account *thercof* is not to be regarded.

XXI. WHAT may be done for the Defence of *Life* may also for the *Members* ; so as that he shall be acquitted for an *honest Man* who shall kill a *Ruffian*, that perhaps had no farther Intention than to *maim* him, or give him some *grievous Wound* : For all Mankind does naturally abhor to be *maimed* or *wounded* ; and the cutting off any, especially of the more noble *Members*, is often not of much less value than *Life* it self ; beside, we are not sure beforehand, whether upon such *wounding* or *maiming* *Death* may not follow ; and to endure this is a Sort of *Patience* that surpasses the ordinary *Constancy* of a *Man*, † to which no man is regularly obliged by the *Laws*, only to gratifie the outrageous *Humour* of a *Rogue*.

XXII. MOREOVER, what is lawfully to be done for Preservation of *Life*, § is adjudged to be so for

* See *Grotius de Jure Belli & Pacis, Lib. 2. Cap. 1. § 15.*

† See *Grotius de Jure Belli, & Pacis, Lib. 2. Cap. 1. § 6.*

§ Mr. *Budeus* denies this (in the 2d Part of his *Elements of Practical Philosophy, chap. 4. sect. 3.*) and his Reason is, That there is no *Proportion between the Life and*

for *Chastity*: Since there cannot be a more horrid *Abuse* offered to an honest Woman, than to force her out of that which being kept undefiled is esteemed the greatest *Glory* of her Sex; and to put upon her a Necessity of raising an Offspring to her Enemy out of her own Blood.

As for *Defence of Goods or Estate*, this may, among those who are in a State of *Natural Liberty*, go as far as the *Slaughter* of the Invader, † provided what is in Controversie be not a *Thing contemptible*. For without *Things necessary* we cannot keep our selves alive; and he equally declares himself my Enemy, who wrongfully seizes my *Estate*, as he that attempts upon my *Life*. But in *Communities*, where what is ravished from us may, with the Assistance of the *Civil Authority*, be recovered, this is not

Chastiy.
L. N. N.
l. 2. c. 5.
§ 11.

XXIII.
Defence of Goods or Estate.
L. N. N.
l. 2. c. 5.
§ 16.

and the Honour of any Person. But can any Violation be too great for a Woman to expect from a Man that is arriv'd to such a Pitch of Brutality? Besides, *Honour* is a *Good* whose Loss is not only irrecoverable, but which, among civiliz'd Nations, is placed in the same Degree of Value with Life it self. After all, does not such an Act of Hostility as this, give her a perfect Right to have recourse to Extremities against a Man, who to satisfy his brutish Passion, irreparably stains the Honour and takes away the Liberty of an honest Woman? See *Grotius de Jure Belli & Pacis, lib. 2. cap. 1 § 7.*

† The Author I just now quoted pretends in the same place, that *no one can justifiably kill a Thief, unless he attempts to steal from him so considerable a Part of his Substance, as that he could not live upon the Remainder.* But this learned Author has said nothing to invalidate the Principles, and confute the Reasons alledged to the contrary by our Author, in his large Work of *The Law of Nature and Nations*, of which this is an Abridgment. See *Lib. 2. Cap. 5. § 16.*

regularly allowed ; unless in such case when he that comes to take away what we have, cannot be brought to *Justice* : On which account it is, that we may lawfully kill *Highwaymen* and *Night-robbers*.

XXIV. *Self Defence in him that first injur'd.* AND thus much for *Self-Defence* in those who without Provocation are *unjustly invaded* by others : But for him who has *first* done an *Injury* to another, he can only then rightly *defend* himself with *Force*, and *hurt* the other *again*, when having *repented* of what he has done, he has offered *Reparation* of the Wrong and *Security* for the future ; and yet he who was *first injured*, shall, out of ill Nature, *refuse* the same, and endeavour to *revenge* himself by Violence ; [shewing hereby that he seeks not so much *Reparation* and *Right* to himself, as *Mischief* to the other.]

XXV. *Self Preservation in Cases of Necessity.* LASTLY, *Self-Preservation* is of so much regard, that, if it cannot otherwise be had, in many Cases it exempts us from our Obedience to the standing Laws ; and on this Score it is, that *Necessity* is said to *have no Law*. For seeing L. N. N. Man is naturally inspired with such an earnest Desire to preserve himself, it can hardly be presumed that there is any Obligation laid upon him, to which he is to sacrifice his *own Safety*. For tho' not only *God*, but the *Civil Magistrate*, when the *Necessity* of Affairs requires it, may lay upon us so strict an *Injunction*, that we ought rather to die than vary a Little from it ; yet the *general Obligation* of Laws is not held to be so rigorous. For the *Legislators*, or those who first introduced *Rules* for Mankind to act by, making it their Design to promote the *Safety* and *common Good* of Men, must regularly be supposed to have had before their Eyes the Condition

dition of *Human Nature*, and to have considered how *impossible* it is for a Man *not* to shun and keep off all Things that tend to his own *Destruction*. Hence those Laws especially, called *Positive*, and all *Human Institutions* are judged to except *Cases of Necessity*; or, not to oblige, when the Observation of them must be accompanied with some Evil which is *destructive* to *Human Nature*, or not tolerable to the *ordinary Constancy* of Men; unless it be *expressly* so ordered, or the *Nature* of the Thing requires, that even *that* also must be undergone. Not that *Necessity justifies* the Breach of a Law and Commission of Sin; but it is presumed, from the favourable Intention of the Legislators, and the Consideration of Man's Nature, that *Cases of Necessity* are not included in the general Words of a Law. This will be plain by an Instance or two.

(I.) THOUGH otherwise Man have no such Power over his own *Members*, as that he may lose or maim any of them at his pleasure; yet he is justifiable in *cutting off* a gangren'd Limb, in order to save the *whole Body*; or to preserve those *Parts* which are *sound*; or lest the other Members be rendred *useless* by a dead and cumbersome Piece of Flesh. XXVI.
Cutting off
Members.
L. N. N.
1. 2. c. 6.
§ 3.

(II.) IF in a *Shipwrack* more Men leap into the Boat than it is *capable* of carrying, and no one has more Right than another to it; they may *draw Lots* who shall be cast overboard; and if any Man shall *refuse* to take his chance, he may be thrown over without any more ado, as one that seeks the *Destruction* of *all*. XXVII.
One lost to
save many.

(III.) IF *two* happen into imminent Danger of their Lives, where *both* must perish; one XXVIII.
One has-

tens the
Death of
another to
save him-
self.

L. N. N.
1. 2. c. 6.
§ 4.

may, as he sees good, hasten the Death of the other, that he may save *himself*. For instance, If I, who am a skilful Swimmer, should fall into some deep Water with another who could not swim at all, and he clings about me ; I not being strong enough to carry *him* off and *myself* too, I may put him off with *force*, that I may not be drowned together with him ; tho' I might for a little while be able to keep him up. So in a Shipwrack, if I have got a Plank which will not hold *two*, and *another* shall endeavour to get upon it, which if he does, we are *both* like to be drowned, I may keep him off with what *violence* I please. And so if *two* be pursued by an Enemy meaning to kill them, *one* may, by shutting a Gate or drawing a Bridge after him, secure *himself*, and leave the *other* in great Probability of *losing* his Life, supposing it not to be possible to save *both*.

XXIX.
Another
destroyed
or hurt to
the same
end.

(IV.) CASES also of *Necessity* may happen, where one may *indirectly* put another in Danger of *Death*, or some *great* Mischief, when at the same time he means no harm to the Person ; but only, for his own *Preservation*, he is forced upon some Action which probably may do the other a Damage ; always supposing that he had rather have chosen any *other* Way, if he could have found it, and that he make that Damage as *little* as he can. Thus, if a stronger Man than I pursues me to take away my Life, and one meets me in a narrow Way thro' which I must flee, if, upon my Request, he will not stand out of the Way, or he has not time or room so to do, I may throw him down and go over him, tho' it be very likely that by the Fall he will be very much hurt ; except he should be one
who

who has such peculiar Relation to me, [suppose my *Parent, King, &c.*] that I ought for his Sake rather to surrender my self to the Danger. And if he who is in the Way cannot, upon my speaking to him, get out of the Way, suppose being lame or a Child, I shall be excused who try to leap over him, rather than to expose my self to my Enemy by delaying. But if any one shall, out of *Wantonness* or *cross Humour*, hinder me or deny to give me the Liberty of escaping, I may immediately by any Violence throw him down, or put him out of my Way. And those who in these Cases get any *Harm*, are to look upon it not as a *Fault* in the Person that did it, but as an unavoidable *Misfortune*.

(V.) IF a Man, not through his own Fault, happen to be in *extreme Want of Victuals and Cloaths* necessary to preserve him from the Cold, and cannot procure them from those who are wealthy and have great Store, either by Intreaties, or by offering their Value, or by proposing to do Work equivalent; he may, without being chargeable with *Theft* or *Rapine*, furnish his Necessities out of their Abundance, either by force or secretly, especially if he do so with a Design to pay the Price, as soon as he shall have an Opportunity. For it is the Duty of the *opulent* Person to succour another who is in such a *needy* Condition. And tho' regularly what depends upon *Courtesie* ought by no means to be extorted by *Force*, yet the *Extreme Necessity* alters the Case, and makes these Things as *claimable*, as if they were absolutely *due* by a formal Obligation. But it is first incumbent upon the Necessitous Person to try all Ways to supply his Wants with the *Consent* of the Owner, and he is to take care that

XXX.
Case of
extreme
Want.
L. N. N
l. 2. c. 6.
§ 5.

the Owner be not thereby reduced to the *same Extremity*, nor in a little time like to be so; and that *Restitution* be made; * especially if the Estate of the other be such as that he cannot well bear the Loss.

XXXI.
 Destroying
 other
 Men's
 Goods to
 save our
 own.
 L. N. N.
 1. 2. c. 6.
 § 8.

(VI.) LASTLY, the *Necessity* of our own Affairs seems sometimes to justify our destroying the *Goods of other Men*; 1. Provided still, that we do not bring such *Necessity* upon our selves by our *own Miscarriage*: 2. That there cannot be any *better Way* found: 3. That we cast not away that of our Neighbours which is of *greater Value*, in order to save our own which is of *less*: 4. That we be ready to pay the *Price*, if the Goods would not otherwise have been destroyed, or to bear our share in the *Damage* done, if the Case were so that *his* must have perished together with *ours*, but now by the Loss of them *ours* are preserved. And this sort of *Equity* is generally found in the *Law-Merchant*. Thus in case of *Fire*, I may pull down or blow up my Neighbour's House, but then those whose Houses are by this means saved, ought to make good the *Damage* proportionably.

* See *Gratius de Jure Belli & Pacis*, lib. 2. cap. 2. § 6. lib. 3. cap. 17. § 1, 2. seq.

C H A P. VI.

Of the Duty of one Man to another, and first of doing no Injury to any Man.

WE come now to those Duties which are to be practis'd by *one Man towards another*. Some of these proceed from that *common Obligation* which it hath pleas'd the Creator to lay upon all Men in general; others take their Original from some certain *Human Institutions*, or some *peculiar, * adventitious* or *accidental State* of Men. The *first* of these are *always* to be practis'd by *every* Man towards *all* Men; the *latter* obtain only among those who are in such *peculiar* Condition or State. Hence those may be called *Absolute*, and these *Conditional Duties*.

AMONG those Duties we account *Absolute*, or those of every Man towards every Man, this has the first Place, † that *one do no Wrong to the other*; and this is the *amplest* Duty of

I.
Reciprocal
Duties of
two Sorts.

II.
No wrong
to be done.
L. N. N.
l. 3. c. 1.

* This *Status adventitius* is that State of Life we come into in consequence of some Human Constitution; whether we enter into it at our Birth immediately, or whether it happens after our Birth. Such are, for example, all those Conditions of Life where the Duties and Relations are reciprocal; such as a *Parent* and his *Child*, an *Husband* and a *Wife*, a *Master* and a *Servant*, a *Sovereign* and his *Subject*. &c.

† See *Grotius de Jure Belli & Pacis*, lib. 2. and the whole 17th Chapter.

all, comprehending *all Men* as such; and it is at the same time the *most easy*, as consisting only in an *Omission* of acting, unless now and then when unreasonable Desires and Lusts are to be *curb'd*. It is also the *most necessary*, because without it *Human Society* cannot be preserv'd. For I can live *quietly* with him that does me *no Good*, or with whom I have no manner of Correspondence, provided he doth me *no Harm*. Nay this is all we desire from the *greatest Part* of Mankind; the doing mutually *good Offices* lying but among a few. But I can by no means live *peaceably* with him that *wrongs* me; Nature having instilled into every Man such a tender Love of *himself* and what is his *own*, that he cannot but by all possible means *repel* those Men who shall make any Attempt upon one or t'other.

III. *So to do a Crime.* BY this Duty are fenced not only what we have by the Bounty of *Nature*; such as our Laws, Bodies, Limbs, Chastity, Liberty; but whatsoever by any *Human Institution* or *Compact* becomes our Property; so as by this it is forbidden to take away, spoil, damage, or withdraw, in whole or in part, from our Use, whatsoever by a lawful Title we are possess'd of. Whence all those Actions are hereby made Crimes, by which any Wrong is done to others, as Murther, Wounding, Striking, Rapine, Theft, Fraud, Violence, whether practis'd directly or indirectly, mediately or immediately, and the like.

IV. *Reparati- on of* FARTHER, hence it follows, That *if any Harm or Damage be done to another, he who is truly chargeable as Author of the Wrong, ought,*
as

as far as in him lies, to make *Reparation*: For otherwise the Precept would be to no purpose; That no Man shall be hurt nor receive damage; if when he has actually sustain'd a Mischief, he must put it up quietly, and he who did the Injury shall enjoy *securely* the Fruit of his Violence without *Reparation*. And setting aside this *Necessity of Restitution*, the Pravity of Man's Nature is such, that they would never forbear *injuring* one another, and it would be very hard for him who has suffered *Wrong*, to compose his Mind so as to live peaceably with the other, till *Reparation* were made.

THO' the Word *Damage* may seem properly to belong to Loss in Goods, yet we take it here in the large Sense, that it may signifie all Manner of *Harm, spoiling, diminishing, or taking away* what is already ours, or *intercepting* that which by an *absolute Right* we ought to have, whether it be bestowed upon us by Nature, or given us by Man and Human Laws; or lastly, the *Omission or Denial* of paying what by a *perfect Obligation* is due to us. But if such Payment only be stopt, as was *not due* by any *perfect Obligation*, it is not looked upon as a *Damage* that ought to be made good: For it would be unmeet to account it a *Wrong* suffered if I receive not such Stipends; and unreasonable for me to demand as my *Right*, what I cannot expect from another but under the name of a *Free Gift*, and which I can by no means call *my own*, till after I have received it.

UNDER the Head of *Damage* liable to *Reparation*, we must also comprise not only a *Mischief, Loss or Interception* of what is ours or due to us; but also such *Profits* as do naturally accrue

Wrong a necessary Consequence from thence.

V.
Damage how to be accounted.
L. N. N.
l. 3. c. 1.
§ 3.

VI.
Damage in expectations.

crue from the Thing, or have already accrued, or may fairly be *expected*, if it was the Right of the Owner to receive them ; allowing still the Expences necessary for gathering in such Profits. Now the Value of *Profits*, thus in *Expectation* only, is to be high or low, according as they are certain or uncertain, and will be sooner or later received. And lastly, that also is to be called *Damage*, which upon a Hurt given, does of Natural Necessity *follow* thereon.

VII. *Damage mediately or immediately done.* ONE Man may damnifie another not only *immediately* or by *himself*, but also by *others*: And it may happen that a Damage immediately done by *one Man* may be chargeable upon *another*, because he contributed somewhat to the Action, either by doing what he ought not, or not doing what he ought to have done. Sometimes among *several Persons* who concurred to the same Fact one is to be accounted the *Principal*, others but *Accessaries*; sometimes they may all be *equally Parties*. Concerning whom it is to be observed, that they are so far obliged to *repair* the Wrong as they were indeed the *Causes* thereof, and by so much as they contributed to doing *All* or *Part* of the Damage. But where any one did not actually assist in the Trespas committed ; nor was antecedently a Cause of its being done, nor had any Advantage by it ; there, though upon Occasion of the Injury done, he may be *blame worthy*, yet he cannot be any ways obliged to *Restitution* : And of this Sort are such as *rejoyce* at their Neighbour's Misfortunes, such as *commend* the Commission of Outrages, or are ready to *excuse* them, who *wish* or *favour* the Practice of them, or who *flatter* the Actors therein.

WHERE

WHERE *many* have joined in an Action VIII. from whence Damage has come, he in the *first* Damage done by many. place shall be chargeable with *Reparation*, by whose *Command* or powerful *Influence* the others L. N. N. were put upon the Action; and he who immediately perpetrates the Thing, to which he could not decline his helping Hand, shall be esteemed but only as the *Instrument*. He who *without any constraint* concerned himself in the Enterprize shall be *chiefly liable*, and then the rest who assisted in it. But this so, as that if *Restitution* be made by the former, then the latter are cleared, (which in *Penal Cases* is otherwise.) If *many in Combination* have committed an Injury, all are obliged for each one single, and each one single is obliged for all; so as that if *all* are seized, they must each pay their Shares to make good the Loss; and if all escape but *one*, he shall be obliged to pay for all; but where some amongst them are *insolvent*, those who are *able* must pay the Whole. If *many, not in Combination*, concur to the same Thing, and it can plainly be discerned *how much* each of them contributed to the doing of the Mischief; each shall only be accountable for so much as *himself* was the Cause of. But if *one shall* pay the whole, they are *all discharged* for the same. § 5.

NOT only he who out of an *evil Design* does IX. wrong to another, is bound to Reparation of Damage by Negligence. the Damage, but he who does so thro' *Negligence* or *Miscarriage*, which he might easily L. N. N. have avoided. For it is no inconsiderable Part 1. 3. c. 1. of *social Duty*, to manage our Conversation with § 6. such *Caution* and *Prudence*, that it does not become *mischievous* and *intolerable* to others; in order to which, Men under some Circumstances and

and Relations, are obliged to more exact and watchful *diligence* : The slightest Default in this point is sufficient to impose the Necessity of *Reparation* ; unless the Fault lay rather more in him who was harmed, than in him who did it ; or unless some great Perturbation of Mind, or some Circumstance in the Matter, would not allow the most deliberate Circumspection ; * as, when a Soldier in the Heat of Battle in handling his Arms shall hurt his Comrade.

X. *Damage by Chance.* BUT he who by *meer Chance*, without any Fault of his own, shall do Harm to another, is not obliged to *Reparation*. Because nothing in this Case being done which can be chargeable upon him, † there is no Reason, why he who *unwillingly* did a Mischief should rather suffer, than he to whom it was done.

XI. *Damage by a Vassal.* IT is also agreeable to Natural Equity, if *my Vassal*, though not by my Desire, do Wrong to another, that either I make it good, or surrender *him* to the Party injured. For 'tis true, this *Vassal* is *naturally obliged* to *Reparation* ; but he not having wherewith, and his Body being the *Property* of his Patron, it is but just that such Patron either *repair* the Loss sustained, or *deliver* him up. Otherwise such a Bond-man would be at liberty to do what Mischief he listed, if Amends cannot be had from *him*, because he is the Owner of nothing, no not of the Body he bears ; nor from his *Patron*. For, let him beat the Slave never so severely, or punish him with the closest imprisonment,

* See *Grotius de Jure Belli & Pacis*, lib. 3. c. 1. § 4.

† See *Grotius de Jure Belli & Pacis*, lib. 3. c. 1. § 5.
that

that gives *no Restitution* to the Person wronged.

THE same seems to be just in the Case of our *Cattle* or any *living Creature* we keep, that, when they *against* our Wills and by a Motion of their own, contrary to their *Natures*, do a Mischief to another, we either make *Reparation*, or *give up* the same. For if I am hurt by any Animal that lives in its *Natural Liberty*, I have a Right, by what means I can, to give my self Satisfaction by *taking* or by *killing* it; and this Right doubtless cannot be taken away by its being in the Possession of another. And whereas the Owner of this Animal makes some *Gain* by it, but I have suffered *Loss* by the same; and whereas the *Reparation* of *Wrong* is more to be favoured than procuring *Gain*; it appears that I may with reason demand Satisfaction from the *Owner*, or if the Animal be not worth so much, then that *it* at least be delivered to me on Account of the Damage sustained.

THUS then, he who without any *evil Intention* does an Injury to another, ought of his own accord to offer *Reparation*, and to protest himself to have done it *unwillingly*, lest the injured Person take him for his *Enemy*, and endeavour to *retaliate* the Mischief. But he, who with a *naughty design* shall wrong his Neighbour, is not only bound to offer *Reparation*, but to declare his *Repentance* for the Fact and to beg *Pardon*. On the other side, the *wronged Party* having Satisfaction made him, is obliged, up- the *Repentance* of the other, and at his *Request*, to grant him *Pardon*. For he that will not be content when *Reparation* is made him, and a
fit

XII.

Damage
by Cattle.

XIII.

Recapitu-
lation.

fit *Submission* offered, but still seeks to revenge himself by Force, does nothing else but gratifie his own ill Nature, and so disturbs the common Peace of Men without cause. And upon that account *Revenge* is by the *Law of Nature* condemned, as proposing no other End, than doing Mischief to those who have hurt us, and pleasing our selves in their Sufferings. Moreover, there is great Reason that Men should be the more apt to pardon *each others* Offences, upon a consideration how often themselves transgress the *Laws of God*, and have therefore daily so much need of begging Forgiveness of *Him*. [Not still but that the *Publick* may inflict a *Punishment* on the Aggressor, tho' he have given satisfaction to the *Private* Man, if the Act was *Criminal*, and in its Nature *Evil*.]



C H A P. VII.

The Natural Equality of Men to be acknowledged.

MAN is a Creature not only most solicitous for the *Preservation* of Himself; but has of Himself also so nice an *Estimation* and *Value*, that to diminish any thing thereof does frequently move in him as great *Indignation*, as if a *Mischief* were done to his *Body* or *Estate*. Nay, there seems to him to be somewhat of *Dignity* in the Appellation of *Man*: so that the last and most efficacious Argument to curb the *Arrogance* of insulting Men, is usually, *I am not a Dog, but a Man as well as your self*. Since then Human Nature is the same in us all, and since no Man will or can cheerfully join in *Society* with any, by whom he is not at least to be esteemed equally as a *Man*, and as a *Partaker* of the same *Common Nature*: It follows that, among those *Duties* which Men owe to each other, this obtains the second Place, That every Man esteem and treat another, as naturally equal to himself, or as one who is a Man as well as he.

I.
Equality
of Man-
kind.

L. N. N.
l. 3. c. 2.
§ 1.

Now this *Equality* of Mankind does not alone consist in this, that Men of ripe Age have almost the same *Strength*, or if one be weaker, he may be able to kill the stronger, either by *Treachery*, or *Dexterity*, or by being better furnished with *Weapons*; but in this, that though Nature may have accomplished one Man be-

II.
Wherein
this E-
quality
consists.
L. N. N.
l. 3. c. 2.
§ 2.

H

yond

yond another with various Endowments of Body and Mind ; yet nevertheless he is obliged to an Observation of the *Precepts* of the *Law Natural* towards the meaner Person, after the same manner as *himself* expects the same from *others* ; and has not therefore any greater Liberty given him to insult upon his Fellows. As on the other side the Niggardliness of *Nature* or *Fortune* cannot of themselves set any Man so low, as that he shall be in worse Condition, as to the Enjoyment of *Common Right*, than others. But what *one Man* may rightfully demand or expect from *another*, the same is due to *others* also (Circumstances being alike) from *him* ; and whatsoever *one* shall deem reasonable to be done by *others*, the like it is most just he practise *himself* : For *the Obligation of maintaining Sociability among Mankind equally binds every Man* ; neither may one Man more than another violate the *Law of Nature* in any part. Not but that there are other *popular Reasons* which illustrate this *Equality* ; to wit, that we are all descended of the *same Stock* ; that we are all born, nourished, and die after the *same Manner* ; and that God has not given any of us a *certain Assurance* that our happy Condition in the World shall not at one time or other be *changed*. Besides, the Precepts of the Christian Religion tell us that God favours not Man for his Nobility, Power, or Wealth, but for *sincere Piety*, which may as well be found in a *mean and humble Man*, as in those of *high degree*.

III.
This Equality
should
make us

Now from this *Equality* it follows, *That he who would use the Assistance of others in promoting his own Advantage, ought to be as free and ready to use his Power and Abilities for their Service,*

when

when they want his Help and Assistance on the like occasions. For he who requires that other Men should do him Kindnesses, and expects himself to be free from doing the like, must be of opinion that those other Men are below himself and not his Equals. Hence as those Persons are the best Members of a Community, who without any difficulty allow the same things to their Neighbour that themselves require of him; so those are altogether incapable of Society, who setting a high Rate on themselves in regard to others, will take upon them to act any thing towards their Neighbour, and expect greater Deference and more Respect than the Rest of Mankind; in this insolent manner demanding a greater portion unto themselves in those things, to which all Men having a common Right, they can in reason claim no larger a Share than other Men: Whence this also is an universal Duty of the Law Natural, That no Man, who has not a peculiar Right, ought to arrogate more to himself, than he is ready to allow to his Fellows, but that he permit other Men to enjoy Equal Privileges with himself.

THE same Equality also shews what every Man's behaviour ought to be, when his business is to distribute Justice among others; to wit, that he treat them as Equals, and indulge not that, unless the Merits of the Cause require it, to one, which he denies to another. For if he do otherwise, he who is discountenanced is at the same time affronted and wronged, and loses somewhat of the Dignity which Nature bestowed upon him. Whence it follows, that Things which are in common, are of right to be divided by equal Parts among those who are equal: Where

benevolent, courteous and complaisant to each other.
L. N. N.
l. 3. c. 2.
§ 4.

IV.
It ought to make us observe exact Justice in distributing to each his own.
L. N. N.
l. 3. c. 2.
§ 5.

the Thing will not admit of *Division*, they who are equally concerned, are to use it *indifferently*; and, if the Quantity of the Thing will bear it, as *much* as each Party shall think fit: But if this cannot be allowed, then it is to be used after a *stated* manner, and *proportionate* to the Number of the Claimants; because 'tis not possible to find out any other Way of observing *Equality*. But if it be a Thing of that nature as not to be capable of being *divided*, nor of being possess'd in *common*, then it must be used by *turns*; and if this yet will not answer the point, and it is not possible the rest should be satisfied by an *Equivalent*, the best Way must be to determin Possession by *Lot*; for in such Cases no fitter Method can be thought on, to remove all Opinion of Partiality and Contempt of any Party, without debasing the Person whom Fortune does not favour.

V.
This E-
quality a
sufficient
Remedy
against
Pride.
L. N. N.
1. 3. c. 2.
§ 6.

THE Consideration of this *Natural Equality* among Men, ought to take from us all *Pride*; a Vice that consists herein, When a Man, without any Reason, or, without sufficient Reason, prefers himself to others, behaving himself contemptuously and haughtily towards them, as being in his Esteem base Underlings, unworthy of his Consideration or Regard. We say, *without any Reason*. For where a Man is regularly possess'd of some *Right*, which gives him a Preference to other Men; he may lawfully *make use of*, and *assert* the same, so it be without vain Ostentation and the Contempt of others; as on the contrary every one is with good reason to *yield* that *Respect* and *Honour* which is *due to another*. But for the Rest, *true Generosity* has always for its Companion a *decorous Humility*, which

which arises from a Reflection on the Infirmity of our Nature, and the Faults, of which our selves either have been, or may hereafter be guilty, which are not less heinous than those which may be committed by other Men. The Inference we ought to make from hence is, that we do not over-value our selves with regard to others, considering that *they* equally with us are, endowed with a *free Use of their Understanding*, which they are also capable of managing to as *good Purpose*; the *regular Use* whereof is that alone which a Man can call *his own*, and upon which the *true Value* of Himself depends. But for a Man, without any Reason, to set a high esteem upon himself, is a most *ridiculous Vice*; first, because 'tis in it self *silly*, for a Man to carry it high for nothing at all; and then, because I must suppose all *other Men* to be Coxcombs, if I expect from them a great Regard, when I deserve none.

THE Violation of this Duty is yet carried farther, if a Man shew his *Contempt* of another by outward Signs, Actions, Words, Looks, or any other abusive way. And this Fault is therefore the more grievous, because it easily excites the Spirits of Men to Anger and Revenge: So that there are many who will rather venture their *Lives* upon the spot, much more will they break the Publick Peace, than put up an *Affront* of that nature; accounting that hereby their Honour is wounded, and a Slur is put upon their Reputation, in the untainted Preservation of which consists all their *Self-satisfaction* and *Pleasure* of Mind.

VI.
And against
rude un-
mannerly
and con-
temptuous
Behavi-
our.
L. N. N.
l. 3. c. 3.
§ 7.

C H A P. VIII.

Of the mutual Duties of Humanity.

- I. **A**MONG the Duties of one Man towards another, which must be practis'd for the sake of *Common Society*, we put in the *third* place this, *That every Man ought to promote the Good of another, as far as conveniently he may.*
- Doing good to others.
L. N. N.
1. 3. c. 3.
- For all Mankind being by Nature made, as it were, *akin* to each other ; such a Relation requires more than barely abstaining from offering Injury and doing Despight to others. It is not therefore sufficient that we neither hurt nor despise our Fellows, but we ought also to do such *good Offices* to others, or mutually to communicate the same, as that common *brotherly Love* may be kept up among Men. Now we become beneficial to our Neighbour, either *indefinitely* or *definitely* ; and *that* either parting with *something* or *nothing* our selves.
- II. **T**HAT Man *indefinitely* promotes the Good of others, who takes such necessary care of his *Mind* and *Body*, that he may be able to perform such Actions as may be profitable to his Neighbour ; or who by the *Acuteness* of his *Wit* finds out something that may be of Advantage to Mankind. So that those are to be accounted guilty of a *Breach* of this Duty, who betaking themselves to no *honest Calling* spend their Lives in Sloth, as if their Souls were given them but to serve as Salt to keep their Bodies from stinking, or as if they were born but to make up a Number,
- Benefactors of the first Sort.
L. N. N.
1. 3. c. 3.
§ 2.
- ber,

ber, and eat their Share: And such as, being content with the Estates their *Ancestors* have left 'em, think they may give themselves up to *Idleness* without blame, because they have whereon to live by the Industry of others: And those who *alone* enjoy what they have got, not bestowing any Part upon others: Finally, all those who, like Hogs, do Good to no one till they *die*; and all that Sort of Wretches who only serve to load the Earth with their useles Weight.

ON the other side, to those who make it their Business to deserve well of Mankind, the Rest of the World owe thus much, that they don't envy 'em, nor lay any Rubs in their way, while by their noble Actions they seek the Universal Good: And if there be no Possibility for themselves to imitate 'em, they at least ought to pay a *Regard* to their *Memory* and promote their *Honour*, which perhaps is all they shall get by their Labours.

III.
Such deserve Honour as make themselves useful to the Publick.
L. N. N.
l. 3. c. 3.
§ 3.

Now not to do readily all that Good to others which we can do without Detriment, Labour, or Trouble to our selves, is to be accounted detestable *Villany* and *Inhumanity*. The following are wont to be called *Benefits* which cost nothing, or which are of Advantage to the Receiver, without being a Charge to the Bestower. Such as, to allow the Use of the running Water; the letting another light his Fire by mine; the giving honest Advice to him that consults me; the friendly Directing a wandering Man to the right Way, and the like. So, if a Man have a mind to quit the Possession of a Thing, either because he has too much, or because the keeping of it becomes

VI.
Good done to others without any charge or cost to the Benefactor.

* In-
scribed Posts
set up in
Highways
to direct
Travel-
lers.

troublesome, why should he not rather leave it fit for Use to others, (provided they are not Enemies) than to mar or destroy it? Hence it is a Sin for us to *spoil Victuals*, because our *Hunger* is satisfied; or to *stop up*, or cover a *Spring*, because we have quenched *our Thirst*, or to destroy *Buoys* set up to discover Shelves and Sands, or * *Mercuries* in Roads, when our selves have made use of them. Under this Head may be comprehended also the *little Alms* bestow'd by the Wealthy upon those who are in Want; and that *Kindness* which we justly shew to *Travellers*, especially if under Necessities, † and the like.

V. BUT it is a higher Degree of Humanity, out of a singular Favour to do a good Turn *freely*, which costs either *Charge* or *Pains*, that so another may either have his Necessities relieved, or acquire some considerable Advantage. And these, by way of Excellence, are called *Benefits*, and are the fittest Matter for rendring Men *Illustrious*, if rightly tempered with Prudence and Magnanimity. The *Dispensation* of which, and the *Manner*, are to be regulated according to the *Condition* of the *Giver* and *Receiver*.¹ Wherein Care is first of all to be taken; 1. *That the Bounty we are about to exercise do not more Hurt than Good to the Person to whom we design a Kindness, and to others: Next,* 2. *That our Bounty be not greater than consists with our Ability: Then,* 3. *That the Worthiness of Men be regarded in our Distri-*

Good done
to others
with an
Expence to
the Bene-
factor.
L. N. N.
1. 3. c. 3.
§ 15.

† See Grotius de Jure Belli & Pacis, lib. 2. cap. 2.
§ 11, 12. seq.

bution,

bution, and Preference given to the Well-deserving. We must therefore consider *how far* each stands in need of our Help, and observe the Degrees of *Relation* among Men; moreover, 'tis to be observ'd *what* every one wants most, and what they can or cannot compass *with* or *without* our Assistance. * The Manner also of exercising Acts of Kindness will render them more acceptable, if they be done *cheerfully*, *readily*, and *heartily*.

AND then he who *receives* a Benefit ought to have a *grateful Mind*, by which he is to make it manifest, that it was *acceptable* to him, and that for its sake he has a *heartly Respect* to the Donor, and that he wants nothing but an *Opportunity* or an *Ability* of making, if possible, a *Requital* of the full value or more. For it is not absolutely necessary that the Returns we make be *exactly tantamount* to the Courtesy we receive, but our *Good-will* and *heartly Endeavour* are in lieu to be accepted. Not but that sometimes he who pretends to have done me a Kindness, may, notwithstanding, have no Reason to say, he has *obliged* me thereby; as if a Man shall drag me out of the Water, into which he pushed me before; in such a Case I owe him no thanks.

Now by how much the more *Benefits* are apt to oblige and place Engagements on the Minds of Men, by so much ought the Party who is *beholden* to be the more eager to return his *Thanks*. If it be but because we ought not

* Grotius de Jure Belli & Pacis, Lib. 2, Cap. 5.
§ 10.

to suffer our Benefactor, who out of a good Opinion he had of us has done us a Kindness, to think worse of us; and because we should not receive any Favour, but with a Design to endeavour, that the Giver shall never have Cause to repent of what he has done for us. For, if for any particular Reason we are not willing to be beholden to such or such a Man, we may civilly *avoid* the Accepting of the *Courtesy*. And truly if no grateful Returns were to be made upon the Receipt of Benefits, it would be unreasonable for any Man to cast away what he has, and to do a good Turn where beforehand he is sure it will be slighted. By which means all Beneficence, Good-Will, and Brotherly-Love would be lost among Men; and there would be no such things as doing *Kindnesses frankly*, nor any Opportunities of procuring *mutual Friendships*, left in the World.

VIII. *Ingrati-*
tude.
 L. N. N.
 l. 3. c. 3.
 § 17.

AND though the *ungrateful Man*, cannot be precisely said to do a *Wrong*; yet the Charge of *Ingratitude* is look'd upon as more base, more odious, and detestable than that of *Injustice*; because 'tis judg'd a Sign of an *abject* and *rascally Soul* for a Man to shew himself unworthy of the good Opinion, which another had entertain'd of his Probity, and not to be mov'd to some Sense of Humanity by *Benefits*, which have a Power to tame even the Brutes. But, let *Ingratitude* be never so abominable, yet simply consider'd, as it is a bare *Forgetting* of a *Courtesy*, and a *Neglect* of making a due Return upon occasion, Courts of Judicature take no cognizance of it; for it would lose the Name of *Bounty*, if it were redeman-

redemandable by Law, as Money lent is ; because then it would be a *Credit*. And whereas it is a high Instance of *Generosity* to be grateful, it would cease to be a *generous* Action, when so to do could not be avoided. Beside that it would take up the Business of all Courts, by reason of the great Difficulty in making an Estimate of all the Circumstances, which either would enhance or lessen the Benefit : And that it was to this End I bestow'd it, (to wit, that I did not therefore demand a Promise of Repayment,) that so the other might have an Occasion of shewing his Gratitude, not for Fear of Punishment, but out of Love to Honesty ; and to manifest, that it was not in Hopes of Gain, but only out of mere Kindness that I was liberal of that, which I would not take care should be reimburs'd to me. But for him who improves his *Ingratitude*, and not only gives no thanks to, but injures his Benefactor ; * this shall cause an *Aggravation* of his *Punishment*, because it plainly demonstrates the profligate Villany and Baseness of his Mind.

* See *Grotius de Jure Belli & Pacis, Lib. 2. Cap. 20.*
§ 20.

C H A P. IX.

The Duty of Men in making Contracts.

I. **C**ONTRACTS. FROM the Duties *Absolute* to those that are *Conditional* we must take our *Passage*, as it were, through the *intermediate Contracts*; for, since all Duties, except those already mentioned, seem to presuppose some Covenant either expressed or implied; * we shall therefore in the next place treat of the *Nature of Contracts*, and what is to be observed by the Parties concerned therein.

II. **T**he Necessity of of 'em. Now it is plain that *it was absolutely necessary for Men to enter into mutual Contracts*. For though the Duties of *Humanity* diffuse themselves far and near thro' all the Instances of the Life of Man; yet *that alone* is not Ground sufficient, whereon to fix all the Obligations which may be necessary to be made *reciprocal* between one and another. For all Men are not endowed with so much Good Nature as that they will do all good Offices to every Man out of *meer Kindness*, except they have some certain Expectation of receiving the *like* again: And very often it happens, that the Services we would have to be done to us by *other Men* are of that Sort, that we cannot with *Modesty* desire them. Frequently also, it may not *become* one of my Fortune,

* Compare herewith the whole Eleventh Chapter of the Second Book of *Grotius de Jure*, &c.

or in my Station, to be *beholden* to another for such a Thing. So that many times another cannot give, neither are we willing to accept, unless that other receive an *Equivalent* from us; and it happens not seldom, that my Neighbour *knows not* how he may be serviceable to my occasions. Therefore, that these *mutual good Offices*, which are the Product of *Sociality*, may be more freely and regularly exercised, it was necessary that Men should agree among themselves, concerning what was to be done on this side and on that, which no Man from the *Law of Nature* alone could have assured himself of. So that it was beforehand to be adjusted what, this Man doing *so* by his Neighbour, he was to expect *in lieu* of the same, and which he might lawfully *demand*. This is done by means of *Promises* and *Contracts*.

WITH respect to this general Duty it is an
 Obligation of the *Law of Nature*, that every
 Man keep his Word, or fulfil his Promises and
 make good his Contracts. For without this, a
 great Part of that Advantage, which naturally
 accrues to Mankind by a *mutual Communication*
 of good Offices and useful Things, would be
 lost. And were not an exact Observance of
 one's Promise *absolutely necessary*, no Man could
 propose to himself any *Certainty* in whatever he
 design'd, where he must depend upon the Assis-
 tances of *others*. Besides that Breach of Faith is
 apt to give the justest Occasions to Quarrels and
 Wars. For if, according to my Agreement, I
 perform my Part, and the other falsifie his Word,
 whatsoever I have *done* or *deposited* in Expectation
 of his Performance, is *lost*. Nay, though I
 have done *nothing* as yet, yet it may be a Mis-
 chief

III.
 Veracity.
 L. N. N.
 l. 3. c. 4.
 § 2.

chief for me by this Disappointment to have my *Affairs* and *Purposes confounded*, which I could have taken care of some other way, if this Man had not offered himself. And there is no reason I should become ridiculous, only for having trusted one whom I took to be an honest and a good Man.

IV. *Distinction between what is due on Courtesy or Humanity, and what by particular Contract or Promise.*
 L. N. N. 1. 3. c. 4.

BUT it is to be observed, that such Things as are due to me only of *Courtesie*, differ from those which I can claim on account of a *Contract* or *Promise*, in this respect chiefly: That, 'tis true, I may fairly desire the honest Performance of the *first*: But then, if the other shall neglect my Request, I can only charge him with *Rudeness*, *Cruelty* or *hard dealing*; but I cannot *compel* him to do me reason either by my own Power or by any superior Authority. Which I am at liberty to do in the *latter* Case, if that be not freely performed which ought to have been according to an *absolute Promise* or *Covenant*. * Hence we are said to have an *imperfect Right* to those things, but to these our Claim is *perfect*; as also that to the Performance of the *first* we lie under an *imperfect*, but to the *other* under a *perfect* Obligation.

V. *Obligations different.*
 L. N. N. 1. 3. c. 5.

OUR Word may be given, either by a *single Act*, where one Party only is obliged; or by an *Act reciprocal*, where more than one are Parties. For sometimes *one Man* only binds himself to do somewhat; sometimes *two* or *more* mutually engage each other to the Performance of such and such things. The former whereof is called a *Promise*, the latter a *Covenant* or *Contract*.

* See Grotius de Jure Belli & Pacis. Lib. 1. cap. 1: § 4. seqq.

PROMISES may be divided into *imperfect* VI. and *perfect*. The former is, when we mean indeed to be obliged to make good our Word to him to whom we promise; but we intend not to give him a Power of *requiring* it, or of making use of force to compel us to it. As, if I say thus, I really design to do this or that for you, and I desire you'll believe me. Here I seem more obliged by the Rules of *Veracity* than of *Justice*; and shall rather appear to have done the promised Service out of a Regard to *Constancy* and *Discretion*, than to *Right*. Of this Sort are the Assurances of great Men who are in favour, whereby they *seriously*, but not upon their *Honours*, promise their Recommendation or Intercession, their Preferring a Man, or giving him their Vote, which yet they intend shall not be demanded of them as Matters of *Right*, but desire they may be wholly attributed to their *Courtesie* and *Veracity*; that the Service they do may be so much the more acceptable, as it was incapable of *Compulsion*. L. N. N. 1. 3. c. 5. 6.

BUT this is called a *perfect Promise*, when I not only oblige my self by my Word, but I give the other Party Authority to *require* at my hands the Performance of what I stipulated, as if 'twere a Debt. VII. *Promise perfect.*

MOREOVER, that *Promises* and *Contracts* may have a full Obligation upon us to *give* and to *do* somewhat, which before we were at liberty *not* to have done; or to *omit* that which we had a Power to *do*, 'tis especially requisite that they be made with our *free Consent*. For where- as the making good of any *Promise* or *Contract* may be accompanied with some *Inconvenience*, there can be no readier Argument why we should VIII. *No Obligation where the voluntary Consent of Parties is wanting.* L. N. N. 1. 3. c. 6.

not

not *complain*, than that we *consented* thereto of our own accord, which it was in our power not to have done.

IX.
Consent
express or
tacit.
L. N. N.
l. 3. c. 6.
§ 16.

AND this * *Consent* is usually made known by outward *Signs*, as, by *Speaking*, *Writing*, a *Nod*, or the like; tho' sometimes it may also be plainly intimated without any of them, according to the Nature of the thing and other Circumstances. So *Silence* in some Cases, and attended with some Circumstances, passes for a *Sign* expressing *Consent*. To this may be attributed those *tacit Contracts*, where we give not our formal Consent by the Signs generally made use of among Men; but the Nature of the Business, and other Circumstances make it fairly supposable. Thus frequently in the principal Contract, which is *express*, another is included which is *tacit*, the Nature of the Case so requiring: And it is usual, in most Covenants that are made, that some *tacit Exceptions* and *imply'd Conditions* must of necessity be understood.

X.
Who capable
of giving
Consent.
L. N. N.
l. 3. c. 6.
§ 4.

BUT to render a Man capable of giving a valid *Consent*, 'tis absolutely requisite, that he have so far the *Use of his Reason*, as fully to *understand* the Business that lies before him, and to know whether it be *meet* for him, and whether it lie in his *Power* to perform it; and having consider'd this, he must be capable of giving *sufficient* Indications of his *Consent*. Hence it follows, that the Contracts and Promises of *Ideots* and *Madmen* (except such whose Madness admits of lucid Intervals) are null and void: And the

* See *Grotius de Jure Belli & Pacis*, Lib. II. Cap. 4. § 4. Lib. III. c. 1. §. 8. c. 24. §. 1, 2.

same must be said of those of *Drunken Men*, L. N. N. if they are befotted to that degree as that their Reason is overwhelm'd and stupify'd. ^{l. 3. c. 6. § 4.} For it can never be accounted a *real* and *deliberate Consent*, if a Man, when his Brains are disorder'd and intoxicated, shall on a sudden and rashly make foolish Engagements, and give the usual Demonstrations of Consent, which at *another* time would have *obliged* him: and it would be a Piece of *Impudence* for any Man to exact the Performance of such a Promise, especially if it were of any considerable weight. But if one Man shall lay hold on the *Opportunity* of another's being drunk, and craftily making an *advantage* of his Easiness of Temper under those Circumstances, shall procure any Promise from him, this Man is to be accounted guilty of a *Cheat* and *Knavery*: Not but that, if, after the Effects of his Drink are over, he shall *confirm* such Promise, he shall be *obliged*; and this not with regard to what he said when *drunk*, but to his Confirmation when *sober*.

As for *Consent* in *young Persons*, it is impossible for the *Laws Natural* to determine so nicely the *exact Time* how long Reason will be too weak in them to render 'em capable of making Engagements; because Maturity of Discretion appears earlier in some than in others; Judgment therefore must be made hereof by the *daily Actions* of the *Person*. Though this is taken care for in most Commonwealths, by *Laws* prescribing a certain *Term* of years to all in general; and in many Places it is become a commendable Custom to set these under the *Guardianship* of wiser Men, whose Authority must be

XI.
Consent in young Persons.

L. N. N.
l. 3. c. 6.
§ 5

had to any Contracts they make, till the other's youthful Rashness be a little abated. For Persons of this Age, however perhaps they may well enough understand what they do, yet for the most part act with too much Vehemence and Rashness; are too free and easie in their Promises, eager and over confident in their Hopes, proud of being thought generous and liberal, ambitious and hasty in contracting Friendships, and not furnished with prudent Caution and necessary Diffidence. So that he can hardly pass for an *honest* Man, who makes any advantage of the *Easiness* of this Age, and would gain by the *Losses* of *young people*, who for want of Experience could not foresee, or place a true Estimate thereon.

XII.
Mistake
in Con-
tracts.

L. N. N.
l. 3. c. 6.
§ 6.

ANOTHER Thing which invalidates *Consent*, and by consequence the Promises and Pacts that are built upon it, is *Error* or *Mistake*; thro' which it comes to pass, that the Understanding is cheated in its Object, and the Will in its Choice and Approbation. Concerning *Error*, these three Rules are diligently to be observ'd. (1.) *That when to my Promise, some Condition is supposed, without the Consideration whereof I should not have made such Promise; the same shall, without the other, have no Obligation upon me.* For in this Case the Promiser does not engage *absolutely*, but upon a *Condition*, which not being made good, the Promise becomes null and void. (2.) * *If I am drawn into a Bargain*

* Provided this Error concerns something essential to the Bargain made; that is to say, that it does necessarily and naturally concern the Affair in hand, or respects

gain or Contract by a Mistake, which Mistake I find, before as we use to say Bulk is broke, or any thing done in order to the Consummation thereof, it is but Equity that I should be at liberty to retract; especially if upon the Contract making, I plainly signify'd for what Reason I agreed to it; more particularly, if the other Party suffers no Damage by my going off from my Bargain, or, if he does, that I am ready to make Reparation. But when, as was said afore, Bulk is broke, and the Mistake is not found till the Covenant is either wholly or in part already performed, the Party who is under an Errour cannot retract, any farther than the other shall of Courtesy release to him. (3.) When a Mistake shall happen concerning the Thing, which is the Subject of the Contract, such Contract is in-

spects plainly the Intention of those who contract, notified sufficiently at such time as the Contract was made: And on both Sides allowed as a Reason without which such Contract had never been made; otherwise, as the Errour had no Influence on the Contract to be made, so can it not disannul it when made, whether it be executed or not. An Example will make the meaning hereof plain. Suppose I imagin that I have lost my Horse. and that I shall never recover him again; and buy another, which otherwise I wou'dn't have done: If I happen afterwards, contrary to Expectation; to find my own again, I can't oblige the Person I bought the new one from to take it again, altho' at that time he shou'dn't have sent me the Horse, or have receiv'd the money agreed for: Unless when we bargain'd, I had expressly and formally made this a Condition of annulling such Agreement: For without such formal Stipulation, the Agreement stands good against me, altho' I might (in way of Discourse only) mention, that I would not have bought this Horse, had I not lost my other. See *L. N. N. lib. 3. c. 6. § 7.* See also *Grotius de Jure Belli & Pacis, lib. 3. cap. 23. § 4.*

valid, not for the sake of the Mistake, but because the Laws and Terms of the Agreement are not really fulfilled. For in Bargains of this nature, the Thing and all its Qualifications ought to be known, without which Knowledge a fair Agreement cannot be supposed to be made. So that he who is like to suffer Wrong by any Defect therein, either may throw up his Bargain, or force the other to make the Thing as it should be, or else to pay him the Value, if it happen'd through his Knavery or Negligence.

XIII. BUT if a Man be drawn into a Promise
Guileful or Bargain by the *Craft* and *fraudulent* Means
Contracts. of another ; then the Matter is thus to be con-
 L. N. N sidered. (1.) *If a third Man were guilty of the*
 l. 3. c. 6. *Cheat, and the Party with whom the Bargain*
 § 8. *is driven was not concerned in it, the Agreement*
will be valid : But we may demand of him who
 practis'd the Knavery, so much as we are Los-
 ers by being deceiv'd. (2.) *He who knavishly*
procures me to promise or contract with him, shall
not set me under any Obligation. (3.) *If a Man*
*will indeed come freely with a plain * Design to*
drive a Bargain, but in the very Action shall perceive
a Trick put upon him ; suppose in the Thing bar-
gain'd for, its Qualities or Value ; the Contract
shall be so far naught, as to leave it in the Pow-
er of him who is deceiv'd, either to relinquish his
Bargain, or to require Satisfaction for his Loss.
 (4.) *If unfair Dealing chance to be us'd in some*
things not essential to the Business, and which

* See Grotius de Jure Belli & Pacis, Lib. 2. cap. 17.

were not expressly under regard, this weakens not the Agreement, if, for the rest, it be regularly made; tho' perhaps one Party might have a Secret and sly Respect to some such thing, at the very time of driving the Bargain, and cunningly conceal'd such his View till the Contract were perfectly transacted.

WHENSOEVER *Fear* is to be consider'd in XIV.
 Promises or Bargains, it is two-fold, and *Contracts*
 may either be call'd a *probable Suspicion* lest *suspicious.*
 we should be deceiv'd by another, and this be- L. N. N.
 cause he is one who is very much addicted to 1. 3. c. 6.
 unjust Practices, or has sufficiently intimated to § 9.
 his fraudulent Design; or else a *panic Terror of the Mind*, arising from some grievous Mischief threaten'd, except we make such a Promise or Contract. Concerning the first Sort of *Fear*, (or *Mistrust* rather) these Things are to be observ'd. (1.) *He who trusts the Engagements of one who is notoriously negligent of his Word and Troth, acts very imprudently; but, for that Reason only can have no Remedy, but shall be obliged.* (2.) *When a Bargain is fully made and compleated, and a Man hath no new Reasons to apprehend any knavish Designs from the other Party, it shall not be sufficient to invalidate the Agreement that the other was, on other Occasions before this Agreement, known to have been trickish and deceitful.* For since our Knowledge of such his former Behaviour did not prevent our making the Agreement with him, it ought not to prevent our making it good to him. (3.) *Where after the Bargain made, it appears plainly that the other Person intends to elude his Part of the Contract, as soon as I have perform'd mine; here I cannot*

cannot be forced to comply first, till I am secure of a Performance on the other side.

XV. As for the other Sort of *Fear*, these Rules
Contracts thro' Fear. are to be observ'd. (1.) If a Man has taken an
 L. N. N. Obligation upon him, thro' Fear of Mischief
 l. 3. c. 7. threaten'd by a third Person, neither at the Insti-
 § 11. gation, nor with the Confederacy of the Party to
 whom the Engagement was made, he stands firmly bound to perform what he promis'd. For there appears no Fault in him to whom the Promise was made, which can render him incapable of acquiring a Right to the Performance of it; on the contrary, he may justly challenge a Requital, in that he lent his Assistance to the other, in warding off the Danger he apprehended from the third Person. (2.) All such Covenants that are made out of Fear or Reverence of our lawful Superiours, or by the Awe we have for those to whom we are very much beholden, shall be firm and good. (3.) Those Bargains which are wrongfully and forcibly extorted from a Man by the Person to whom the Promise or Agreement is made, are invalid, For the Violence he unjustly uses to set me under that Fear, renders him incapable of pretending to any Right against me on account of such Action of mine. And whereas in all other Cases, every Man is bound to Reparation of what Wrong he shall do to another: this * Restitution to which he is bound is understood as it were to take off any

* There was no need to have recourse to this Duty of Restitution, thereby to shew the Invalidity of such Contracts. For the want of Liberty in the Person promising, and the want of Capacity in the Person obtaining by force the Promise, of creating to himself thereby any Right to the Thing promised, are sufficient to shew the plain Nullity of the Agreement thus obtained.

Obligation

Obligation from such Promise, since if what was promised were paid, it ought to be immediately restored.

MOREOVER not only in Contracts, but in Promises the *Consent* ought to be *reciprocal*; that is, both the Promiser and he to whom the Promise is made must agree in the Thing. For if the latter shall not *consent*, or refuse to *accept* of what is offered, the thing promised remains still in the Power of the Promiser. For he that makes an *offer* of any thing, cannot be supposed to intend to *force* it upon one that is *unwilling* to receive it, nor yet to *quit* his own Title to it; therefore when the othe *denies* Acceptance, he who proffered it loses nothing of his Claim thereto. If the Promise was occasion'd by a *Request* before made, the same shall be accounted to oblige so long, as till such Request be expressly *revok'd*; for in that case the thing will be understood to be *accepted beforehand*; provided yet that what is offer'd be proportion'd to what was desired. For if it be not, then an *express Acceptance* is requisite; because it may often do me no good to answer my Request by halves.

As for the *Matter* of our Promises and Contracts, it is absolutely necessary, that what we promise, or make a Bargain for, be *in our Power* to make good, and that so to do be not prohibited by any Law; otherwise we engage our selves either *foolishly* or *wickedly*. Hence it follows that *no Man is obliged to do Things impossible*. But if it be a Thing which at the time of the Bargain making was possible, and yet afterwards by some Accident, without any Fault of the Contracter, became altogether impossible, the Contract shall be null, if there be no-

XVI.
Consent
mutual.
L. N. N.
l. 3. c. 6.
§ 15.

XVII.
Impossible
Engagements.
L. N. N.
l. 3. c. 7.

thing as yet done in it ; but if one Party have perform'd somewhat towards it, what he has advanced is to be restor'd to him, or an Equivalent given ; and if this cannot be done, by all means it is to be endeavour'd that he suffer no loss thereby. For in Contracts that is principally to be regarded which was *expressly* in the Bargain ; if this cannot be obtain'd, it must suffice to give an *Equivalent* ; but if neither can this be had, at least the *utmost Care* is to be taken that the Party undergo no Damage. But where any Man shall *designedly*, or by some very *blameable Miscarriage*, render himself incapable of making good his Part of the Bargain, he is not only obliged to use his utmost Endeavour, but ought also to be *punish'd*, as it were, to make up the amends.

XVIII. IT is also manifest, that we cannot set our selves under any Obligation to perform what is *unlawful*. For no Man can engage himself farther than he hath *lawful Authority* so to do. But that Legislator who prohibits any Action by a Law takes away all legal Power of undertaking it, and disables any Man from obliging himself to perform it. For it would imply a Contradiction, to suppose, that from a Duty enjoyn'd by the Laws should arise an Obligation to do that which the same Laws forbid to be done. So that he transgresses who promises to do what is unlawful, but he is doubly a Transgressor who performs it. Hence also it follows, that neither are those Promises to be kept, the Observation of which will be *mischievous* to him to whom they are made ; because it is forbidden by the *Law-Natural* to do hurt to any Man, even though he do foolishly desire it. And if a Contract

Unlawful
Engage-
ments.
L. N. N.
l. 3. c. 7.
§ 6, 7.

Contract be made to do some *filthy* and *base* Thing, neither shall be obliged to fulfil it. If such filthy Thing be done by one Party pursuant to the Bargain, the other shall not be bound to give the Reward agreed for; * but if any thing be already given on that account, it cannot be demanded again.

AND then, it is plain, that such Engagements and Bargains as we shall make of what belongs to other Men are altogether insignificant, so far as they are not ours, but subject to the Will and Direction of others. But if I promise thus; *I will use my Endeavour that such a Man* (always supposing him to be one not absolutely under my Command) *shall do so or no*: Then I am obliged by all methods morally possible, (that is, so far as the other can fairly request of me, and as will consist with Civility) to take pains to move that Person to perform what is desired. Nay we cannot promise to a third Man *Things* in our own possession, or *Actions* to be done by our selves, to which another has acquired a Right, unless it be so order'd, as not to be in force till the time of that other's Claim is *expir'd*. For he who by *antecedent* Pacts or Promises has already transferr'd his Right to another, has no more such Right left to pass over to a *third* Person: And all manner of *Engagements* and *Bargains* would be easily eluded, if a Man after having contracted with one, might be at liberty to enter a Treaty with another, wherein

XIX.
Engagements concerning other men,
L. N. N.
l. 3. c. 7.
§ 10.

* This determination seems not altogether just, because he who had parted with his Goods, had parted with them by an act invalid and of no effect. See L. N. N. l. 3. c. 7. § 9.

Disposals should be made contrary to the *first* Agreement, and with which it is impossible *this* should consist. Which gives foundation to that known Rule, *First in Time, prior in Right.*

XX.
Conditions
various
L. N. N.
1. 3. c. 8.
§ 1.

BESIDE all which it is to be chiefly observ'd concerning Promises, that they are wont to be made *positively* and *absolutely*; or *conditional-ly*, that is, when the Validity thereof lies upon some *Event* depending on Chance or the Will of Man.

Now *Conditions* are either *possible* or *impossible*; and the former are subdivided into *Casual* or fortuitous, which *we* cannot cause to be or not to be; or *Arbitrary*, or such as are in the Power of him to whom the Promise is made, that they are or are not comply'd with; or else *Mixt*, the fulfilling of which depends partly on the Will of the Person receiving the Promise, and partly on Chance.

Impossible Conditions are either such as are *naturally* or *morally* so, that is, some Matters by the Nature of Things *cannot* be done; others by the Direction of the Laws *ought not* to be done. Such Conditions then as these being annex'd, do, according to the plain and simple Construction of the Words, render the Promise *Negative*, and therefore null; tho' it is true it may be so provided by Law, that if to Affairs of great Concernment any such *impossible Conditions* should be annex'd the Agreement may remain good, rejecting these Conditions as if they had never been made; that so Men may not have busied themselves about that which otherwise can signify nothing.

XXI. LASTLY, we promise and contract, not *Mediatory* only in our *own Persons*, but oftentimes by the *Mediation*

Mediation of other Men, whom we constitute the *Bearers* and *Interpreters* of our Intentions; by whose Negotiations, if they deal faithfully by us in following the Instructions we gave, we are firmly obliged to those Persons who transacted with them as our Deputies.

AND thus we have done with the *Absolute* Duties of Man, by which, as it were, we naturally pass to the *Conditional* Duties of Men. And these do all presuppose some Human Institution, founded upon an *Universal Agreement*, and so introduced into the World, or else some peculiar State or Condition. And of this Sort of Institutions, there are three chiefly to be insisted on, to wit, *Speech* or *Discourse*, *Property* and the *Value* of Things, and the *Government* of Mankind. Of each of these, and of the Duties arising therefrom we shall next discourse.



C H A P. X.

The Duty of Men in Discourse.

I **H**OW useful and altogether necessary an Instrument of Human Society *Discourse* is, there is no Man can be ignorant; since many have made that only an Argument to prove Man to be by Nature design'd for a *Social Life*. Now that a *lawful* and *beneficial Use* may be made hereof for the Good of the same Human Society, the *Law of Nature* has given Men this for a Duty, *That no Man deceive another either by Discourse, or any other Signs which customarily are accepted to express our inward Meaning.*

II. **B**UT that the Nature of *Discourse* may be more thoroughly understood, it must first be known, that there is a two-fold Obligation respecting *Discourse*, whether express with the Voice, or written in *Characters*. The first is, that those who make use of the *same Language*, are obliged to apply such certain *Words* to such certain *Things*, according as Custom has made them to signify in each Language. For since neither any *Words* nor any particular *Strokes* form'd into *Letters* can naturally denote any certain *Thing* (otherwise all Languages and Characters for writing would be the same; and hence the Use of the Tongue would be to no purpose if every Man might call every *Thing* by what *Name* he pleas'd;) it is absolutely necessary among those who speak the same Language, that there be a *tacit Agreement* among them, that this certain *Thing* shall be so, or so call'd, and not otherwise. So that unless

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an *uniform Application* of *Words* be agreed upon, 'twill be impossible for one Man to gather the Meaning of another from his Talk. By virtue then of this *tacit Compact*, every Man is bound in his common Discourse to apply his Words to *that Sense*, which agrees with the *receiv'd Signification* thereof in that Language: From whence also it follows, that albeit a Man's *Sentiments* may differ from what he expresses in Words, yet in the Affairs of Human Life he must be look'd upon as *intending* what he *says*, tho', as was said, perhaps his inward Meaning be the clear contrary. For since we cannot be inform'd of another's *Mind* otherwise than by outward *Signs*, all Use of Discourse would be to no purpose, if by *mental Reservations*, which any Man may form as he lists, it might be in his power to elude what he had declar'd by Signs usually accepted to that end.

THE other Obligation which concerns *Discourse*, consists in this, that every Man ought by his *Words* so to express to another his *Meaning*, that he may be plainly understood. Not but that it is in a Man's power to be *silent*, as well as to *speak*; and whereas no Man is bound to tell every one all that he bears in his Mind; it is necessary that there be some *peculiar Obligation* that shall engage him first to speak, and then so to speak as that another shall fully understand his Meaning. Such Obligation may arise from a *particular Compact*, or some *common Precept of the Law Natural*, or from the *Nature of the present Affair*, in which Speech is made use of: For oftentimes a *Bargain* is made expressly with a Man, that he shall disclose to me all that he knows in some Matter;

III.
Discourse
to be plain.
 L. N. N.
 l. 4. c. 1.
 § 6.

Matter ; as suppose I desired to be instructed in any Science : Frequently also I may be *commanded* by some Precept of the *Law of Nature* to communicate my Skill to another, that by this Means I may be helpful to him, or that I may save him from Mischief, or that I may not give him some Cause or Occasion of receiving a Harm : And lastly, the *present Case* may require me to declare my Opinion in a Matter wherein another is concerned ; as it often happens in Contracts of the greatest Importance.

IV.
Silence.
L. N. N.
l. 4. c. 1.
§ 7.

BUT because it cannot *always* happen, that upon any of these Heads I am *obliged* to signify my Thoughts upon any Matter, it is plain that I am not bound to disclose in Words any more than another has a *Right* either *perfect* or *imperfect* to require. So that I may, by holding my Tongue, lawfully conceal what he has no just Claim to the Knowledge of, or to the Discovery whereof I lie under no Obligation, however earnestly it be desir'd.

V.
Counter-
feit Dis-
course.

NAY, since *Speech* was not only ordain'd for the Use of *others*, but *our own* Benefit also ; therefore whensoever my private Interest is concern'd, and it occasions Damage to no Body else, I may so order my Words, that they may communicate a Sense different from that which I bear in my Mind.

VI.
Figura-
tive
Speech.

LASTLY, because oftentimes those to whom we talk upon some Matters may be so disposed, that from a *downright* and *plain Discourse* they would perceive the true State of the Case, which ought rather to be *conceal'd*, because a full Knowledge would not procure the good End we drive at, but be a *Detriment* to 'em ;

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we may in such Cafes use a *figurative* or *shadow'd* way of *Speech*, which fhall not directly represent our Meaning and plain Senfe to the Hearers. For he who would and ought to benefit another, cannot be bound to attempt it after fuch a manner, as fhall incapacitate him from obtaining his End.

FROM what has been faid may be gather'd wherein that *Verity* confifts, for their Regard to which good Men are fo much celebrated; to wit, that our *Words* do fitly represent our *Meaning* to any other Perfon who *ought* to underftand 'em, and which it is our *Duty* to *exprefs plainly* to him, either by a perfect or imperfect Obligation; and this to the end either that he upon knowing our Minds may make to himfelf fome Benefit thereby, or that he may avoid fome undeferv'd Evil, which he would incur upon a wrong Underftanding of the Cafe. Hence by the Bye it is manifefit, that it is not always to be accounted *Lying*, when even for the nonce a Tale is told concerning any Thing in fuch a manner as does not exactly quadrate with the Thing it felf, nor with our own Opinion of it; and confequently, that the Congruity of *Words* with *Things*, which conftitutes the *Logical Verity*, is not in all Points the fame with *Moral Truth*.

ON the contrary that is rightly call'd a *Lye*, when our Words bear a different Signification from that which we think in our Minds, whereas the Perfon to whom we direct our Difcourfe has a *Right* to underftand the Thing as it *really* is, and we are under an *Obligation* of making our Meaning *plain* to him.

FROM

VII.
Verity.
L. N. N.
l. 4. c. 1.
§ 8.

VIII.
A Lye.

IX. FROM what is said it appears, * that those
Innocent are by no Means chargeable with *Lying*, who
Untruths. entertain *Children* or the like with *Fables* and
 L. N. N. fictitious Discourses for their better Information,
 l. 4. c. 1. they being suppos'd incapable of the naked
 § 11. Truth. As neither are those who make Use of
 a *feign'd Story* to some *good End*, which could
 not be attain'd by speaking the *plain Truth* ;
 suppose, to protect an *Innocent*, to appease an
 angry Man, to comfort one who is in *Sorrow*,
 to encourage the *Fearful*, to persuade a *nausea-*
ating Patient to take his *Physick*, to soften the
Obstinate, or to divert the evil *Intention* of
 another, and the like ; or, if the *Secrets* and
Resolutions of a *Community* are to be kept
 from publick Knowledge, we may raise false
Rumours in order to conceal 'em, and to mis-
 lead the importunate *Curiosity* of others ; or, if
 we have an *Enemy*, whom by open Force we
 cannot Annoy, we may, by way of *Stratagem*,
 make Use of any *lying Tales* to do him *Mis-*
chief.

X. ON the other side, if any Man be *bound* in
Equivoca- Duty to signify *plainly* his *true Meaning* to ano-
tion and ther, he is not without *Blame*, if he discover
mental only a *part* of the *Truth*, or amuse him with *am-*
Reserva- *biguous Discourse*, or use some *mental Reservation*
tion. not allow'd in the common *Conversation* of
 L. N. N. Men.
 l. 4. c. 1. § 14.

* See Grotius de Jure Belli, &c. lib. 3. cap. 1. § 9. seqq.

C H A P: XI.

The Duty of those which take an Oath.

ALL Men agree in the Opinion, That an *Oath* gives a great additional Confirmation to all our Assertions, and to those Actions which depend upon our Discourse. An *Oath* is, ** A Religious Asseveration, by which we disavow the Divine Clemency, or imprecate to our selves the Wrath of God if we speak not the Truth.* Now when an All-wise and an Almighty *Witness* and *Guaranty* is invok'd, it causes a strong Presumption of the Truth, because no Man can easily be thought so Wicked, as to dare rashly to call down upon himself the grievous Indignation of the Deity. Hence it is the Duty of those that take an Oath, *To take the same with awful Reverence, and religiously to observe what they have sworn.*

Now the *End* and *Use* of an Oath is chiefly this, *To oblige Men the more firmly to speak the Truth, or to make good their Promises and Contracts out of an Awe of the Divine Being, who is infinitely Wise and Powerful; whose Vengeance they imprecate to themselves when they Swear, if they wittingly are guilty of Deceit; whereas otherwise the Fear of what Men can do may not be sufficient; because pos-*

I.

An Oath.

L. N. N.

l. 4. c. 2.

II.

The End and Use.

* Compare herewith the whole 13th Chapter of the 2d Book of *Grotius de Jure, &c.*

sibly they may have Hope to oppose or escape their Power, or to beguile their Understandings.

III. SINCE GOD alone is of infinite Knowledge and of infinite Power, it is a manifest Absurdity to swear by any other Name but the Name of GOD only; that is, in such a Sense, as to invoke it for a Witness to our Speech, and for an Avenger of our Perjury: But if in the Form of Oaths any other Things, that we hold Dear, or have in Veneration or Esteem, be mention'd, it is not to be understood that such Things are invoc'd as Witnesses to our Truth or Avengers of our Falseness; but GOD only is herein invoc'd, with a Desire, that if we swear falsely, he would be pleas'd to punish our Crime, in these Things especially for which we are most nearly and tenderly concern'd.

IV. IN Oaths the *Form* which is prescrib'd, (by which the Person swearing invokes GOD as a Witness and an Avenger,) is to be *accommodated to the Religion of the said Swearer*; that is, to that Persuasion and Opinion of GOD which he is of. For 'tis to no Purpose to make a Man swear by a God, whom he does not believe, and consequently does not fear. But no Man supposes himself to take an Oath in any other Form, nor under any other Notion, than that which is consonant to the Precepts of his Religion, which, in his Opinion, is the true. Hence also it is, that he who swears by *false Gods*, which yet himself takes to be true ones, stands obliged, and if he falsifies is really guilty of Perjury; because whatever his peculiar Notions were, he certainly had some Sense of the Deity before his Eyes; and therefore by wilfully forswearing himself he violated, as far as he was

was able, that Awe and Reverence which he ow'd to Almighty GOD.

THAT an Oath may be *binding*, 'tis necessary it be taken with *deliberate Thoughts*, and a *real Design*: Whence he shall not be obliged by an Oath who merely *recites* it; or speaking in the *first Person*, dictates the concept Words thereof to another who is to say after him. But he who shall *seriously* behave himself as one that is about to *swear solemnly*, shall be obliged, whatsoever *mental Reservations* he all the while may harbour in his Mind. For otherwise all Oaths, nay, all Methods of mutual Obligation by the Intervention of the plainest Significations would be of no Use to human Life, if any Man by his *tacit Intention* could hinder such an Act from obtaining such an Effect as it was first instituted to produce.

WE ought likewise carefully to observe, that Oaths do not of themselves produce a new and peculiar Obligation, but are only apply'd as an *Accessional Strength*, and an additional Bond to an *Obligation*, in its nature valid before. For whenever we swear, we always suppose some Matter, upon non-performance of which we thus imprecate the Vengeance of Heaven. But now this would be to no purpose, unless the Omission of the Thing suppos'd had been before unlawful, and consequently, unless we had before been oblig'd. Tho' indeed it frequently happens, that we comprehend in one Speech, both the *principal Obligation* and the *additional Bond* of the Oath; as thus, *As God help me, I'll give you a hundred Pounds*. Where the Oath is not superfluous, albeit 'tis added to a Promise that might have been valid of it self.

V.

Deliberation necessary.

L. N. N.

l. 4. c. 2.

§ 5.

VI.

Oaths how obliging.

L. N. N.

l. 4. c. 2.

§ 6.

Because tho' every good Man believes a bare Promise to oblige, yet 'tis look'd upon to be the more firm when 'tis reinforced with an Imprecation of Vengeance from above upon a Failure. Hence it follows, that any Acts which were before attended with some inward *Flaw*, hindring any Obligation to arise from them, cannot be made obligatory by the Accession of an Oath; as neither can a *subsequent* Oath avoid a *former legitimate Engagement*, or annul that Right which *another* may claim thereby; thus a Man would swear in vain not to pay another Person what is justly due to him: Nor will an Oath be of any Validity, where it appears, that 'twas made by the Juror upon *Supposition* of a Thing to be done which was not *really so*; and that he would not have so sworn, had not he *believ'd* it to be done; especially if he were *cajol'd* into such his Error by the *Craft* of him to whom the Oath was made: * Neither shall he, who by setting me under *panick Fear* forces me to take an Oath, have any good Title to require my Performance. Farthermore, an Oath shall have no Obligation upon me to do any *unlawful Act*, or to *omit* the performing any *Duty* enjoyn'd by the Laws of God or Man. Lastly, an Oath cannot *alter* the Nature or Substance of the Contract or Promise to which it is annex'd: Hence it cannot oblige to *Impossibilities*. Again, a *Conditional* Promise, by the Addition of an Oath, is not changed into a *Positive* and *Absolute* Promise: In like manner, it is no less requisite to Promises confirm'd by Oaths, than to others

* *Grotius de Jure Belli & Pacis, Lib. 3. cap. 19. § 5.*
which

which are not so confirm'd, that they be accepted by the other Party: So that he who obtains a Right by any Covenant, may equally release the Performance of it, whether it was sworn to or not.

BUT the taking of an *Oath* has this Effect among Men, for the sake of that Invocation of God which is therein made use of, whose Wisdom no Man's Cunning can elude, and who suffers not the Man that mocks Him to escape unpunish'd; that not only a heavier Punishment is assign'd to him who forswears himself, than to him who barely breaks his Word; but it puts them in mind to avoid all Deceit and Prevarication in the Matters which it is added to confirm.

NOT yet that all *Oaths* are to be consider'd in their greatest Latitude, but that sometimes they must be interpreted in the narrowest Sense, if so it be, that the Subject-matter seem to require it: For instance; if the Oath be made to promote some malicious Design against another, to execute something *ibreatned*, and not to perform somewhat *promis'd*. Neither does an Oath exclude *tacit Conditions* and *Limitations*, provided they are such as plainly result from the Nature of the Thing; as suppose, I have sworn to give another whatsoever he shall request, if he ask what it is *wicked* or *absurd* for me to grant, I am not at all obliged. For he who indefinitely promises any Thing to him that desires, before he knows what he is like to ask, presupposes the other will crave nothing but what is *honest*, and morally *possible*, not Things absurd or mischievous to himself or any Body else.

VII.

Punish-
ment.

L. N. N.

l. 4. c. 2.

§ 12.

VIII.

Strict In-
terpreta-
tion.

L. N. N.

l. 4. c. 2.

§ 14.

IX. THIS is also to be noted, that in Oaths *Sense of an Oath.* the Sense of all the Words thereof is to be such as he shall acknowledge himself to take them in, who L. N. N. accepts the Oath, that is, to whom the other l. 4. c. 2. Party swears. For the Oath is to be look'd § 15. upon to be made for *his* sake, and not for the sake of the *Juror*. Whence it is *his* Part to dictate the *Form* of the Oath, and this to do in Words as *plain* as is possible, so that himself may signify in what *Sense* he conceives them; and the Person swearing may profess that he well understands his *Meaning*, and then those Words are *distinctly* to be express'd, that so no room may be left for Cavils or Shuffling.

X. OATHS may most fitly be *distinguish'd* according to the *Use* they are apply'd to in Human Life. * Some are annex'd to *Promises* and *Contracts*, thereby to procure a *strict and religious Observance* of the same; others are apply'd to the *Confirmation* of any Man's *Affertion* concerning a Matter of Fact not altogether evident, and where the Truth cannot by other Means be more conveniently search'd out; such are the Oaths administred to *Witnesses*, and those who are privy to another Man's doings; sometimes also two *Adversaries*, or *Litigants*, may, with the Consent of the Judge, or the Concession of one Party, by taking such or such an Oath put an end to their *Law-Suit*.

* These are call'd Obligatory or Promissory Oaths, (*Furamenta Promissoria*;) the other Assertory or Affirmative Oaths, (*Affertoria*.)

C H A P. XII.

Duties to be observ'd in acquiring Possession of Things.

WHEREAS such is the Condition of I. Man's Body, that it cannot be *supported* Other Creatures useful to Man. and *preserved* from that which would destroy its Fabric, without the Assistance of *Things* without him; and whereas by making Use of *other Creatures* his Life may be render'd much L. N. N. more *comfortable* and *easy*; we may safely ga- l. 4. c. 3. § 2. ther, that it is the Will of the supreme Moderator of the World, that he be allow'd to apply such other Creatures to his Service, and that he may even destroy many of them for his Occasions. * Neither doth this hold, as to *Vegetables* only, which have no Sense of the Loss of their Beings; but it reaches even the *innocent Animals*, which though they die with Pain, yet are kill'd and devour'd by Men for their Sustenance without Sin.

FARTHER, all these *outward Things* are II. understood to have been left in the Beginning by God *indifferent to the claim of all Men*; that is, so that none of them were the Property of this Man rather than that. Not but that Men were at liberty to *dispose* Things so, as should seem requisite to the Condition of Mankind, Possession introduced.

* See Grotius de Jure Belli & Pacis, lib. 2. cap. 2. § 2. seqq.

L. N. N.
l. 4. c. 4.
§ 5.

and the Conservation of Peace, Tranquillity and good Order in the World. Hence it was, that at first, while the Human Race was but of a small Number, * it was agreed, That *whatever any one did first seize should be his, and not be taken from him by another*; provided however, *that he only possesses himself out of the common Store of what is sufficient for his private Service, but not so as to destroy the whole Fund, and so prevent a Stock for future Uses.* But afterward, when Mankind was multiply'd, and they began to bestow Culture and Labour upon those Things which afforded them Food and Raiment; for the prevention of Quarrels; and for the sake of good Order, those Bodies or Things also, which produced such Necessaries, were divided among particular Men, and every one had his proper Share assign'd him, with this general Agreement, That *whatsoever in this first Division of Things, was yet left unpossess'd, should for the future be the Property of the first Occupant.* † And thus, God so willing, with the previous Consent, or at least by a tacit Compact of Man, *Property, or the Right to Things.* was introduced into the World.

* There was no need of any Convention, either express or tacit for this purpose. The Right of the first Occupant is necessarily concluded to be conformable to his Intention who bestows any Thing in common to many, provided, that in possessing one's self of that which no one has a particular Right to, we content our selves with a modest Proportion, not engrossing the Whole, but leaving what is sufficient for the Occasions and Use of others See L. N. N. l. 4. c. 4 § 4.

† See Grotius de Jure Belli & Pacis, lib. 2. cap. 3. § 1.

Now from *Property* flows a Right, where-
 by the Substance, as it were, of any Thing so
 belongs to One, that it cannot after the same
 manner *wholly* belong to Another. From whence
 it follows, that we may at our own Pleasure dis-
 pose of those Things which are our Property,
 and hinder all other People from the Use of
 them; unless by Agreement they have procur'd
 from us some special Right. Although in
 Communities it does not always happen that
 Properties are kept so unmix'd and absolute,
 but are sometimes circumscrib'd and limited
 by the Municipal Laws thereof, or by Orders
 and Agreements of Men among themselves. But
 when any certain Thing belongs jointly to
 more Persons than one after the same manner,
 then it is said to be *common* to those several
 Persons.

BUT as Things did not *all at once* become
 the Possessions of Men, but successively, and
 according as the State of Mankind seem'd to
 require; so it was not necessary neither that
every Thing in the World should be claim'd by
 one Man or other, but, the Peace of Mankind
 being preserv'd, *some Things may, and some*
Things ought to continue, as at the Beginning,
common to all. For there are Things which
 are, indeed, very advantagious to Man, but
 then since they are *inexhaustible*, so that every
 Man may have the Benefit of 'em, and yet no
 single Person can have the less Use of them,
 it would be foolish, and to no purpose, for any
 one to enclose or lay claim to 'em. Such are
 the Light of the Sun, the Air, the running
 Water, and the like: Among which also may
 be accounted the vast Ocean flowing between
 great

III.
Property
what.
 L. N. N.
 l. 4. c. 4.
 § 2.

IV.
All things
not pos-
essed.
 L. N. N.
 l. 4. c. 5.
 § 2.

great Continents, for so much of it as is very far distant from the Shore. Because 'tis not only more than sufficient for the promiscuous Use of all Men, but 'tis morally impossible for any single Nation to guard it. * For where a Thing is of that Nature, that other Men cannot by any Means be hinder'd from the Use of it, it is not only in vain to divide or lay claim to it, but it is apt to give Occasion for insignificant Quarrels.

V.
Property
twofold
L. N. N.
l. 4. c. 6.

THE Methods of acquiring Property are either *Original* or *Derivative*: The *Original Ways* of obtaining Property, are those by which the Property of Things was first introduced: The *Derivative Ways* are those, by which a Property already settled passeth from one Man to another. Again, the *Original Way* of acquiring Property is twofold; either, first, *simple and absolute*; as when we obtain *Dominion* and *Property* over the Body or Substance of the Thing: Or, secondly, *primitive and respective*; as when we add to a Thing already our own some farther Improvement and Increase.

VI.
Premier
Seisin.

AFTER it had been covenanted among Mankind that Things should be *appropriated* to this or that Man, it was also agreed, That what Things soever had *not fallen* within that *first Division*, should thereafter become the Property of the *first Occupant*, that is, of him, † who before any other, should actually seize it

* See *Grotius de Jure Belli & Pacis*, l. 2. c. 2. § 3.

† That whereon the first Occupant properly grounds his Right is, his giving open Notice, before any other, of his Design and Intention to preserve to his own Use this
or

it with a Design of possessing the same. So that even at this time the Original Method of acquiring Property in many Things is only *Premier Seisin*, or the first Occupancy. After this manner Titles are made to desolate Regions, which no Man ever claim'd, which become his who *first enters* upon 'em with an Intention of making them his own, provided he cultivate them and assign *Limits* how far he propounds to occupy. But when any Number of Men *jointly* possess themselves of any Tract of Land, 'tis customary to assign to each Member of the Company a *Share*, and to account what is left undivided to belong to the Society in *common*. * By this *first* Occupancy also are gain'd all the wild Beasts, Birds, and Fishes living in the Sea, Rivers, or Lakes thereunto appertaining; as well as what by the Sea shall be thrown upon the Shore; except *particular Laws* inhibit the promiscuous Seizure of the same, or assign them to some certain Claimant. These, if we would make our own, we must actually *seize* 'em, and take 'em into our *Possession*. By this Occupancy also we may rightfully acquire Possession of Things whereof the

L. N. N.
l. 4. c. 6.
§ 3, 4

or that Thing, which he has made himself the first Possessor of. If therefore he has given any such fair and significant Notice of such his Intention; or if any others, who might with him have a common Right to the Thing, shall freely and significantly set forth their Intention to depart from their Share, or Part of the Thing in favour of this Claimant: He then comes to have the Original Property in the Thing, even before he may have taken actual Possession of it. See *L. N. N. l. 4. c. 6.*

* See *Grotius de Jure Belli, &c. L. II. c. 8. § 2. seqq.*

Property

Property which any other Person could have is *extinct*. As for instance, in Things which are cast away with Intention of the Owner not to have 'em any more, or in Things which at first we lost unwillingly, but in Time relinquish'd and forewent. * To which may be added what the Lawyers call *Treasure trove*, or Money found, the Owner whereof is not known, which goes to the Finder, except by the special Laws of a Country it be otherwise provided.

VII. *Accessio-
nal Im-
prove-
ments.* MOREOVER, there are many Things capable of being possess'd which continue not always in the same State, but soon after several manners *increase* of themselves or inlarge their Substance; to others some *external Additions* are made; many bring forth *Fruit*, and not a few by Man's Labour and Workmanship admit of *Improvement*. All these are compris'd under the Head of *Accessional Advantages*, and may be divided into two Sorts; for *some* without the Help of a Man accrue from *Nature* alone; while *others* either wholly or in part are to be attributed to *Human Industry*. † Concerning both which this is to be the Rule, To him who is the Owner of the *Thing*, to the same belong the *Improvements* and *Accessional Advantages*; and he who has form'd any Matter of his own into such or such a *Fashion*, is Owner of that *Form* or *Fashion*.

VIII. *Services.* BUT Cases often happen, where, either by Contract, or some different Way, another Man

* See *Grotius de Jure Belli & Pacis*, lib. 2. c. 8. § 2. seq.
† See *Grotius de Jure Belli & Pacis*, Lib. 2. cap. 8.

may get a Right to receive a certain *Profit* out of Things that are *ours*, or to prohibit us the Using even of what is *our own* to every Purpose. These Rights are wont to be call'd *Services*, L. N. N. and they are of two Sorts, either *Personal*, l. 4. c. 8. where the Advantage from what belongs to another Man comes to the Person *immediately*; or *Real*, where such Benefit is receiv'd from that which is another's by the Means or *Mediation* of that which is ours; among which are accounted the Right of receiving Profits, of making use of what is another's, of living in such a Place, of commanding the Work of Servants. The *Real Services* are again subdivided into such as regard the *City* or the *Country*; the first Sort are the supporting my Neighbour's House or Wall which cannot but bear upon mine, affording the Benefits of Lights, not stopping them up, allowing Prospects, carrying off the Rain-Water, and the like: The *latter* are Liberty of Passage for Men or Cattle, Leave to derive or draw Water, or to water Cattle, or to graze 'em for a time, &c. All which Services have been introduced for the Preservation of good *Neighbourhood*.

AMONG the *derivative* Methods of acquiring Property, some are when by the Disposal of the Law Things are devolv'd from one upon another; others are when Possession is transferr'd by the *former Owner*; and this sometimes affecting the same in *whole*, and sometimes in *part*. IX. *Derivative Property.* L. N. N. l. 4. c. 9.

THE * Whole of an Estate by the Death of the former Owner generally passes by *Succession* X. *Inheritance to those who die intestate.*

* See *Grotius de Jure Belli, &c. l. 2. c. 7. § 3. seqq.*

L. N. N. to the *next Heir* of the Intestate. For it being
 l. 4. c. 11. repugnant to the common Inclinations of Men,
 and altogether disserviceable to the Peace of
 Mankind, that such Possessions should be ac-
 counted as *foregone* and *relinquish'd*, and as left
 to be a Prey to any who shall seize 'em, which
 such Owner had, while he liv'd, taken so much
 Care and Pains to get : Hence, by the Dic-
 tates of *Reason* it has obtain'd among all civi-
 liz'd Nations, that if any Man dies, not hav-
 ing *dispos'd* of what he had, the same shall *de-*
volve to those, whom, according to the *general*
Inclination of Mankind, he must be thought to
 have holden most dear to him. And these, re-
 gularly consider'd, are those who *descend* from
 us, as our *Children*, &c. after them those who
 are of the same *Consanguinity*, according as they
 are nearly ally'd. And tho' there may be ma-
 ny, who either for having receiv'd *Benefits*, or
 from some *particular Affection*, have a greater
 Respect for Persons not at all by *Blood* related
 to them, than for the nearest *Kin* ; yet for
 Peace sake it is necessary, without taking No-
 tice of the peculiar Case of some Few, rather
 to follow the *universal Propensity* of Man, and
 to observe that *Method* of Succession which is
 most plain, and least obnoxious to *Controver-*
sies ; which would be very apt to arise, if the
Benefactors and *Friends* of the deceased might
 be admitted to contest Succession with the next
 of *Kin*. So that if a Man has a mind to pre-
 fer those to whom he stands obliged by Kind-
 nesses, or such as he has on any other account a
 Love for, he is to make such Disposals openly
 and expressly.

WHENCE it follows, that the next *Heirs* to any Man are his *Children*, which are given by Nature to Parents to be carefully bred and educated, and for whom every Parent is supposed to wish a most plentiful Provision, and to design to leave whatsoever he shall die possess'd of. But by *Children* are chiefly understood such as are born in lawful Matrimony: For to these much Favour is due from *Reason* itself, from the *Honour* and *Decency* of the married Life, and from the *Laws* of all civiliz'd Countries, above the *Illegitimate*. All which Considerations obtain yet with these Exceptions, to wit, unless the Father has sufficient Reason not to *acknowledge* such a one for his Son, or *disinherit* him for some heinous Wick- edness. In the same Case with *Children* are also to be consider'd Progeny of *lower Degrees*, as Grand-children, whom the Grand-father is bound to bring up, and who have Right to share his Inheritance together with the Uncles on both sides; and this, because there can be no Reason, that the Misery of losing their deceased Parent should be aggravated by being excluded from their Proportion of Inheritance in the Estate of their Grand-father. Upon failure of *Heirs descendant*, 'tis reasonable the Goods of Children revolve to their *Parents*; and that to those who are Fatherless, Motherless, and Childless their *Brethren* should succeed; and upon Default of these, the *next of Kin* to the deceas'd ought to inherit. Tho' in order to prevent Contentions, to which on this score great Occasions are frequently given, and that this Matter may be settled for the publick Good, in most Communities the *Order of Succession*

XI.

*Children**Heirs.*

1. 4. c. 11.

§ 3.

cession is found to be accurately stated; and such Directions of the Government it is most safe for every private Man to follow in this case, unless very weighty Causes force him to the contrary.

XII. ANOTHER *derivative* Method of acquiring Property justifiable by Law, was by the * *Roman* call'd *Usucapio*, by the Modern's *Prescription*; by which he who by honest Means and a just Title hath gotten Possession of what was really another's, and hath also held it for a considerable time, without being disturb'd or oppos'd, obtains the full Property of the Thing thus possess'd, so as to extinguish all the *Right* and *legal Claim* of the former Owner.

THE Reasons on which this *Right of Prescription* is grounded, are, First, The former Proprietor having for so long time neglected claiming what was his, is judged voluntarily to have relinquish'd all Right and Title to it; it being reasonable to believe, that in a sufficient Space of time he could not want Opportunities, had he had Inclinations to put in his Claim: Secondly, The Preservation of the Peace of Society demands, that he who by *honest* Methods comes to the *Possession* of what he has, should not be perpetually liable to have taken from him, what became his Purchase by a *fair and honest Title*; especially it being much more grievous to the *present Possessor* to be turn'd out of a Possession honestly acquir'd, than to the *former Owner* not to be put into Possession of what he had long since lost the *Hopes* and *Ex-*

* See the whole 4th Chap. of the 2d Book of *Grotius de Jure Belli, &c.*

petitions of. The Rules of *Natural Equity* are sufficient to determine what time shall suffice to create *Prescription* in particular Cases: However, it is much better, for the Prevention of *Strife* and *Controversies*, that certain limited times, according to Reason and Convenience, should be stated and mark'd out by all Communities, whereby it may be determined what shall make a good *Prescription*.

THE Whole also of an Estate may, by an Act of the former Proprietor, upon his Death be pass'd away by his * *Last Will* and *Testament*; for this has been allow'd by most Nations, that for some kind of Ease to our Thoughts of Mortality, a Man yet alive may, if Death happen, transfer what he has of outward Goods to some Person that he loves best. Now whereas in the most ancient Times it seems to have been customary, that the dying Man upon the Approach of his End *openly declar'd* his Heirs, and with his own Hands *deliver'd* such or such Portions into the Hands of them who were to receive; yet afterwards, for good Reasons, another manner of *Bequeathing* was approved by many People; to wit, that a Man may at any time, when himself thinks good, make his own Will, and either declare it *openly*, or keep it *close* in Writing; which Will also he may at his Pleasure *alter*, and of which the Heirs he has named or written down cannot make any Use till the Testator be *dead*. Not but that such *Last Wills*, of how much Authority soever they are among Men, yet are to be order'd with Consideration

XIII.
Last Will.
L. N. N.
l. 4. c. 10.

* See *Grotius de Jure Belli, &c. lib. 2. cap. 6. § 14.*

of the Party's *various Relations* to Men, and of the Good of the *Community*; the Neglect whereof has given Occasion for the *Laws* oftentimes to provide and give Rules for making them; from which prescribed *Directions*, if any Man depart, he has no Reason to *complain*, that Regard was not had to his *Last Will*.

XIV.
Gift.

WHILE Men are yet living, Things are transferr'd by the Act of the first Proprietor, either *Gratis* or *Freely*; or else by the Mediation of some *Contract*. The former Way of Transferring is call'd *Gift*: And of the latter, which is *Contracting*, we shall speak hereafter.

XV.
Forcible
Possession.

SOMETIMES also Things change their Owner without the Consent, and even *against the Will* of the same Owner; and this is mostly in Communities, by way of *Fine*, when sometimes *all* the Estate of a Convict, sometimes such a *Portion* only shall be forfeited, and the same shall be given either to a private Person who has suffer'd Wrong, or applied to the Uses of the Publick. So in *War* Goods are *forcibly* taken from the Possessor, who parts with them very *unwillingly*, by an Enemy who is too strong for him, and become the true *Property* of the Seizer; not but that the first Owner has still a Right with a greater Force, whenever he can, to recover them, so long as till by subsequent Treaties of Peace he does in effect renounce his Pretences thereto.

L. N. N.
1. 4. c. 6.
§ 14.
1. 2. c. 16.
§ 13.

C H A P. XIII.

The Duties which naturally result from
Man's Property in Things.

PROPERT Y in Things being establish-
ed among Men, these Duties naturally arise. I.
* *EVERY Man is obliged to suffer another, who is not a declared Enemy, quietly to enjoy whatsoever Things are his; and neither by Fraud or Violence to spoil, imbezzel, or convert them to his own Use.* Whence it appears, That Theft, Rape, removing of Boundaries, and the like Crimes, which tend to the Invading and In-
croaching upon other Mens Properties, are forbidden. We must conscientiously abstain from invading our Neighbours Property. L. N. N. l. 4. c. 13.

WHEN any Thing, that belongs to another, falls into our Hands, although it be fairly on our Part, that is, without Trick or Fraud of ours; yet if it belongs to another Person, and we have Possession of it, we are obliged to take care, as far as in us lies, to return it to its right Owner. II. Restitution to be made if we possess what belongs to another. L. N. N. l. 4. c. 13. § 2.
By this is not to be understood, That when we have procur'd any Thing to our selves by fair and honest Means, and enjoy it by a rightful Title, we are to make groundless Doubts and Scruples about the Validity of our Right, and make Proclamation, as it were, That we are in Possession of such a Thing; that, if possibly it should belong to another Person, the Proprie-

* See Grotius de Jure Belli & Pacis, Book II. Ch. 10.

tor might come and demand it. It is enough that, if we come to the Knowledge that what we possess is another Person's, we then give notice to the Proprietor, that it is in our Possession, and that we are ready to deliver it up to the right Owner. And in this Case, we are not bound to restore it, unless we are repay'd the necessary Charges we have been at in procuring, or preserving it; which we may justly demand to be reimburs'd, or stop the Thing 'till Satisfaction be made. And the Duty of *Restitution* of which we are speaking, is so indispensably necessary, that it sets aside all private Engagements or Contracts to the contrary, and takes away all Right that may seem to arise from any such private Obligations: As for Instance, Should a *Thief* trust and deposit with me, upon my Promise of Redelivery, somewhat that he has stolen, I being altogether ignorant of the Matter; if after this, the *Right Owner* appears, the same is to be restor'd to *him*, and not to the *Thief*.

III. *Restitutions Part consum'd.*
L. N. N.
l. 4. c. 13.
§ 6.

BUT if any Thing belonging to another, which yet we came by fairly and honestly, be wasted and consum'd, 'tis our Duty to restore only so much to the Owner as we have made Profit or Advantage to our selves from it. All that lies upon us to do herein, being to refund so much as we have gain'd thereby, that so we may not be the richer by another Man's undeserved Loss.

IV. *Conclusions.*
First.
L. N. N.
l. 4. c. 13.
§ 7.

FROM these Premises, we may deduce the following Conclusions: 1. *A Presumptive Owner*, (or one who without any Covin on his Part, becomes the Possessor of what belongs to another Man) is not obliged to make any *Restitution*, if the Thing perishes; because neither the Thing it self

is in his Power, neither has he receiv'd any Gain or Advantage thereby.

2. SUCH a Presumptive Owner is oblig'd to make Restitution, not only of the Thing it self, but also of the Fruits and Profits, which are in being at the Time. For to whomsoever the Thing really belongs, to the same likewise the Profits and Advantages thence arising do accrew. Nevertheless, it is lawful for the Possessor to deduct what Charges he has been at upon the Thing, or upon its Culture and Improvement, by means whereof it has produced those Fruits and Profits.

V.
Second.
L. N. N.
l. 4. c. 13.
§ 8.

3. A Presumptive Owner is oblig'd to make Restitution of the Thing, and of the Fruits and Profits of it that are consumed, if otherwise he would have consum'd as much of his own, and can recover the Value thereof from him of whom he received Possession. For otherwise he would enrich himself, whilst by spending what belongs to another, he spares his own.

VI.
Third.
L. N. N.
l. 4 c. 13.
§ 9.

4. A Presumptive Owner is not oblig'd to make good the Fruits and Profits which he might have made of the Thing in his Possession, but neglected so to do: Because he has not the Thing it self, nor any Thing in Lieu thereof, and he must be consider'd, to have done by it, as he would have done by that which was truly his own.

VII.
Fourth.
L. N. N.
l. 4. c 13.
§ 10.

5. IF a Presumptive Owner makes a Present or Donation of any Thing belonging to another, which was given to himself, he is not bound to restore it; unless he had been oblig'd in Duty to have given the like Value. For in such a Case, he would be a Gainer, by saving what he must have given of his own.

VIII.
Fifth.
L. N. N.
l. 4. c. 13.
§ 11.

IX. Sixth. L. N. N. l. 4. c. 13. § 12. 6. IF a Presumptive Owner makes over what he hath purchased of another Man, upon a valuable Consideration, he is not bound to make Restitution; unless so far as he has made any Advantage by it.

X. Seventh. L. N. N. l. 4. c. 13. § 13. 7. A Presumptive Owner is obliged to restore that which belongs to another, tho' he bought it up on a valuable Consideration; nor can he demand of the true Owner the Price he paid for it, but only of him from whom he had it; unless so far as the Charges which the Owner must necessarily have been at, in regaining the Possession of his Right; or that otherwise he did freely promise some Reward for the Recovery.

XI. Things found. L. N. N. l. 4. c. 13. § 15. WHO SO EVER happens to find any Thing belonging to another, which, 'tis probable, the right Owner lost against his Will, he cannot take it up with an Intention to detain it from him when he requires it. But if the Owner appear not, he may fairly keep it himself.



C H A P. XIV.

Of the Price and Value of Things.

AFTER *Property* was introduced into the World, all Things not being of the same *Nature*, nor affording the same *Help* to Human Necessities; and every Man not being sufficiently provided with such Things as were necessary for his Use and Service, it was early brought into Practice among Men to make *mutual Exchanges* of one Thing for another. But because it very often happened, that Things of a *different Nature* and *Use* were to be transferred; lest either Party should be a Loser by such *Exchanging*, it was necessary, by a common Agreement or Consent among themselves, to assign to Things a certain *Quantity* or *Standard*, by which those *Things* might be compar'd and reduced to a Balance between each other. The same also obtained as to *Actions*, which it was not thought good should be done *gratis* by one Man for another. And this *Quantity* or *Standard* is that which we call *Price* or *Value*.

THIS *Price* is divided into *Common* and *Eminent*; The *First* is in *Things* or *Actions* which come within the compass of *ordinary Commerce*, according as they afford either *Usefulness* or *Delight* to Mankind. But the other is in *Money*, as it virtually contains the *Value* of all Things and Works, and is understood to give them their common Estimate.

III. THE natural Ground of the *Common Value*,
 Common Value * is that † *Fitness* which any Thing or Action
 L. N. N. has for supplying, either mediately or immedi-
 1. s. c. 1. ately, the *Necessities* of Human Life, and ren-
 § 4. dring the same more *easie* or more *comfortable*.
 Hence it is we call those Things which are not of
 any *Use* to us, *Things of no Value*. There are
 nevertheless some *Things most useful* to Human
 Life, which are not understood to fall under any
determinate Price or *Value*; either because they
 are or ought to be exempted from Dominion and
 Property, or because they are not capable of be-
 ing exchanged, and therefore cannot be traded
 for; or else, because in Commerce they are
 not otherwise regarded than as Appendages to
 be supposed of course to belong to another Thing.
 Besides also, when the Law of God or Man pla-
 ces some Actions above the Reach of Commerce,
 or forbids that they should be done for a Re-
 ward, it is to be understood that the same
 Laws have set them without the Bounds of Price
 or Valuation. Thus the Upper Regions of the
Air, the *Sky*, and the *Heavenly Bodies*, and e-

* See *Grotius de Jure Belli & Pacis*, l. 2. c. 12. § 14.

† Our Author here gives an imperfect Account of the proper and intrinsic Value of Things. For Things capable of Valuation or Price, ought not only to be of some Use and Service to human Life, if not really, yet at least in the Opinion and Fancy of those who desire them; but also they ought to be of such a Nature, as not to be sufficient for the Occasions and Demands of every one. The more any Thing is useful or scarce, in this Sense, the greater is its intrinsic Price or Value. Nothing can be more useful to human Life than Water, yet it never bears any Price or Value, unless in such Places, or under such Circumstances, as make it not sufficient for every one's Use, or difficult to be come at.

ven the vast *Ocean* are exempt from Human Property, so that no Rate or Value can be put upon them. So there is no Rate or Price to be set upon a *Freeman*, because Freemen come not within the Compass of Commerce. Thus the Lying open to the Sun, a clear and wholesome Air, a pleasant Prospect to the Eye, the Winds, Shades, and the like, consider'd separately in themselves, bear no Price, because they cannot be enjoy'd and purchas'd separately from the Lands they belong to; but yet of what Moment they are in raising the Value of Lands and Tenements to be purchas'd, no Man is ignorant. So likewise 'tis unlawful to set any Rate or Price on *Sacred Actions*, to which any moral Effect is assign'd by *Divine Institution*; which Crime is call'd *Simony*. And it is great Wickedness in a *Judge* to expose *Justice* to Sale.

Now there are various Reasons, why the Price of one and the same Thing should be *increas'd* or *diminish'd*, and why one Thing should be preferr'd before another, though it may seem to be of *equal* or *greater Use* to Human Life. For here the *Necessity* of the Thing, or its extraordinary *Usefulness*, is not always regard-
 ed; but, on the contrary, we see those Things are of the least Account or Value, without which Human Life is least able to subsist; and therefore, not without the singular Providence of Almighty God, *Nature* has been very *bountiful* in providing *plentiful* Store of those Things. But the *Rarity* or *Scarceness* of Things conduces chiefly to the *inhanfing* their Value; which is the more look'd upon, when they are brought from remote Countries. And hence the wanton *Luxury* of Mankind has set *extravagant Rates* upon

IV.

Inhanfing
 or *Deba-*
sing a
Price.

L. N. N.

l. 5. c. 1.

§ 6.

upon many Things which Human Life might very well be without ; for Instance, upon *Pearls* and *Jewels*. But the Prices of Things, which are of *daily Use*, are then chiefly rais'd when the *Scarcity* is join'd with the *Necessity* or *Want* of them. The Prices of *Artificial Things*, besides their *Scarceness*, are for the most Part inhan's'd by the ingenious *Contrivance* and *Curiosity* of *Art*, that is seen in them, and sometimes by the *Fame* and *Renown* of the *Artificer*, the *Difficulty* of the *Work*, the *Want* of *Artists* in that *Way*, and the like. The Prices of *Works* and *Actions* are rais'd by their *Difficulty*, *Neatness*, *Usefulness*, *Necessity*, by the *Scarcity*, *Dignity*, and *Ingenuity* of the *Authors* of them ; and lastly, by the *Esteem* and *Reputation* which that *Art* has gotten in the *World*. The *Contrary* to these are wont to *diminish* the *Price* of *Things*. Sometimes again, there may be some certain *Thing*, which is not *generally* much esteem'd, but only by some *particular Persons*, out of a peculiar *Inclination* ; for *Example*, because he, from whom we had it, is mightily *belov'd* by us, and that it was given as a *Token* of his particular *Affection* to us ; or because we have been *accustom'd* thereto, or because it is a *Remembrancer* of some remarkable *Accident*, or because by the *Help* thereof, we have escap'd any extraordinary *Danger*, or because the *Thing* was made by *Our selves*. And this is called *The Estimate of singular Affection*.

V. B U T there are other Circumstances likewise to be consider'd in *stating* the *Rates* and *Prices* of *particular Things*. And among those indeed, *Legal*.
 L. N. N. who live in a *Natural Independance* on any other,
 l. 5. c. 1. the *Prices* of *particular Things* are determin'd no
 § 8. otherwise

otherwise, than by the *Will* of the *Persons contracting*; since they are intirely at their own Liberty to make over or to purchase what they please, nor can they be controlled in their Dealings by any superior Authority. But in States and Governments the *Prices of Things* are determin'd two severel Ways: The *First* is by an *Order* from the *Magistrate*, or some *particular Law*; the *Second* is by the common *Estimate* and *Judgment* of Men, or according as the *Market* goes, together with the *Consent* and *Agreement* of those who contract among themselves. The former of these by some is call'd the *Legal*, the other the *Vulgar Price*. Where the *Legal Rate* is fix'd for the sake of the *Buyers*, as it is for the most part, there it is not lawful for the *Sellers* to exact *more*; though they are not forbidden, if they will, to take *less*. So where the Rate of any *Labour* or *Work* is tax'd by the Publick Magistrate for the sake of those who have Occasion to hire, it is not lawful for the Workman to demand *more*, though he be not prohibited to take *less*.

BUT the *Vulgar Price*, which is not fix'd by the Laws, admits of a certain *Latitude*, within the Compass whereof more or less may be, and often is, either taken or given, according to the *Agreement* of the *Persons dealing*; which yet for the most part, goes according to the Custom of the *Market*. Where commonly there is Regard had to the Trouble and Charges which the *Tradesmen* generally are at, in the bringing home and managing their Commodities, and also after what manner they are bought or sold, whether by Wholesale or Retail. Sometimes also on a sudden the Common Price

VI.
Vulgar
Price.
L. N. N.
l. 5. c. 1.
§ 9.

is

is alter'd by reason of the *Plenty* or *Scarcity* of *Buyers*, *Money*, or the *Commodity*. For the *Scarcity* of *Buyers* and of *Money*, (which on any particular Account may happen) and the *Plenty* of the *Commodity*, may be a Means of *diminishing* the *Price* thereof. On the other hand, the *Plenty* of *Buyers* and of *Money*, and the *Scarcity* of the *Commodity*, *inbanfes* the same. Thus as the *Value* of a *Commodity* is lessen'd, if it *wants* a *Buyer*, so the *Price* is augmented when the *Possessor* is solicted to sell what otherwise he would not have parted with. Lastly, it is likewise to be regarded, whether the *Person* offers *ready Money*, or desires *Time* for *Payment*; for *Allowance* of *Time* is Part of the *Price*.

VII. (BUT after Mankind degenerated from their
Price eminent. (primitive Simplicity, and introduced into the
 L. N. N. World several kinds of Gaining, it was easily
 l. 5. c. 1. discern'd, that that *Common* and *Vulgar* *Price*
 § 12. was not sufficient for the dispatching the Bu-
 siness of Men, and for the carrying on of
 Commerce, which then daily increas'd. For
 at first all Kind of Trading consisted only in
Exchanging and *Bartering*, and the Labours
 of others could no otherwise be valued than by
 Work for Work, or some Thing given in
 Hand for Recompence. But after Men began
 to desire so many several Things for *Conveni-
 ence* or *Pleasure*, it was not easie for every
 one to become Master of That which another
 would be willing to take in Exchange, or
 which might be of equal Value to the Things
 he wanted from him. And in civiliz'd States
 or Societies, where the Inhabitants are distin-
 guish'd into *several Stations*, there is an abso-
 lute

lute Necessity there should be different Degrees and Sorts of Men, which, if that simple and plain Way of *bartering* of *Things* and *Works* had been still in Use, could not, or at least, not without great Difficulty, support themselves. Hence most Nations, which were pleased with a more sumptuous Way of Living, thought fit, by Publick Consent, to set an *Eminent Price* or *Value* upon some Certain Thing, whereby the *Common* and *Vulgar* Prices of other Things should be measured, and wherein the same should be virtually contain'd. So that by Means of this *Thing*, any one may purchase to himself whatsoever is to be sold, and easily manage and carry on any Kind of Traffick and Bargain.

FOR this purpose, most Nations chose to make use of the nobler Kind of *Metals*, and such as were not very Common; because these being of a very compacted Substance, they cannot easily be worn out, and admit of being divided into many minute Parts; nor are they less proper to be kept and handled; and for the *Rarity* of 'em are equivalent to many other Things. Altho' sometimes for Necessity, and by some Nations for Want of *Metals*, other *Things* have been made Use of instead of *Money*.

MOREOVER, in Communities, it is only in the Power of the Chief Magistrates to assign the *Value* of *Money*; and thence *Publicks Stamps* are wont to be put upon them. Nevertheless, in the assigning thereof, respect is to be had to the Common Estimate of the *Neighbouring Nations*, or of those with whom we have any *Traffick* or *Commerce*. For otherwise,

VIII.
Gold, Silver &c.
L. N. N.
l. 5. c. 1.
§ 13.

IX.
Coin.
L. N. N.
l. 5. c. 1.
§ 14.

wife, if the State should set *too high a Value* on their Money, or if they should not give it a *just and true Allay*, all Commerce with Foreign Nations, which could not be carried on by *Exchange* or *Barter* alone, would beat a Stand. And for this very Reason, the Value of Money is not rashly to be *alter'd*, unless a very great Necessity of State require it. Tho' as Gold and Silver grow more plentiful, the *Value of Money*, in Comparison to the Price of Land, and Things thereon depending, is wont, as it were insensibly and of its self, to grow lower.

C H A P. XV.

Of those Contracts in which the Value of Things is pre-supposed; and of the Duties thence arising.

I. *Pacts and Contracts.* **A** *PACT* or *Agreement* in general, is the Consent and Concurrence of Two or more in the same *Resolution*. But because oftentimes simple *Agreements* are contra-distinguish'd to *Contracts*, the Difference seems chiefly to consist herein, That by *Contracts* are understood such Bargains as are made concerning *Things* and *Actions*, which come within the compass of *Commerce*, and therefore suppose a *Property* and *Price* of Things. But such Covenants as are concluded upon, about other Matters, are called by the common Term of *Pacts* or *Agreements*.

L. N. N.
l. 5. c. 2.
§ 1.

* Although

* Although even to some of these is promiscuously given the Name of *Pacts* and *Contracts*.

CONTRACTS may be divided into *Gratuitous* and *Chargeable*. The former Sort affords *gratis* some Advantage to one of the Parties contracting: the latter subjects each of the Parties contracting to some Charge, or lays upon them some Condition or Obligation equally burdensome to them both; in which Case, nothing is done or delivered by either Party, but with a Prospect of receiving an Equivalent.

II.
General Division of Contracts.
L. N. N.
l. 5. c. 2.
§ 8.

OF *Gratuitous* Contracts, there are three Sorts; a *Commission*, a *Loan*, and a *Charge*.

III.
L. N. N.
l. 5. c. 4.
§ 1.

A *Commission* is, *When any one takes upon himself gratis, and in mere good Will, to transact the Business of his Friend, who requests this Trouble of him on the Account of Friendship only.* And this may be done two Ways; first, When the Method of transacting the Business is *prescribed* to the Person who is so kind as to undertake it; and, secondly, When it is wholly left to his *Judgment* and *Discretion*.

BUT as no one would commit the Management of his Affairs to any one but a Friend, and one of whose *Honesty* and *Integrity* he has a good Opinion; so he who undertakes this Trust, ought to be careful not to abuse this Confidence reposed in him; but to execute it with the greatest Care, and with the utmost Fidelity. But then, on the other hand, he who has given him this *Commission*, ought to prevent its being any Loss to him that executes it, by repaying him any Expences he is at in the Execution

* *Grotius de Jure Belli & Pacis, lib. 2. cap. 12.*
of

of it, and likewise by satisfying him for any Loss he may suffer in his own Affairs, while he spends his Pains and Time thus in Friendship to him.

IV. *WHEN we give to another the free Use of what*
Of Loans. is ours, without any Consideration for the Use of it,
 L. N. N. this is called a *Loan*; and the Rules to be ob-
 l. 5. c. 4. served in this Case, are:
 § 6.

1. WE must take all possible Care most diligently to look after and preserve intirely the Thing lent us.

2. WE must put it to no other Uses, nor detain it any longer Time, than the Proprietor is willing.

3. WE must restore it to the Owner intire, and in the same Condition we received it; or at least with no other Detriment than what it must of Necessity receive by the common and ordinary Use of it.

4. IF after a Thing is lent us for a certain Time, something, not foreseen at the Time it was lent, should fall out, so that the Proprietor wants it before the Time he had lent it us for, we are to restore it without Delay, as soon as ever it is required of us.

5. IF the Thing lent us, comes to any Damage, or is destroyed by any unforeseen and unavoidable Accident, and not by any Fault of ours, we are not obliged to make it good, if it be reasonable to think, it would have been in the same manner damaged or destroyed, had it been in the Proprietor's Custody, as it was in ours. But if it lay in our Power to have prevented such Damage or Loss, then we ought to make Restitution to the Proprietor to the full Value,

Value, * since it is very unreasonable in us to make any one lose what is his, only for being so kind to us, as for our sakes, to deprive himself of the Use of it.

HE that lends any Thing to another, lies under no other Obligation to the Person he lends it to, but this only ; If the Borrower has been at any necessary Charge, more than what the ordinary Use of the Thing requires, in preserving it, then this extraordinary Expence ought to be made good to him by the Proprietor.

THE Third and Last Sort of gratuitous Contracts, is a Charge, Trust, or Deposit: Which is, *When we commit any Thing of our own, or which we have any manner of Title to, or Interest in, to the Trust and Care of another Person, to keep the same Gratis :* And what the Person's Duty is, to whom the Deposit is made, will easily be understood.

I. THE Thing thus trusted in his Hands, must be carefully looked after, nor must any Use be made of it, without the Knowledge and Consent of the Proprietor, if it can in any ways receive Damage by such using it ; as also if it be any Profit or Benefit to the Proprietor to have it kept concealed from any one's Sight : And if the Person intrusted shall take the Liberty of using it, he ought to make good any Damage or Disadvantage that shall accrue from the Use of it to the Owner. Likewise, it is not just to

* There is, in Cases of this Nature, always a tacit Agreement, by Virtue of which, he that borrows any Thing, engages to restore the Thing lent, either in Kind, or to make Amends by something of equal Value. See L. N. N. l. 5. c. 4. § 6.

untye, unseal, or otherwise open any Thing we are intrusted withal, that is sealed or ty'd up, or to take it out of any Box, Chest, or other Thing in which the Owner had inclosed and secured it, when he put it into our Hands.

2. WE ought immediately to restore any Thing deposited with us, as soon as ever the Proprietor claims it; at least, unless the Redelivery of it, at such Time it is so claimed, should be a real Prejudice to the Claimant, or to some other Person. But to deny that we have it, when the Owner comes to reclaim what he trusted us with, is a most infamous Piece of Wickedness, and even more base than Theft it self: And it is yet a more detestable Crime, to withhold or disown a *miserable Deposit*; that is, what is put into our Hands in the Time of any Misfortune, during the Danger of Fire, or in the Midst of Tumults and Confusions, or the like Calamities.

HE who makes the Deposit on his Part, ought to re-imburse, to the Person with whom it is made, all the Charges that he has necessarily laid out upon the Thing deposited, while it continued in his Hands.

VI. *Equality in all chargeable Contracts*
 L. N. N.
 l. s. c. 3.
 § 1.

IN all *Contracts that are purely chargeable*, and have nothing gainful in them, where the Law or the Market hath fix'd the Prices of Things, a *just Equality* is to be observed, that is, one Party ought to receive as much Benefit as the other; and if it happens, that one receives less than the other, he has a Right to demand the Rest, which if denied him by the other Party, he is at Liberty to set aside the Contract.

NOw to find out and adjust this *Equality*, it is necessary that the Parties contracting be each of them

them alike thoroughly acquainted with the Commodity about which they are treating, and with the several Qualities of it; and therefore whoever is going, by way of Contract, to make over the Property of a Thing to another, is indispensably obliged to expose not only the good Qualities of it, but also, to the best of his Knowledge, the Faults and Defects of it; since otherwise no just Price or real Value of the Thing can be assign'd. But this is not to be extended to minute and circumstantial Matters, which affect not the Substance of the Thing; nor need the Faults already known to the Buyer, be mention'd to him; for if, knowing the Faults, he purchases the Thing, such Defects do not annul the Contract, which shall stand good, and the Buyer must be contented with the Inconvenience he has consented hereby to bring on himself.

THE Equality we have been mentioning, is so absolutely necessary in all *chargeable Contracts*, that although in making such a Contract, all the Faults of the Thing contracted for, have been fairly expos'd, and nothing demanded more than was really believed to be the just Value of the Thing; yet if afterwards there appears to have been an Inequality, without any Fault of the Contractors, (as suppose some Defect or Blemish lay undiscover'd, or there was some Mistake in the Price) it ought to be corrected, and he that has too much, must make Amends to the Sufferer. In *notorious Abuses* of this Kind, the Laws of every Country have made Provision for Reparation; but in lesser Breaches of this Duty, they are silent, for the avoiding a Multitude of unnecessary Suits, supposing here'n, that every

VII.
If an Inequality is discover'd after the Bargain is made, it must be redress'd.
 L. N. N.
 l. 5. c. 3.
 § 9.

Body will take Care, in his own Concerns, not to be impos'd upon.

VIII.
Barter-
ing
L. N. N.
l. 5. c. 5.
§ 1.

N O W among *chargeable Contracts*, or Cove-
nants which imply somewhat to be done or given
on both Parts, the most ancient, and that
whereby Trading and Commerce was carried
on before the Invention of Money, was *Permu-
tation* or *Bartering*, whereby, on each Side,
something was given for some other Thing equi-
valent thereto. Altho' at this Day, since the In-
vention of Money, that Sort of *Exchange* is
chiefly practis'd among Merchants, whereby
Things are not simply compar'd between them-
selves, but they are first reduced to Money, and
afterwards deliver'd as so much Money. But
reciprocal Donation is a different Sort of a Thing
from the Contract of Barter; for in this there is
no Necessity that an *Equality* should be observ'd.

IX.
Buying
and Sell-
ing.
L. N. N.
l. 5. c. 5.
§ 2.

B U Y I N G and *Selling*, is, When for Money
the Property of any Thing is acquired, or else
such a Right as is equivalent thereto; of which
Kind this is the most plain and obvious; When
the Buyer, after the Value is agreed upon, im-
mediately pays down the Price, and the Seller
thereupon delivers the Commodity. Yet often-
times the Agreement is made so, that the
Commodity shall be immediately delivered, and
the Price thereof paid at a certain Time. And
sometimes the Price is agreed upon, but the
Delivery of the Thing or Commodity is to be
within a certain Time limited. In which Case,
it seems but Equity, that before the Time be
elaps'd, the Seller should stand to the Hazard
of it; but if, after the Time is elaps'd, the Buy-
er makes Delay, and neglects the taking it away,
then, if the Commodity perishes, the Buyer
shall

shall stand wholly to the Loss thereof. Now to this of Buying and Selling, are wont to be added several other Kinds of Bargains: As that which is term'd *Additio in diem*, whereby any Thing is sold with this Proviso, That it may be lawful for the Seller to accept of better Terms, offered by another within a certain Time. So also the *Lex Commissoria*, which is such a Condition in any Contract, as not being perform'd within a Time limited, the Bargain becomes void. So likewise any Kind of Recalling, or Privilege of Recanting a Bargain, which is to be either so understood, That if the Price be laid down within a certain Time limited, or at any Time whatever is offer'd, the Buyer shall be obliged to restore it again to the Seller; or else so, as if the Thing be offer'd again, the Seller is bound to return back again the Price thereof; or so as if the Buyer be willing to sell the same again, the first Seller should have the Refusal of it, before any other, which is likewise call'd *Jus Protimeseos*, or the Right of Pre-emption. It is also customary that the Seller should reserve to himself a certain Portion of the Lands which he sells, or some Use or Acknowledgement for the same.

THERE is another Way of Buying, which they call *Per Aversionem*, when several Things of different Prices are not valued singly, but at Hap-hazard, and, as it were, in the Lump.

IN that Way of Sale, which is call'd an *Auction*, the Thing is adjudged to that Person who, among several Bidders, offers most,

LASTLY, There is another Way of Buying, whereby not any certain Thing is bought, but only the probable Hopes and Expectation

thereof which implies something of *Chance*; so as neither the Buyer, if his Expectation fails him, nor the Seller, though it much exceed, hath any Reason to complain.

X. *Hiring and Letting.* HIRING and *Letting*, is, *When the Use of a Thing, or any Labour is granted to another, upon a certain Consideration.*

L. N. N. 1. THE usual Method is to agree beforehand, how much shall be received for doing the Thing propos'd; yet if any one makes no actual Bargain for what he undertakes to perform, or for the Use of any Thing he lends, he is suppos'd to expect so much as the common Custom allows, and for that to refer himself to the Honesty and Justice of the Person hiring.

l. s. c. 6.
§ 1.

2. HE who lets out a Thing, ought to take care, that it be in a serviceable Condition, and must therefore be content to undergo all Charges necessary to render it fit for Use. On the other Hand, the Person who hires the Thing, ought to be a good Husband in the Use of it; and if it be lost or damaged by his Fault, he is responsible for it. And for the same Reason, he who is hired to do any Work, if by his Fault it be spoil'd or damaged, must make it good.

3. IF a Man be hired only for some transient Business, which does not require his constant Attendance to perform, and any Mischance hinders him from performing what he undertook, he can have no Title to the *Wages* agreed for: But if a Man takes another into his Service for a continu'd Time, and he should, by Sicknes or other Misfortune, be hinder'd from doing what he undertook, in common
Humanity,

Humanity, he ought neither to be discarded, nor have his Wages refus'd or abated.

4. W H E N any Thing let out happens wholly to perish; from that Time, the Person hiring is no longer obliged to pay the Wages or Stipend agreed on. But if the Thing let out, has a known, certain, and determin'd Use assigned to it, for which Use the Owner is obliged to make it fit and serviceable; in this Case, if by any Misfortune it becomes less fit and proper for this Use, the Owner is obliged to abate of the agreed Price in such Proportion as the Thing falls short of the design'd Use. Thus, for Instance, I *hire* a House to dwell in, which my *Landlord* is obliged to make habitable; if, in this Case, the Violence of a Storm, or my Neighbour's Fire, should intercept the Use of it, I may fairly withhold, in Proportion, so much of the *Rent* as I suffer by Want of the Use of the House. But if the Profit or Increase of the Thing farmed out be uncertain, and have any Thing of Chance attending it, wherein, as a large Increase happens to the Advantage of the Hirer, so a small one is to his Loss; in such Case there can be nothing deducted from the Pension in Strictness of Law, upon the Account of Barrenness, especially since a Dearth of one Year may be recompensed by the Plenty of another: Unless those Accidents, which prevent the Increase, do but very rarely happen, and the Person hiring be presumed not to have intended to run any manner of Risk; and if so, it is but equitable that his Rent be abated, when such uncommon and unforeseen Accidents happen.

XI.
Things
lent.

L. N. N.
 l. 5. c. 7.

IN a Contract of *Things* lent, Something is given to a certain Person upon this Condition, That he be obliged to restore the same *Kind* after a certain Time in the same *Quantity* and *Quality*. Now those Things which are usually lent, are called *Fungibles*, that is, such Things as are capable of being repaid in Kind, though not in *Specie*; because any Thing of that Kind may so perform the Part of another Thing, that he who receives any Thing of that *Kind* in the same *Quantity* and *Quality*, may be said to have receiv'd the *same*, which he gave. The same Things are likewise determined and specified by Number, Weight, and Measure, in which Respect also they are commonly called *Quantities*, as they are contra-distinct to *Species*. Now a Thing is lent either *gratis*, so as no more is to be received than was deliver'd; or else for some Profit or Advantage, which is call'd *Usury*; and which is no Ways repugnant to the Law of Nature, provided it be moderate, and proportionable to the Gain, which the other Person makes of the Money or the Thing lent; or to that Gain I my self might have made with the same Money; or to the Loss I suffer by the Want of the present Use of it; or, lastly, that it be not exacted of *Poor Men*, to whom a Thing lent, is sometimes as good as an *Alms*.

XII.
Partner-
ship.

L. N. N.
 l. 5. c. 8.

IN a Contract of *Partnership*, Two or more join together their *Money*, *Wares*, or *Works*, with an Intention that every one should receive a proportionable Share of the Profit; and if there happens to be any Loss, that likewise must be born ratably by each Party. In which indK of Society, as all Parties are obliged to

Faithfulness

Faithfulness and Industry; so no Party must break off the Partnership before the Time, or to the Detriment of his Partner. But when the Time of the Partnership is expired, after the Gain and Loss is allow'd; each Party is to receive what Stock he put in. But if one Person puts in *Money* or *Goods*, and the other contributes his *Labour*, we must consider, after what Manner such a Contribution was made. For when one Man's *Labour* is only concern'd about the Managing and Disposing of the other Person's *Money* or *Goods*, the Shares of the Gain are so to be determin'd, as the Profit of the *Money* or *Commodity* bears Proportion to the Value of the *Labour*; the *Principal* still remaining the Property of him only, who first contributed it. But when any *Labour* is bestow'd in the *Improvement* of any *Commodity*, which is put in by another, he is suppos'd to have such a Share in the Thing it self, as is proportionable to the *Improvement* it has received. Again, when Men engage all that they have in any Joint-Stock, as each of the Partners must faithfully bring into the Account the Profits they have made; so also every one of them is to be maintain'd out of the Joint-Stock according to their Condition. But when the Partnership is broken off, the Division of the Goods is made ratably, according as each Party at first brought in; without any Regard had, by whose Goods any Gain or Loss happened to the Company, unless before-hand it was otherwise agreed.

THERE are likewise several Contracts which XIII.
 imply a *Chance*: Amongst which may be *Contracts*
 reckon'd *upon*
Chance.

L. N. N. reckon'd * *Wagers*, when the Certainty of any
 l. 5. c. 9. Event, which is not yet known by either Par-
 ty, is affirmed by one, and denied by the o-
 ther, a Certain Value being laid on both Sides,
 it is adjudg'd to that Person, to whose Asserti-
 on the Event is found to agree. Hitherto may
 also be referr'd all Sorts of † *Games*, wherein
 we play for any Thing of Value. Among
 which, those have the least Chance which con-
 tain a Trial of *Wit*, *Dexterity*, *Skill*, or *Strength*.
 In some of these *Skill* and *Chance* have both a
 like Share. In others, *Chance* does chiefly de-
 termine the Matter. Altho' it is the Part of
 the Civil Magistrate to consider how far such
 Kind of Contracts may be tolerated, as con-
 sistent with the publick or private Good. A-
 mong these we may reckon the various Sorts of
Lotteries; as either when several Men; having
 paid for a Thing by Money laid down jointly,
 refer it to a Decision by Lot, which of them
 shall have the Whole; or when a Box or Pot
 of Lots is made Use of, into which a certain
 Number of Lots or Papers, both Blanks and
 Prizes are put, and for some set Price, Liber-
 ty is granted of drawing them out, so that the

* A Wager shall be deem'd Good, though one of the
 Parties, who lay the Wager, knows perfectly the Truth
 of what he lays upon; unless he pretends himself igno-
 rant or doubtful about it, in order to draw the other
 Party on to lay with him. See *L. N. N. l. 5. c. 9. § 4.*

† To make Games, and other Contracts, in which
 there is Hazard, lawful, it is not only necessary that what
 both Parties playing run the Risk of losing, be equal;
 but also, that the Danger of losing, and the Hope of
 gaining, on both Sides, bear a just Proportion with the
 Thing plaid for.

Person

Ch. XV. according to the Law of Nature.

Person drawing, may receive the Prize mark'd upon the Lot. To these Contracts, the receiv'd Methods of * *Insurance* have some kind of Affinity, which are such Bargains whereby is undertaken the securing from, and making good any Damage, so that the Insurer, for a certain Sum of Money paid down, takes upon himself, and is obliged to satisfy for whatsoever Losses or Damages any Commodities may undergo in their Transportation to remote Countries; so that if it shall happen that they be lost, he is bound to pay the Owner the Value of them.

FOR the rendring of Contracts and Covenants more firm and secure, *Sureties* and *Pledges* are frequently made Use of. † A *Surety* is, when another Person, who is approv'd of by the Creditor, takes upon himself the Obligation of the principal Debtor; so that unless he makes Payment, the other must make it good; yet so, that the principal Debtor is obliged to repay him, and save him harmless. And altho' the *Surety* cannot stand bound for a greater Sum than the principal Debtor, yet nothing hinders but that the *Surety* is more firmly ty'd than the other, because more is rely'd upon his Credit, than upon that of the principal Debtor. Yet in course, the principal Debtor is to be call'd upon before the *Surety*, unless he has

* The Insurer may demand more or less, according as there is more or less Hazard run. But the Contract shall be null, if, at the Time of making thereof, the Insurer knew, that the Goods were safe arrived, or if the Owner of the Goods at that Time, knew that the Goods were lost.

† *Grotius de Jure Belli & Pacis*, l. 3. c. 20. § 59. wholly

XIV.
Sureties
and
Pledges.
L. N. N.
l. 5. c. 10.
§ 8, 9, &c.

wholly taken the Obligation upon himself ; and such a Person in the Civil Law is commonly called *Expromissor*, or an Undertaker. Now if several Persons be Security for one, each of them is to be call'd upon for his Proportion only ; unless by Accident, any one of them becomes insolvent, or is not to be found : For in such a Case, the others must be charged with his Share.

XV. 'T IS likewise oftentimes customary for the Debtor to deliver, or make over to the Creditor for the securing his Debt, some certain Thing, which is call'd a *Pledge* or a *Mortgage*, until the Debt be paid. The Intent of which is, not only that the Debtor should be excited to make Payment out of a Desire of recovering what belongs to him ; but also that the Creditor should have some Prospect how he may be satisfied. And upon this Account, Pledges ought regularly to be of equal, or greater Value than the Debt it self. Now the Things which may be offer'd as Pledges, are either Improveable, or not Improveable : As to the former Kind, there is commonly added a Covenant called *Pañtum ἀντιχρήσεως*, which impowers the Creditor to enjoy the Fruits and Profits of that Pledge, instead of *Interest* : Now as to the other Sort, the *Lex Commissoria* takes Place ; which provides, That the Pledge shall be forfeited to the Creditor, if Payment be not made within a certain Time limited : And this is no ways unreasonable, when the Pledge is not of greater Value than the Debt, together with the Use for the intermediate Time, and provided the Overplus be restored to the Owner. But as the Creditor is obliged to restore the Pledge upon

upon Payment of the Debt; so in the mean Time he ought to be as careful in the preserving thereof, as if it were really his own. And when there is no *Patium ἀνελιχρήσεως*, and the Thing be of that Nature, as to receive any Damage by Use, or if it be any way for the Debtor's Advantage, he ought not to make Use of it without his Consent. Now a *Mortgage* differs from a *Pledge* in this, That a *Pledge* consists in the Delivery of the Thing, but a *Mortgage*, though the Thing be not deliver'd, holds good by the bare Affignation of a Thing altogether immoveable, from which, Payment not being made, the Creditor may receive Satisfaction for his Debt.

AND thus what the Duties of Persons contracting are, will plainly appear from the End and Nature of these Contracts.

C H A P. XVI.

The several Methods by which the Obligations arising from Contracts are dissolved.

AMONG the several Ways of discharging Obligations arising from Contracts, and by which likewise the Duties and Offices which proceed from thence do utterly expire, the chiefest and most natural of all, is the *Fulfilling* or *Payment* of what was agreed upon. Where, although generally he that is the *Debtor*, is obliged

I.
*Fulfilling
or Pay-
ment.*
L. N. N.
l. 5. c. 11.

liged to make the Payment ; yet, if it be perform'd by any other in *his Name* who contracted the Obligation, the same is dissolv'd ; since 'tis no ways material by what Person the Thing is perform'd. Yet with this Proviso, That he who pays for another, without any Intention of bestowing it upon him, may demand from the same again what he laid out upon his Account. Moreover, Payment must be made to that Person to whom it is due, or else to one whom he has *appointed* to receive the Debt in his Name. And lastly, *That very Thing* must be perform'd or paid which was agreed upon, not any Thing else instead thereof, intire and not mangled, nor in Parcels, nor by Piece-meal ; and likewise at the *Place* and *Time* appointed : Altho' frequently the *Courtesie* of the Creditor, or the *Inability* of the Debtor, may be the Occasion of prolonging the Time of Payment, or receiving a Debt by little Sums at once, or else of accepting of one Thing for another.

II.
Compen-
sation.
 L. N. N.
 l. 5. c. 11.
 § 5.

OBLIGATIONS are likewise taken away by * *Compensation*, which is an Adjusting or Balancing the Credit and the Debt, one against the other ; or when the Debtor is therefore discharged, because 'tis manifest that the Creditor himself stands indebted to him for something that is of the same Kind, and of the same Value. Especially since in those *Things* (called *Res Fungibiles*, that is) which admit of being repaid in *Kind*, tho' not in *Specie*, an Equivalent is look'd upon to be the same Thing ; and

* *Grotius de Jure Belli & Pacis*, l. 3. c. 19. § 15.

where

where the Debt is mutual, since I must presently return back as much as I have received, for the declining of unnecessary Payments, it seems to be the most convenient Way so to order the Matter, that each Party may keep what he has. Now it is evident, that those Things aforementioned, may very properly be brought to a Balance, of which the Time for Payment is either present, or past. But it is not so in other Things or Performances, which are of a different Nature; unless they are estimated on both Sides, and reduced to Money.

A N Obligation also ceases when the Thing is *released* and *forgiven* by him to whom it was due, and whose Interest it was that the Obligation should have been perform'd. And this is done either *expressly*, by some certain Tokens declaring his Consent; as by giving a Discharge, by giving up or cancelling the Bonds and Writings; or else *tacitly*, if he himself hinders, or is any ways the Occasion that what is owing to him cannot be paid.

THOSE Obligations are likewise sometimes dissolved, which imply some Performance on both Sides, *by a mutual Breaking off* before any Thing on either Side be done in the Contract; unless this be expressly forbidden by the Laws. But if any Thing is performed by one of the Parties, the Obligation in this Case cannot be cancelled, unless he who perform'd his Part, releases the other, or has Amends made him some other Way.

BESIDES, an Obligation is not indeed properly dissolv'd, but rather broken off by the *Falseness* of either Party; for when the one does not perform what was agreed upon, nei-

III.
Release.
L. N. N.
l. 5. c. 11.
§ 7.

IV.
Breaking
off mutu-
ally.
L. N. N.
l. 5. c. 11.
§ 8.

V.
Falseness
on one
Side.

L. N. N. ther is the other obliged to make good what
 l. 5. c. 11. he undertook upon a Prospect of the other's per-
 § 9. forming. For as to the main Things which
 are to be performed in Contracts, the former
 are always included in the latter by way of
Condition; as if it should be said, I will per-
 form this, if you perform that first.

VI. OBLIGATIONS likewise cease when that
Case al- *State of Things* upon which they chiefly de-
tered. pended, is either *alter'd* by the Party who was
 L. N. N. obliged to perform somewhat, or by him to
 l. 5. c. 11. whom, or for whose Sake it was to be done.
 § 10.

VII. SOMETIMES also *Time* it self puts an End
Time. to some Obligations, whose Duration depends
 L. N. N. upon a certain precise Day; unless it be pro-
 l. 5. c. 11. long'd by the *express* or *tacit Consent* of each
 § 11. Party. Yet there is a Necessity that the Power
 of exacting the Obligation within the Time li-
 mited, should stand good.

VIII. ANY one may make over by *Assignment*, his
Assign- Debtor to his Creditor, provided he approves
ment. him, that he, instead of the other, may dis-
 L. N. N. charge the Debt. Where indeed there is re-
 l. 5. c. 11. quired the Consent of the Creditor, but not of
 § 13. that third Person who is the Debtor, whom I
 may turn over without his Knowledge or Con-
 sent, to the other Person that is to accept him.
 For it is no great Matter *to whom* any Person
 makes Payment; but *from whom* the Debt is
 to be required, is very material.

IX. LASTLY, By *Death* those Obligations ex-
DEATH. pire, which were founded in the Person of the
 L. N. N. Deceas'd; for the *Subject* being gone, the *Ac-*
 l. 5. c. 11. *cidents* must necessarily follow, and the Perfor-
 § 12. mance is hereby rendred impossible in Nature.
 Yet oftentimes the Obligation that lay on the
 Deceas'd,

Deceas'd, is continued to the Survivors ; and this, either when the Survivor takes it upon him of his own Accord to preserve the Reputation of the Deceased, or for other Reasons ; or when the Goods of the Deceased being made over to the Heir, the Incumbrance goes along with them.

C H A P. XVII.

Of Meaning, or Interpretation.

AS in all Commands and Directions which Men receive from their Superiors, no other Obligation is derived on them from thence, but such as is conformable to the Will and *Intention* of the Superior ; so likewise, when any Man of his own free Will, sets himself under any Obligation, he is bound only to that which himself *intended*, when he entered into that Obligation. But then, because one Man cannot make a Judgment of another Man's Intention, but by such Signs and Actions as are apparent to the Senses ; hence, therefore, every one, *in foro humano*, is adjudged, To be *obliged to that Thing, which he may fairly be supposed to have suggested by a right Interpretation of the outward Signs made by him.* Wherefore 'tis of great Use for the true Understanding both of Laws and Covenants, and for the better Discharging the Duties thence arising, that there

I.
Rules for
Interpre-
tation ne-
cessary.
L. N. N.
l. 5. c. 12.

N

should

should be laid down * *Certain Rules for the true Interpretation of Words*, especially they being the most common and ordinary Signs whereby we express our Mind and Intention.

II. *Popular Terms.*
L. N. N.
l. 5. c. 12.
§ 3.

CONCERNING *Common and Vulgar Terms*, this is the Rule: Words are generally to be taken in their most proper and receiv'd Signification, which they have not so much from Analogy and Construction of Grammar, or Conformity of Derivation, as by *Popular Use and Custom*, which is the Sovereign Comptroller and Judge of Speech.

III. *Terms of Art.*
L. N. N.
l. 5. c. 12.
§ 4.

TERMS *of Art* are to be explain'd according to the Definitions of Persons knowing in each Art. But if those Terms are differently defin'd by several Persons, for the avoiding of Disputes, 'tis necessary that we express in *Vulgar Terms*, what we mean by such a Word.

IV. *Conjectures.*
L. N. N.
l. 5. c. 12.
§ 6.

BUT for discovering the genuine Meaning of Words, 'tis sometimes necessary to make Use of *Conjectures*, if either the Words in themselves, or the Connexion of them, be ambiguous, and liable to a double Interpretation; or if some Parts of the Discourse seem to contradict the other, yet so as by a fair and true Explanation they may be *reconcil'd*. For where there is a plain and manifest Contrariety, the latter Contract vacates the former.

V. *Taken from the Subject Matter.*

Now *Conjectures of the Mind*, and the right Meaning thereof in an ambiguous or intricate Expression, are chiefly to be taken *from the Subject Matter, from the Effects and the Ac-*

* *Grotius de Jure Belli & Pacis*, l. 2. c. 16.

cidents or Circumstances. As to the *Matter*, L. N. N. this is the Rule: Words are generally to be understood according to the Subject Matter. l. 5. c. 12. § 7. For he that speaks is suppos'd to have always in View the Matter of which he discourses, and therefore agreeably thereunto, the Meaning of the Words is always to be applied.

As to the *Effects* and *Consequences*, this is VI. the Rule: When Words taken in the literal *From the* and simple Sense, admit either of none, or else *Conse-* of some absurd Consequences, we must recede *quences.* L. N. N. so far from the more receiv'd Meaning, as is l. 5. c. 12. necessary for the avoiding of a Nullity or Ab- § 8. surdity.

FARTHERMORE, most probable Conjec- VII. tures may be taken from the *Circumstances*; be- *From Cir-* cause of Consequence every one is presum'd to cum- be consistent with himself. Now these Circum- *stances.* L. N. N. stances are to be consider'd either as to their l. 5. c. 12. *Place*, or only as to the *Occasion* of them. § 9. Concerning the former of these, this is the Rule: If the Sense in any Place of the Discourse be express'd plainly and clearly, the more obscure Phrases are to be interpreted by those plain and familiar ones. To this Rule there is another nearly related: In the Explaining of any Discourse the Antecedents and Consequents must be carefully heeded, to which those Things that are inserted between are presum'd to answer and agree. But concerning the *latter*, this is the Rule: The *obscure* Expressions of one and the same Man are to be interpreted by what he has deliver'd more clearly, though it was at another Time and Place; unless it manifestly appears that he has changed his Opinion.

VIII. It is likewise of very great Use for finding out the true Meaning, in Laws especially, to examine into the *Reason of that Law*, or those *L. N. N. Causes and Considerations* which induced the *Legislator* to the making thereof; and more particularly when it is evident, that that was the *only Reason* of the Law. Concerning which, this is the Rule: That Interpretation of the Law is to be followed, which agrees with the Reason of that Law; and the contrary is to be rejected, if it be altogether inconsistent with the same. So likewise when the sole and adequate Reason of the Law ceases, the Law it self ceases. But when there are several Reasons of the same Law, it does not follow, that if one of them ceases, the whole Law ceases too, when there are more Reasons remaining, which are sufficient for the keeping it still in Force. Sometimes also the Will of the Law-giver is sufficient, where the Reason of the Law is conceal'd.

IX. MOREOVER, it is to be observ'd, That many Words have *various Significations*, one Meaning being of great Latitude, and the other more *strict and confin'd*; and then the subject Matter is sometimes of a *favourable Nature*, sometimes *invidious*, sometimes between both or *indifferent*. Those are *favourable* where the Condition is equal on both Sides; where Regard is had to the publick Good, where Provision is made upon Transactions already ratified, and which tend to the promoting of Peace, and the like. The *Invidious*, or more distastful, is that which aggrieves one Party only, or one more than the other; that which implies a certain Penalty; that which makes any Transaction of none Effect, or alters what

went

went before; that which promotes Wars and Troubles. That which is between both and *Indifferent* is, That indeed which makes some Change and Alteration in the former State of Things, but 'tis only for the sake of Peace. Concerning these, this is the Rule: That those Things which admit of a *favourable* Construction, are to be taken in the largest and most comprehensive Meaning; but those Things which are capable of an unpleasing Construction, in the most literal and strictest Sense of the Words.

THERE are likewise some Kind of Conjectures which are elsewhere to be fetch'd than from the Words, and which are the Occasion that the Interpretation of them is sometimes to be *extended*, and at other times to be *confin'd*: Although 'tis more easie to give Reasons why the Explanation thereof should be *confin'd* and *limited*, than *extended*. But the Law may be *extended* to a Case which is not express'd in the Law, if it be apparent, that the Reason which suits to this Case, was particularly regarded by the Law-giver amongst other Considerations, and that he did design to include the other Cases of the like Nature. The Law also ought to be *extended* to those Cases wherein the Subtlety of ill Men have found out Tricks in order to evade the Force of the Law.

Now the Reason why some Expressions deliver'd in general Terms should be *restrain'd*, may happen either from the *original Defect of the Will*, or from the Repugnancy of some *emergent Case* to the Will and Intention. That any Person is to be presum'd not at first to have

X.

Conjectures extended.

L. N. N.

l. 5. c. 12.

§ 11.

XI.

Conjectures limited.

L. N. N.

l. 5. c. 12.

§ 15.

intended any such Thing, may be understood,

1. FROM the *Absurdity*, which otherwise would follow from thence; and which, 'tis believ'd, no Man in his Wits could design. Hence general Expressions are to be restrain'd, inasmuch as such Absurdity would thence otherwise arise.

2. FROM *Want of that Reason* which might chiefly cause him to be of that Mind. Hence in a general Expression, those Cases are not comprehended, which do no ways agree with the sole and adequate Reason of the Law.

3. FROM *Defect of Matter*, which always he that speaks, is suppos'd to have consider'd. And therefore all those general Words are to be regarded with relation to the same.

XII. NOW that an emergent State of Things is repugnant to the Intention of the Person who made the Constitution, may be discover'd either from *Natural Reason*, or else from some declar'd Mark and *Signification* of his Meaning.

Emergent Cases,
L. N. N.
l, 5. c. 12.
21.9

THE first happens, when we must exclude *Equity*, if some certain Cases be not exempted from the universal Law. For *Equity* is the Correcting of what is defective in the Law by reason of its *Universality*.

AND because all Cases could neither be foreseen, nor set down, because of the infinite Variety of them; therefore when general Words are apply'd to special Cases, those Cases are to be look'd upon as exempt, which the Law-giver himself would likewise have exempted, if he had been consulted upon such a Case.

BUT we must not have Recourse to *Equity*, unless there be very sufficient Grounds for it. The Chiefest of which, is, If it be evident, that

that the Law of Nature would be violated, if we followed too closely the Letter of that Law.

THE next Ground of Exception is, That though it be not indeed unlawful to keep to the very Words of the Law; yet, if, upon an impartial Consideration, the Thing should seem too grievous and burdensome, either to Men in general, or to some certain Persons; or else, if the Design be not of that Value, as to be purchas'd at so dear a Rate.

LASTLY, There are also some certain XIII.
 Signs of the Legislator's Will, from whence it *Exception*
 may be certainly collected, That a Case ought to *with Re-*
 be excepted from the general Expressions of the *gard to*
 Law; as when the Words of the Legislator *Time.*
 in another Place, though not directly opposite L. N. N.
 to the Law now supposed to be before us, (for l. 5. c. 12.
§ 23.
 that would be a Contradiction) yet, by some peculiar Incident, and unexpected Event of Things, happen to oppose it in the present Case; or, which amounts to the same Thing, When there are two different Laws, which don't interfere, and which easily may and ought to be observ'd at different Times, but can't both of them be satisfy'd, when by some Chance, they call for our Obedience at the same Instant: In this Case we must observe some certain Rules to know which Law or Pact ought to give Place to the other, where both cannot be fulfill'd.

1. THAT *which is only permitted gives place to that which is commanded.*

2 THAT

1. This Rule is not true, unless we suppose the *Permission* general, and the *Command* particular. For it is certain, on the contrary, that a particular *Permission*

2. THAT *which ought to be done at this present Time, is preferable to that which may be done at any other Time,*

3. *A Law forbidding the doing any Thing, is to be preferr'd before a Law directing the doing any Thing: Or when an affirmative Precept can't be satisfy'd but at the Expence of a negative one, then the Performance of the Affirmative, shall be deferr'd or put off, 'till it ceases to clash with that other which is Negative. Thus I am commanded to be charitable, and I am commanded not to steal: If I have not wherewith to be charitable, unless I steal to give away, I lye under no Obligation to be charitable at that Time.*

4. *IN Covenants and Laws, which are in other respects Equal, that which is particular and applicable to the present Case, takes Place of that which is General.*

5. *WHEN two Duties happen to interfere at the same Point of Time, that which is founded upon Reasons more honourable and beneficial is to be preferr'd.*

6. *WHEN two Covenants, one upon Oath, the other not, can't be perform'd both together, the former ought to take Place of the latter.*

takes Place of a general Command; the Permission in this last Case, being an Exception to the Command; as in the former Case, the Command restrains the Extent of the Permission.

3. Here, likewise, it must be distinguish'd, whether these Laws forbidding or commanding, be general or particular, as was laid down in the foregoing Note.

6. This Rule is not true, unless in such Case, where all other Circumstances are exactly equal. For when two Covenants are directly opposite, the latter shall be binding, whether the former be upon Oath, or not. But if the Two Covenants are not directly opposite, but only in some Respects different, the particular one shall be preferr'd before the general one.

7. AN

7. A N Obligation imperfectly mutual, gives Place to one that is perfectly mutual and binding on both sides. Thus what I owe upon Contract, ought to be paid before what is due from me upon free Promise or Gratitude.

8. W H A T I am obliged to do out of Gratitude, must be preferr'd before what I am obliged to out of Generosity.

7. These Two last Rules are comprehended in the Fifth, of which they are, as is obvious, only Consequences.





T H E

Whole Duty of MAN,

According to the

L A W O F N A T U R E.

B O O K II. C H A P. I.

Of the Natural State of Men.

I. *Condition of MAN.*

L. N. N.
l. i. c. i.
§ 6, &c.

IN the next Place, we are to inquire concerning those Duties which are incumbent upon a Man with Regard to that *particular State* wherein he finds himself ordained by Providence to live in the World. What we mean by such *State*, is in general, That *Condition* or *Degree* with all its Relatives, in which Men being placed, they are therefore supposed to be obliged to these or those Performances: And such *State*, whatever it be, has some peculiar Rights and Offices thereunto belonging.

T H E

THE *State* of Man then may be distinguish'd into either *Natural* or *Adventitious*. The natural State, by the Help of the Light of natural Reason alone, is to be considered as Threefold, Either as it regards *God our Creator*, or as it concerns *every single Man* as to *Himself*, or as it affects *other Men*; concerning all which we have spoken before.

II.
Twofold.
Natural
and *Ad-*
ventitious.
L. N. N.
1. 2. c. 3.
§ 24.

THE Natural State of Man consider'd in the *first* mention'd Way, is that Condition wherein he is placed by the Creator pursuant to his Divine Will, that he should be the most excellent Animal in the whole Creation. From the Consideration of which *State*, it follows, That Man ought to acknowledge the AUTHOR of his Being, to pay Him Adoration, and to admire the Works of His Hands; and moreover, to lead his Life after a different Manner from that of the Brutes. So that the contrary to this State is *the Life and Condition of Brutes*.

III:
Natural
State
Threefold.
First.

IN the *second* Way we may contemplate the Natural State of Man, by seriously forming in our Minds an Idea of what his Condition would be, if every one were left * *alone* to himself without any Help from *other Men*. And in this Sense, the *Natural State* is opposed to a *Life cultivated by the Industry of Men*.

IV.
Second.
L. N. N.
1. 2. c. 2.
§ 2.

AFTER the *third* Way we are to regard the Natural State of Man, according as Men are understood to stand in respect to one another, merely from that common Alliance which results from the *Likeness* of their *Natures*, before any mutual Agreement made, or other Deed of

V.
Third.

* See Book I. Chap. III. § 3. and the References made to it.

Man perform'd, by which one could become obnoxious to the Power of another. In which Sense, those are said to live reciprocally in a *State of Nature*, who acknowledge no *common Superior*, and of whom none can pretend Dominion over his Fellow, and who do not render themselves known to each other, either by the doing of good Turns or Injuries. And in this Sense it is, That a *Natural State* is distinguish'd from a *Civil State*, that is, *The State of Man in a Community*.

VI. *Consider'd*
again
Two ways
L. N. N.
l. 2. c. 2.

MOREOVER, the Property of this *Natural State* may be consider'd, either as it is represented to us *notionally* and by way of *Fiction*, or as it is *really* and *indeed*. The *former* is done, when we imagine a certain Multitude of Men at the Beginning to have started up into Beings all at once without any Dependance upon one another, as it is fabled of the *Cadmean Harvest* of Brethren; or else when we form a Supposition, that all the mutual Ties, by which Mankind are one way or other united together, were now dissolv'd; so that every Man might set up for himself apart from the Rest, and no one Man should have any other Relation to his Fellow, but the Likeness of their Natures. But the true State of Nature, or that which is *really* so, has this in it, that there is no Man who has not some peculiar Obligations to *some* other Men, though with all the rest he may have no farther Alliance than that they are Men, and of the same Kind; and, beside what arises from thence, he owes them no Service at all. Which at this Time is the Case of many Kingdoms and Communities, and of the Subjects of the same, with respect to the Subjects of the other; and

and the same was anciently the State of the Patriarchs, when they liv'd independently.

IT is then taken for manifest, that all Mankind never were univerfally and at once in the former *Natural State*; for thofe Children who were begotten and born of the Protoplafts, or firft created Man and Woman, (from whom the whole Human Race derives its Original, as the *Holy Scriptures* tell us) were fubject to the *Paternal Authority*. Not but that this Natural State arofe afterwards among fome People; for Men at firft, in order to fpread over this wide World, and that they might find for themfelves and their Cattle more fpacious Abodes, left the Families of their Fathers, and roaming into various Regions, almoft every fingle Man became himfelf the Father of a Family of his own; and the Pofterity of thefe again difperſing themfelves, that *peculiar Bond* of Kindred, and the Natural Affections thence arifing, by little and little were extinguiſh'd, and no other Obligation remain'd, but that common one, which reſulted from the Likeneſs of their Natures: 'Till afterwards, when Mankind was vaſtly multiplied, they having obſerv'd the many Inconveniencies of that looſe Way of living, the Inhabitants of Places near one another, by Degrees join'd in Communities, which at firft were ſmall, but grew ſoon greater, either by the voluntary or forced Conjunction of many which were leſſer. And among theſe Communities, the State of Nature is ſtill found, they being not otherwiſe obliged to each other, than by the common Tie of Humanity.

Now it is the chief *Prerogative* of thoſe who are in the State of Nature, that they are

VII

*Paternal.
Authority*

VIII.

*Natural
sub-Liberty.*

subject and accountable to none but God only; in which respect also, this is call'd a State of *Natural Liberty*, by which is understood, that a Person so circumstanced without some antecedent human Act to the contrary, is to be accounted absolutely in his own Power and Disposition, and above the Controll of all mortal Authority. Therefore also any one Person is to be reputed *equal* to any other, to whom himself is not subject, neither is that other subject to him.

AND farthermore, whereas Man is indued with the Light of Reason, by the Guidance whereof he may temper and regulate his Actions, it follows, That whosoever lives in a State of *Natural Liberty*, depends not on any other for the Direction of his Doings; but is vested with a Right to do, according to his own Judgment and Will, any Thing he shall think good, and which is consonant to sound Reason.

AND whereas Man, from that universal Inclination which is implanted in all living Creatures, cannot but, in order to the Preservation of his Person and his Life, and to the keeping off whatsoever Mischiefs seem to threaten the Destruction thereof, take the utmost Care and Pains, and apply all necessary Means to that End; and yet whereas no Man in this *Natural State* has any superiour Person, to whom he may submit his Designs and Opinions, therefore every one in this State makes use of his own Judgment only, in determining concerning the Fitness of Means, whether they conduce to his Self Preservation or not. For though he may give ear to the Advice of another, yet it is in his Choice, whether he will approve or reject the same. But that this absolute Power of Governing

verning himself be rightly managed, it is highly necessary, That all his Administrations be moderated by the Dictates of true Reason, and by the Rules of the Law of Nature.

AND yet this Natural State, how alluring
foever it appears to us with the Name *IX.*
of LIBERTY, and flattering us with being *Its Incon-*
free from all manner of Subjection, was *veniences.*
clogg'd, before Men join'd themselves under
Governments, with many *Inconveniences*; whe- *L. N. N.*
ther we suppose every single Man as in that Con- *l. 1. c. 3.*
dition, or only consider the Case of the Pa- *§ 3.*
triarchs or Fathers of Families, while they liv'd
independent. For if you form in your Mind
the Idea of a Man, even at his full Growth of
Strength and Understanding, but without all
those Assistances and Advantages by which the
Wit of Man has rendred Human Life much
more orderly and more easie than at the Begin-
ning; you shall have before you, a naked
Creature no better than dumb, wanting all
Things, satisfying his Hunger with Roots and
Herbs, slacking his Thirst with any Water he
can find, avoiding the Extremities of the Wea-
ther, by creeping into Caves, or the like, ex-
posed an easie Prey to the ravenous Beasts, and
trembling at the Sight of any of them.

'T IS true, the Way of Living among the
Patriarchs, might be somewhat more comforta-
ble, even while they contain'd their Families
apart; but yet it could by no Means be com-
par'd with the Life of Men in a *Community*; not
so much for the Need they might have of Things
from abroad, which, if they restrain'd their
Appetites, they might perhaps well enough
bear withal; as because in that State they could
have

have little Certainty of any continu'd Security.

AND, that we may comprehend all in a few words, In a *State of Nature*, every Man must rely upon his own single Power; whereas in a *Community*, all are on his Side: There no Man can be sure of enjoying the Fruit of his Labour; here every one has it secur'd to him: There the *Passions* rule, and there is a continual Warfare, accompanied with Fears, Want, Sordidness, Solitude, Barbarity, Ignorance, and Brutishness; here *Reason* governs, and here is Tranquillity, Security, Wealth, Neatness, Society, Elegancy, Knowledge, and Humanity.

X. Now though it was the Will of Nature itself, that there should be a Sort of *Kindred* amongst all Mankind, by Virtue of which they might be obliged at least not to hurt one another, but rather to assist and contribute to the Benefit of their Fellows; yet this Alliance is found to be but of little Force among those who live promiscuously in a *State of Natural Liberty*; so that any Man who is not under the same Laws and Possibilities of Coercion with our selves, or with whom we live loosely and free from any Obligation in the said State, is not indeed to be treated as an *Enemy*, but may be look'd upon as a *Friend*, not too freely to be *trusted*. And the Reason hereof is, That

L. N. N. 1. 1. c. 3. Man not only is accomplish'd, with an Ability to do Mischief to his Like, but for many Causes has also a Will so to do: For some, the Pravity of their Natures, Ambition, or Covetousness, incite to make Insults upon other Men; others, though of a meek and

§ 4.

and modest Nature, are forced to use Violence either in defending themselves from imminent Outrages, or by way of Prevention.

BESIDE that, a Rivalship in the Desire of the same Thing in some ; and in others, Competition for Priority in one Quality or other, shall set them at Variance. So that in this State, 'tis hardly possible but that there should be perpetual Jealousies, Mistrusts, Designs of undoing each other, Eagerness to prevent every one his Fellow, or Hopes of making Addition to his own Strength by the Ruin of others.

THEREFORE as it is the Duty of every *honest* Man to be content with his own, and not to give Provocation to his Neighbour, nor to covet that which is his ; so also it behoves him who would be as *wary* as is needful, and who is willing to take Care of his own Good, so to take all Men for his Friends, as not to suppose yet but that the same may quickly become his Enemies ; so to cultivate Peace with all Men, as to be provided though it be never so soon changed to Enmity. And for this Reason, happy is that Commonwealth, where in Times of Quietness, Consideration is had of Requisites for War.

BESIDE, in the *Natural State*, if any one either will not voluntarily make good what he has *covenanted* to do, or does another an *Injury*, or if upon any other Account some Dispute arise ; there's no Man has Authority to force the naughty Person to perform his Bargain, to cause him to repair the Wrong, or to determine the Controversy ; as there is in *Communities*, where I

XI.
*Most convenient
 Remedy
 in Controversies.*
 L. N. N.
 l. 5. c. 13.

may have recourse for Help to the Civil Magistrate.

AND here, because Nature allows not that upon every Occasion we should betake our selves to *violent Means*, even though we are very well satisfy'd in our Consciences of the Justice of our Cause; therefore we are first to try, whether the Matter may not be compos'd after a milder Way, either by an amicable Reasoning of the Point in Question between the Parties themselves, or by a free and unconditional Compromise, * or *Reference* of the Debate to *Arbitrators*. And these Referees are to manage the Matter with an equal Regard to both Sides, and in giving their Award, they are to have an Eye only to the Merits of the Cause, setting aside all partial Animosity or Affection. For which Reason, it is not best to chuse any Man an Arbitrator in such a Cause wherein he shall have greater Hopes of Profit or particular Reputation, if one Party get the better, rather than the other; and consequently where it is his Interest that that Litigant, at what Rate soever, gain the Point. Hence also there ought not to be any underhand Bargain or Promise between the Umpire and either of the Parties, by which he may be obliged to give his Judgment on the behalf of the same.

Now in this Affair, if the Arbitrator cannot find out the Truth in Fact, neither from the Confessions of the Parties, nor from apparent Writings, nor any other manifest Argu-

* See *Grotius de Jure Belli & Pacis, lib. 2. cap. 23. §6, &c.*

ments and Signs ; he must then inform himself by the Testimonies of Witnesses ; whom, though the Law of Nature obliges, especially being usually reinforced by the Religion of an Oath, to speak the Truth ; yet it is most safe not to admit the Evidence of such as are so peculiarly affected to one Party, that their Consciences will be forced to struggle with the Passions either of Love, Hatred, Desire of Revenge, any violent Affection of the Mind, or else some strict Friendship or Dependance ; all, or any of which every Man is not endued with Constancy enough to surmount.

CONTROVERSIES also are frequently made an end of by the *Interposition* of the common *Friends* of each Party, which to do, is deservedly accounted among the best Actions of a good Man. For the rest, in the *Natural State*, when Performances are not made good by either Side of their own Accord, the other seeks his Due after what manner he likes best.



C H A P. II.

Of the Duties of the Married State.

I. *Matrimony.* **A**MONG those States of Man which we have call'd *Adventitious*, or in which a Man is placed by some antecedent human Act, **MATRIMONY** obtains the first Place. * Which also is the chief Representation of the Social Life, and the Seed-Plot of Mankind.

II. *Instituted by Nature.* **A**ND, first, it is certain, That that ardent Propensity found to be in both Sexes to each other, was not implanted in them by the All-wise CREATOR, merely that they might receive the Satisfaction of a vain Pleasure; for had it been so, nothing could have been the Occasion of greater Brutishness and Confusion in the World; but that hereby Married Persons might take the greater Delight in each other's Company; and that both might with the more Chearfulness apply themselves to the necessary Business of Propagation, and go through those Cares and Troubles which accompany the Breeding and Education of Children. Hence it follows, That all Use of the Parts destin'd by Nature for this Work, is contrary to the Law Natural, if it tends not to this End. On which Account also, are forbidden all Lusts for a different *Species*; or for the same Sex; all filthy Pollutions; and indeed, all Copulations

* *Grotius de Jure Belli & Pacis*, l. 2. c. 5. § 9. &c.

out of the State of Matrimony, whether with the mutual Consent of both Parties, or against the Will of the Woman.

THE *Obligation* under which we lye to contract *Matrimony*, may be consider'd either with respect to *Mankind* in general, or to our particular *Station* and *Relation* in the World. The Strength of the former of these, consists in this, That the Propagation of Mankind, neither can nor ought to be kept up by promiscuous and uncertain Copulations, but is to be limited and circumscribed by the Laws of *Wedlock*, and only to be endeavour'd in a married State: For without this no Man can imagine any Decency or orderly Society among Men, nor any Observation of the Civil Rules of Life.

III.
Obligation to Matrimony.
L. N. N.
l. 6. c. 1.
§ 3.

BUT Men *singly* consider'd, are obliged to enter the Matrimonial State, when a convenient Occasion offers it self; whereto also not only a mature Age, and an Ability for Generation-Work is necessary, but there ought beside to be a Possibility of lighting on a Person of the like Condition, and a Capacity of maintaining a Wife, and the Posterity she shall bring forth; and that the Man may be such a one as is fit to become the Master of a Family.

NOT still, but that any Man is excepted from this Duty, who betakes himself to a chaste SINGLE LIFE, finding his Constitution accommodated thereto, and that he is capable in that, rather than in the Married State, to be useful to Mankind, or to the Commonwealth; especially also, if the Case be so, that there is no Fear of the Want of People.

BETWEEN those who are about to take upon themselves the Married State, a *Contract* ought, *Matrimonial Contract.*

L. N. N. ought, and is wont to intervene, which, if it
 l. 6. c. 1. be *Regular* and *Perfect*, consists of these
 § 9. Heads :

FIRST, Because the Man (to whom it is most agreeable to the Nature of both Sexes, that the Contract should owe its Original) intends hereby to get himself Children of his own, not spurious or supposititious ; therefore the Woman ought to *plight her Troth* to the Man, That she will permit the Use of her Body to no other Man but to him ; the same, on the other Hand, being requir'd of the Husband.

AND, Secondly, Since nothing can be more flatly contrary to a Social and Civil Life, than a vagabond, desultory, and changeable Way of Living, without any Home, or certain Seat of his Fortunes ; and since the Education of that which is the Off-spring of both, is most conveniently taken Care of by the joint Help of both Parents together : And whereas continual Cohabitation brings more of Pleasure and Comfort to a Couple who are well match'd, whereby also the Husband may have the greater Assurance of his Wife's Chastity ; therefore the Wife does moreover ingage her Faith to her Husband, That she will *always cohabit* with him, and join her self in the strictest Bond of Society, and become of the same Family with him. And this mutual Promise must be supposed to be made from the Husband to her of the like Cohabitation, the Nature of this State so requiring.

BUT because it is not only agreeable to the natural Condition of both Sexes, that the Case of the Husband should be the more Honourable of the two ; but that he should also be the Head
 of

of the Family, of which himself is the Author ; it follows, That the Wife ought to be subject to his Direction in Matters relating to their mutual State and to their Household. Hence it is the Prerogative of the Husband, to chuse his Habitation, and she may not against his Will, wander abroad, or lodge apart.

YET it does not seem essentially necessary to Matrimony, that the Man should have Power of Life and Death, or of inflicting any grievous Punishment, as neither of disposing at his Pleasure of all the Estate or Goods of his Wife : But these Points may be settled between the Married Couple, by peculiar Agreements, or by the municipal Laws of the Place.

Now tho' 'tis manifestly repugnant to the Law of Nature, that one Woman should have more Men than one at once ; yet it obtain'd among the *Jews* of old, and many other Nations, that one Man might have two or more Wives. Nevertheless, let us allow never so little Weight to Arguments brought from the primitive Institution of Marriage deliver'd in *Holy Writ* ; * yet it will appear from *right Reason*, That 'tis much more decent and fit for one Man to be content with one Woman. Which has been approved by the Practice of all the Christians through the World, that we know of, for so many Ages.

V.
One Man
and one
Woman.
L. N. N.
l. 6. c. 1.
§ 19.

NOR does the Nature of this strict Union tell us less plainly, That the Bond of *Matrimony* ought to be *perpetual*, and not to be unloosed,

VI.
Contract
perpetual.
L. N. N.
l. 6. c. 1.
§ 20, 21.

* See *Element. jurisprud. universal.* l. 11. § 7. *Apol.* § 29. *Eris Scandica.* P. 48. & seq. p. 109.

but by the Death of one Party; except the *essential Articles* of the principal Matrimonial Covenant be violated, either by *Adultery*, or a wicked and dishonest *Desertion*. But for *ill Dispositions*, which have not the same Effect with such *lewd Desertion*, it has obtained among Christians, that a Separation from Bed and Board shall be sufficient, without allowing any Inengagement in a new Wedlock. And one great Reason hereof, among others, is this, That too free a Liberty of Divorce might not give In-
 encouragement to either Party to cherish a stubborn Temper; but rather, that the irremediable State of each, might persuade both to accommodate their Humours to one another, and to stir them both up to *mutual* Forbearance. For the rest, if any essential Article of the Matrimonial Contract be violated, the *wronged Party* only is discharged from the Obligation; the same still binding the other, so long as the former shall think good.

VII. *Moral Impediments.* ANY Man may contract with any Woman, where the Law makes no special Prohibition, if their Age and Constitution of Body render them capable of Matrimony, except some *Moral Impediment* be in the Way: Presupposing,
 L. N. N. § 27. That he or she is under a Moral Impediment, who are already married to some other Person.

VIII. *Kindred* AND it is accounted a Moral Impediment of lawful Matrimony, if the Parties are *too*
 L. N. N. § 28. *nearly allied by Blood or by Affinity*. On which Score, even by the Law of Nature, those Marriages are accounted incestuous and wicked, which are contracted between any Persons related in the *Ascending or Descending Line*. And
 for

for those in the other *transverse Order*, as with the Aunt, either on the Father's or Mother's Side, the Sister, &c. As also those in *Affinity*, as, with the Mother-in-law, Step-Mother, Step-Daughter, &c. Not only the positive Divine Law, but that of most civiliz'd Nations, with whom also all Christians agree, does abominate. Nay, the Special Laws of many Countries forbid Marriage even in the more remote Degrees, that so they may keep Men from breaking in upon those which are more sacred, by setting the Barrier at a greater Distance.

Now as the Laws are wont to assign to other Contracts and Bargains some *Solemnities*, IX. *Ceremony*, which being wanting, the Act shall not be adjudged of Validity: So also it is in Matrimony, where the Laws require, for the sake of Decency and good Order, that such or such *Ceremonies* be performed. And these, though not enjoined by the Law Natural, yet without the same, those who are Subjects of such a Community, shall not consummate a legal Matrimony; or at least, such Contract shall not be allowed by the Publick to be effectual.

It is the Duty of a *Husband* to love his Wife, X. to cherish, direct and protect her; and of the *Wife* *Mutual Duties*, to love and honour her Husband, to be assistant to him, not only in begetting and educating his Children, but to bear her Part in the Domestic Cares. On both sides, the Nature of so strict an Union requires, That the Married Couple be Partakers as well in the good as ill Fortune of either, and that one succour the other in all Cases of Distress; moreover, That they prudently accommodate their Humours to each

each other ; in which Matter, it is the Wife's Duty to submit.

C H A P. III.

Duty of Parents and Children.

I. FROM MATRIMONY proceeds POSTERITY, which is subjected to the *Paternal Authority*. *Power*, * the most Ancient and the most Sacred Kind of Authority, whereby Children are obliged to reverence their Parents, to obey their Commands, and to acknowledge their Pre-eminence.

II. THE Authority of Parents over their Children, hath its chief Foundation on a *Twofold Cause*.

FIRST, Because the Law of Nature it self, when Man was made a Sociable Creature, injoin'd to *Parents the Care of their Children* ; and lest they should herein be negligent, Nature implanted in them a most tender Affection for their Issue. Now that this Care may be rightly managed, it is requisite that they have a Power of ordering the Actions of their Children for their Good ; because these, as yet, understand not, for want of *Discretion*, how to govern themselves.

NEXT, This Authority is also grounded on the *tacit Consent of their Offspring*. For it may

* *Grotius de Jure Belli & Pacis*, 1, 2. c. 5, § 1, &c. fairly

fairly be presum'd, that if an Infant, at the Time of its Birth, had the Use of its Reason, and saw that its Life could not be preserv'd without the Care of the Parents, to which must be join'd a Power over it self, it would readily consent to the same, and desire for it self a comfortable Education from them. And this Power is *actually* in the Parents, then when they breed and nurse up the Child, and form him as well as they can, that he may become a fit Member of Human Society.

BUT whereas the Mother concurs no less than the Father to the Generation of Children, and so the Offspring is common to both, it may be inquir'd, *Which hath the greatest Right thereto?* Concerning which Point we are to distinguish: For if the Issue were begotten *not in Matrimony*, the same shall be rather the Mother's, because here the Father cannot be known, except the Mother discover him. Among those also who live in a State of *Natural Liberty*, and above Laws, it may be agreed, that the Mother's Claim shall be preferr'd to that of the Father. But in *Communities*, which have their Formation from Men, the Matrimonial Contract regularly commencing on the Man's Side, and he becoming the Head of the Family, the *Father's Right* shall take Place, so as though the Child is to pay the Mother all Reverence and Gratitude, yet is it not obliged to obey her, when she bids that to be done which is contrary to the just Commands of the Father. Yet upon the Father's Decease, his Authority over his Child, especially if not of Age, seems to devolve upon the *Mother*, and if she marry again, it passes to the *Step-Father*, he being esteem'd

III.

Which
Parent
has great-
er Right.

L. N. N.

l. 6. c. 2.

§ 4.

esteemed to succeed to the Trust and Care of a Natural Father. And he who shall allow liberal Education to an Orphan or a forsaken Child, shall have a Right to exact *filial Obedience* from the same.

IV. *Paternal Authority distingu'd.*
 L. N. N.
 1. 6. c. 2.
 § 6.

BUT that we may handle more accurately the *Power of Parents over their Children*, we must distinguish, first, between *Patriarchs*, or Chiefs of independent Families; and such as are *Members of a Community*; and then betwixt the *Power of a Father*, as *Father*, and his Power as *Head of his Family*. And whereas it is injoyn'd by Nature to a *Father as such*, That he bring up his Children well, in order to render 'em fit Members of Human Society, so long as 'till they can take Care of themselves; hence he has so much Power given him over them, as is necessary for this End; which therefore by no means extends it self so as to give the Parents Liberty to destroy their unborn Offspring, or to cast away or kill it when it is born. For though it is true, the Issue is of the Substance of the Parents, yet it is placed in a Human State equal to themselves, and capable of receiving Injuries from them. Neither also does this Authority vest them with the Exercise of a Power of Life and Death, upon Occasion of any Fault, but only allows them to give moderate Chastisement; since the Age we speak of is too tender to admit of such heinous Crimes as are to be punished with Death. But if a Child shall stubbornly spurn at all Instruction, and become hopeless of Amendment, the Father may turn him out of his own House, and abdicate or renounce him.

MOREOVER, This Power, thus nicely taken, may be considered according to the *diverse Age of Children*. For in their *early Years*, when their Reason is come to no Maturity, all their Actions are subject to the Direction of their Parents. During which Time, if any Estate fall to the young Person, it ought to be put into the Possession, and under the Administration of the Father, so that the Property be still reserved to the Child; tho' it may be reasonable enough that the Profits arising therefrom should be the Father's till the other arrive at Manhood. So also any Advantage or Profit that can be made by the Labour of a Son, ought to accrew to the Parent; since with the Latter lies all the Care of maintaining and of educating the Former.

WHEN Children are come to *Man's Estate*, when they are indued with a competent Share of Discretion, and yet continue themselves a Part of the Father's Family, then the Power which the Father hath comes differently to be considered, either as he is a *Father*, or as *Head* of the Family. And since in the former Case he makes his End to be the Education and Government of his Children, it is plain, That when they are of *ripe Years*, they are to be obedient to the Authority of their Parents, as wifer than themselves. And whosoever expects to be maintain'd upon what his Father has, and afterwards to succeed to the Possession of the same, is obliged to accommodate himself to the Methods of his Paternal Household; the Management whereof ought to be in his Father's Power.

VII.
Patri-
archs
Power
abridged.

L. N. N.
l. 6. c. 2.
§ 6.

PATRIARCHS, or *Heads* of independent Families, before they join'd in Communities, acted in many Cases after the manner of *Princes*, in their Houses. So that their Progeny, who continued a Part of their Families, paid the highest Veneration to their Authority. But afterward, this Family-Royalty (as well as some other private Rights) was moderated for the Benefit and Order of Communities; and in some Places more, in others less of Power was left to Parents. Hence we see that, in some Governments, Fathers have in Criminal Cases a Power of Life and Death over their Children; but in most it is not allowed, either for fear Parents should abuse this Prerogative to the Detriment of the Publick, or to the unjust Oppression of those so subjected; or, left thro' the Tenderness of Paternal Affection, many Vices should pass unpunished, which might break forth one time or other into publick Mischiefs; or else, that Fathers might not be under a Necessity of pronouncing sad and ungrateful Sentences.

VIII.
Marriage
with Pa-
rents Con-
sent.

L. N. N.
l. 6. c. 2.
§ 14.

AND as the Father ought not to *turn his Child out of his Family*, while he stands in Need of Education and Assistance from him, without the most weighty Reasons; so also ought not the Son or Daughter leave the Parent's House without his Consent. Now whereas Children frequently leave their Father's Family on Occasion of Matrimony; and since it much concerns Parents what Persons their Children are married to, and from whom they are to expect Grand-Children; hence it is a Part of filial Duty, herein to *comply with the Will of the Parents*, and not to marry without their Consent. But
if

if any do actually contract Matrimony against their Liking, and consummate the same, such Marriage seems not to be void by the Law of Nature, especially if they intend to be no longer burthensome to their Parents, and that for the rest their Condition be not scandalous. So that if in any Country such Marriages are accounted null and void, it proceeds from the Municipal Laws of the Place.

BUT when a *Son* or *Daughter* have left their *Father's House*, and either have set up a new Family of their own, or joined to another; the *Paternal Authority* indeed ceases, but *Piety* and *Observance* is for ever due, as being founded in the Merits of the Parents, whom Children can never or very seldom be supposed to requite. Now these Merits do not consist in this only, That a Parent is to his Child the Author of Life, without which no Good can be enjoyed; but that they bestow also a chargeable and painful Education upon them, that so they may become useful Parts of Human Society; and very often lay up somewhat for them, in order to make their Lives more easie and comfortable.

AND yet, though the Education of Children be a Duty laid upon Parents by Nature itself, it hinders not but that, either in Case of Necessity, or for the Benefit of the Children, the Care thereof may by them be *intrusted with another*; so still that the Parent reserve to himself the Oversight of the Person deputed. Hence it is, that a Father may not only commit his Son to the *Tutorage* of proper Teachers; but he may give him to another Man to *adopt* him, if he perceives it will be advantagious to him.

IX.

Piety ever due to Parents.

L. N. N.

l. 6. c. 2.

§ 12.

X.

Educacion intrusted.

L. N. N.

l. 6. c. 2.

§ 6.

him. And if he have no other Way to maintain him, rather than he should die for Want, he may *hire* him out for Wages, or *sell* him into some tolerable Servitude, reserving still a Liberty of redeeming him, as soon as either himself shall be able to be at the Charge, or any of his Kindred shall be willing to do it. But if any Parent shall inhumanly expose and forsake their Child, he who shall take it up and educate it, shall have the *Fatherly Authority* over it; so that the Foster Child shall be bound to pay filial Obedience to his *Educator*.

XI.
*Duty of
Parents.*

THE Duty of *Parents* consists chiefly in this, That they maintain their Children handsomely, and that they so form their Bodies and Minds by a skilful and wise Education, as that they may become fit and useful Members of Human and Civil Society, Men of Probity, Wisdom, and good Temper. So that they may apply themselves to some fit and honest Way of Living, by which they may, as their Genius and Opportunity shall offer, raise and increase their Fortunes.

XII.
*Duty of
Children.*

ON the other Hand, 'tis the Duty of *Children* to honour their Parents, that is, to give them Reverence, not only in outward Shew, but much more with a hearty Respect, as the Authors not only of their Lives, but of many other invaluable Benefits to 'em; to obey 'em; to be assistant to 'em to their utmost, especially if they are Aged, or in Want; not to undertake any Business of Moment, without paying a Deference to their Advice and Opinion; and, lastly, To bear with Patience their Moroseness, and any other their Infirmities, if any such be.

C H A P. IV.

The Duties of Masters and Servants.

AFTER Mankind came to be multiplied and it was found how conveniently Domestic Affairs might be managed by the Service of other Men, * it early became a Practice to take Servants into a Family, to do the Offices belonging to the House. These at first probably offer'd themselves, driven thereto by Necessity, or a Consciousness of their own Want of Understanding ; but upon being assur'd that they should constantly be supplied with Food and Necessaries, they devoted all their Services for ever to some Master : - And then Wars raging up and down the World, † it grew a Custom with most Nations, that those Captives, to whom they granted their Lives, should be made Slaves ever after, together with the Posterity born of them ; though in many Countries, no such Servitude is in Use ; but all Domestic Offices are perform'd by mercenary Servants hired for a certain Time.

Now as there are several Degrees, as it were, of Servitude, so the Power of the Masters, and

I.
Servile
State how
begun.
L. N. N.
l. 6. c. 3.

II.
A Tempo

* Grotius de Jure Belli & Pacis, lib. 2. cap. 5.
§ 27, &c.
† Grotius de Jure Belli & Pacis, lib. 3. cap. 14.
§ 1, &c.

vary Servant.
L N. N.
l. 6. c. 3.
§ 4.

the Condition of the Servants do vary. To a *Servant hired* for a Time, the Duty of the Master is to pay him his *Wages*; the other making good on his Part the *Work* as agreed for: And because in this Contract the Condition of the Master is the better, therefore such Servant is also to pay Respect to his Master according to his Dignity; and if he have done his Business knavishly or negligently, he is liable to Punishment from him; provided it go not so far as any grievous Maiming of his Body, much less so far as Infliction of Death.

III.
A Voluntary Perpetual Servant.

BUT to such a Servant as *voluntarily offers himself to perpetual Servitude*, the Master is obliged to allow perpetual Maintenance, and all Necessaries for this Life; it being his Duty on the other hand to give his constant Labour in all Services whereto his Master shall command him, and whatsoever he shall gain thereby, he is to deliver to him. In thus doing, however, the Master is to have a Regard to the Strength and Dexterity of his Servant, not exacting rigorously of him what is above his Power to do. Now this Sort of Servant is not only subject to the Chastisement of his Master for his Negligence, but the same may correct his Manners, which ought to be accommodated to preserve Order and Decency in the Family: But he may not sell him against his Will; because he *chose this* for his Master of his own Accord, and not another; and it concerns him much with whom he serves. If he have been guilty of any heinous Crime against one not of the same Family, he is subject to the Civil Power, if he live in a Community; but if the Family be independent, he may be expell'd. But if the Crime be against

gainst the same Family, it being independent, the Head thereof may inflict even Capital Punishment.

CAPTIVES in War being made *Slaves*, are frequently treated with greater Severity, something of a hostile Rage remaining towards 'em, and for that they attempted the worst upon us and our Fortunes. But as soon as there intervenes a *mutual Trust*, in order to Cohabitation in the Family, between the Victor and the vanquish'd Person, all past Hostility is to be accounted as forgiven: And then the Master does Wrong even to a Servant thus acquir'd, if he allow him not Necessaries for Life, or exercise Cruelty to him without Cause, and much more if he take away his Life, when he has committed no Fault to deserve it.

IT is also the Practice to pass away our Property in such *Slaves* who are taken in War, or bought with our Money, to whom we please, after the same manner as we do our other Goods and Commodities; so that the *Body of such Servant* is holden to be a Chattel of his Master. And yet here *Humanity* bids us not to forget that this Servant is a MAN, however, and therefore ought not to be treated as we do our Moveables, use 'em or abuse 'em, or destroy 'em as we list. And when we are minded to part with him, we ought not to deliver him into the Hands of such, as we know will abuse him inhumanly and undeservedly.

LASTLY, 'Tis every where allow'd, That the *Progeny* of Parents who are Bondmen, are also in a *servile State*, and belong as Slaves to the Owner of their Mother. Which is justified by this Maxim, That whosoever is Propri-

IV.

Captive
Slaves

L. N. N.

1. 6. c. 3.

§ 7

V.

Alienable.

VI.

Offspring
of Slaves.

L. N. N.

1. 6. c. 3.

§ 9.

etor of the Body, is also Proprietor of whatsoever is the Product thereof; and because such Issue had never been born, if the Master had executed the Rigor of War upon the Parent; and for that the Parent having nothing she can call her own, the Offspring cannot otherwise be brought up but at her Master's Charge. Whereas, therefore, the Master afforded such Infant Nourishment, long before his Service could be of any Use to him; and whereas all the following Services of his Life could not much exceed the Value of his Maintenance, he is not to leave his Master's Service without his Consent. But 'tis manifest, That since these Bondmen came into a State of Servitude not by any Fault of their own, there can be no Pretence that they should be otherwise dealt withal, than as if they were in the Condition of perpetual hired Servants.

C H A P. V.

The Impulsive Cause of Constituting Communities.

I. *This Inquiry necessary.*
 L. N. N.
 l. 7. c. 1.

ALTHO' there be hardly any Delight or Advantage, but what may be obtain'd from those Duties, of which we have already discours'd; it remains, nevertheless, that we inquire into the Reasons, why Men, not contenting themselves with those primitive and small Societies, have founded such as are more ample, call'd COMMUNITIES. For from these
 Grounds

Grounds and Foundations is to be deduced the Reason of those Duties, which merely relate to the Civil State of Mankind.

HERE, therefore, it suffices not to say, II.
Difficulty
herein.
That Man is *by Nature inclin'd to Civil Society*,
so as he neither can nor will live without it. L. N. N.
l. 7. c. 1.
For since, indeed, it is evident, that Man is
such a Kind of Creature, as has a most tender § 2.
Affection for himself and his own Good; it is
manifest, that when he so earnestly seeks after
Civil Society, he respects some particular Ad-
vantage that will accrue to him thence. And
altho' without Society with his Fellow-Crea-
tures; yet since the natural Desires and Necessi-
ties of Mankind might be abundantly satisfied
by those primitive Kind of Societies, and by
those Duties to which we are obliged, either by
Humanity or Contracts; it cannot immediately
be concluded from this natural Society between
Man and Man, that his Nature and Temper
does directly incline him to the forming of Civil
Communities.

WHICH will more evidently appear, if we III.
Twofold
Inquiry.
consider, What Condition Mankind is placed
in by the Constitution of *Civil Communities*:
What that Condition is, which Men enter into L. N. N.
l. 7. c. 1.
when they make themselves Members of a Civil § 4.
State: What Qualities they are which proper-
ly intitle them to the Name of *Political Crea-
tures*, and render them good Patriots or Sub-
jects to the State. And, lastly, What there
is in their Frame and Constitution, which seems,
as we may say, to indispose them for living in
a *Civil Community*.

IV.
*Natural
State.*

WHOSOEVER becomes a *Subject*, immediately loses his Natural Liberty, and submits himself to some Authority, which is vested with the Power of Life and Death; and by the Commands of which, many Things must be done, which otherwise he would have been no ways willing to do, and many Things must be let alone, to which he had a strong Inclination: Besides, most of his Actions must terminate in the Publick Good, which in many Cases seems to clash with Private Men's Advantage. But Man by his *Natural* Inclinations is carried to this, To be subject to no one, to do all Things as he lists, and in every thing to consult his *single* Advantage.

V.
*The Qualities of a
good
Member
of the
Communi-
ty.*

BUT we call him a (*Political Animal* or) *True Patriot*, and Good Subject, who readily obeys the Commands of his Governours; who endeavours with his utmost to promote the Publick Good, and next to that, regards his Private Affairs; nay, more, who esteems nothing profitable to himself, unless the same be likewise profitable to the Community; lastly, who carries himself fairly towards his Fellow-Subjects. But there are few Men to be found, whose Tempers are naturally thus well inclin'd. The greater Part being restrain'd merely for fear of Punishment; and many continue all their Lifetime ill Subjects and unfociable Creatures.

VI.
*How Men
naturally
disturb
and hin-
der the
Benefits
of Society.*

FARTHERMORE, there is no Creature whatsoever more fierce or untameable than Man, or which is prone to more Vices that are apt to disturb the Peace and Security of the Publick. For besides his inordinate Appetite to Eating, Drinking, and Venery, to which Brute Beasts are likewise subject, Mankind is inclin'd to
many

many Vices, to which Brutes are altogether Strangers ; as is the unfa-
 tiable Desire and Thirst after those Things which are altogether
 superfluous and unnecessary, and above all to that worst of Evils,
 AMBITION ; also a too lasting Resentment and Memory of Injuries,
 and a Desire of Revenge increasing more and more by Length of Time ;
 besides an infinite Diversity of Inclinations and Affections, and a
 certain Stiffness and Obstinacy in every one to indulge his own
 particular Humour and Fancy. Moreover, Man takes so great
 Delight in exercising his Cruelty over his Fellow Creatures, that
 the greatest Part of the Evils and Mischiefs, to which Mankind is
 obnoxious, is wholly owing to the merciless Rage and Violence of
 Men to each other.

THEREFORE the genuine and principal Reason which induced
 Masters of Families to quit their own natural Liberty, and to form
 themselves into Communities, was, That they might provide for
 themselves a Security and Defence against the Evils and Mischiefs
 that are incident to Men from one another. For as, next under God,
 one Man is most capable of being helpful to another ; so nothing
 is able to create Man more Distress, and work him more Mischiefs,
 than Man himself ; and those Persons have entertain'd a right
 Conception of the Malice of Men, and the Remedy thereof, who
 have admitted this as a common Maxim and Proverb ; That
*unless there were Courts of Judicature, one Man would devour
 another.* But after that, by the Constituting of Communities,
 Men were reduced into such an Order and Method, that they
 might be safe and secure from mutual Wrongs and Injuries among
 themselves,

L. N. N.
 l. 1. c. 3.
 § 4.

VII.
Reason of Charge.
 L. N. N.
 l. 7. c. 1.
 § 7.

it was by that means provided, that thereby they might the better enjoy those Advantages, which ar to be reap'd and expected from one another ; to wit, That they might from their Childhood be brought up and instructed in good Manners, and that they might invent and improve several Kinds of Arts and Sciences, whereby the Life of Man might be better provided and furnished with necessary Conveniences.

VIII.
Farther Penalties.
 L. N. N.
 l. 7. c. 1.
 § 8.

AND the Reason will be yet more cogent for the Constituting of Communities, if we consider, that other Means would not have been capable of curbing the Malice of Men. For although we are enjoyn'd by the Law of Nature not to do any Injury one to another ; yet the Respect and Reverence to that Law is not of that Prevalence as to be a sufficient Security for Men to live altogether quietly and undisturbed in their Natural Liberty.

FOR although by Accident, there may be found some few Men of that moderate quiet Temper and Disposition, that they would do no Injury to others, tho' they might escape unpunish'd ; and there may be likewise some others, that in some measure bridle in their disorderly *Affections* thro' fear of some Mischief that may ensue from thence ; yet, on the contrary, there are a great Number of such, as have no Regard at all to Law or Justice, whenever they have any Prospect of Advantage, or any Hopes, by their own subtle Tricks and Contrivances, of being too hard for, and deluding the injur'd Party. And as it behoves every one, that would take care of his own Safety, to endeavour to secure himself against this Sort of Persons ; so no better Care and

and Provision can be made, than by means of these Communities and Civil Societies. For altho' some particular Persons may mutually agree together to assist each other; yet unless there be some Way found out, whereby their Opinions and Judgments may be united together, and their Wills may be more firmly bound to the Performance of what they have agreed upon, it will be in vain for any one to expect and rely upon any certain Succour and Assistance from them.

L A S T L Y, Altho' the Law of Nature does sufficiently insinuate unto Men, that they who do any Violence or Injury to other Men, shall not escape unpunished; yet neither the Fear and Dread of a Divine Being, nor the Stings of Conscience are found to be of sufficient Efficacy to restrain the Malice and Violence of all Men. For very many Persons, thro' the Prejudice of Custom and Education, are, as it were, altogether deaf to the Force and Power of Reason. Whence it comes to pass, that they are only intent upon such Things as are present, taking very little Notice of those Things which are future; and that they are affected only with those Things which make a present Impression upon their Senses. But since the Divine Vengeance is wont to proceed on but slowly; from whence many ill Men have taken Occasion to refer their Evils and Misfortunes to other Causes; especially since they very often see wicked Men enjoy a Plenty and Abundance of those Things wherein the vulgar Sort esteem their Happiness and Felicity to consist. Besides, the Checks of Conscience, which precede any wicked Action, seem not to be of that

IX.
Advantage of Penalties.
L. N. N.
l. 7. c. 1.
§ 11,

that Force and Efficacy, as that Punishment which follows the Commission of the Fact, when, that which is done, cannot possibly be undone. And therefore the most present and effectual Remedy, for the quelling and suppressing the evil Desires and Inclinations of Men, is to be provided by the Constituting of Civil Societies.

C H A P. VI.

Of the Internal Frame and Constitution of any State or Government.

I.

Conjunction necessary.

L. N. N. 1. 7. c. 2.

THE next Enquiry we are to make, is upon what Bottom Civil Societies have been erected, and wherein their *Internal Constitution* does consist. Where, in the first Place, this is manifest, That neither any Place, nor any Sort of Weapons, nor any Kind of brute Creatures can be capable of affording any sufficient and safe Guard or Defence against the Injuries to which all Men are liable, by reason of the Pravity of Mankind : From such Dangers, Men alone can afford an agreeable Remedy by joining their Forces together, by interweaving their Interests and Safety, and by forming a general Confederacy for their mutual Succour ; that therefore this End might be obtain'd effectually, it was necessary that those who sought to bring it about, should be firmly joined together and *associated* into *Communities*.

N O R

NOR is it less evident, that the Consent and Agreement of *Two or Three* particular Persons cannot afford this Security against the Violence of other Men: Because it may easily happen, that such a Number may conspire the Ruin of those *few Persons*, as may be able to assure themselves of a certain Victory over them; and 'tis very likely they would with the greater Boldness go about such an Enterprize, because of their certain Hopes of Success and Impunity. To this end therefore it is necessary, that a very considerable *Number* of Men should unite together, that so the Overplus of a few Men to the Enemies, may not be of any great Moment to determine the Victory to their Side.

AMONG those many, which join together in order to this End, it is absolutely requisite that there be a *perfect Consent and Agreement concerning the Use of such Means as are most conducive to the End aforesaid*. For even a great Multitude of Men, if they do not agree among themselves, but are divided and separated in their Opinions, will be capable of effecting but very little; Or, although they may agree for a certain Time, by reason of some present Motion or Disposition of the Mind; yet as the Tempers and Inclinations of Men are very variable, they presently afterwards may divide into Parties. And although by Compact they engaged among themselves, that they would employ all their Force for the common Defence and Security; yet neither by this Means is there sufficient Provision made, that this Agreement of the Multitude shall be permanent and lasting: But something more than all this, is requisite, to wit, That they who have once entered

II.

Numbers
Necessary.
L. N. N.1. 7. c. 2.
§ 2.

III.

Agreement to be
perpetual.
L. N. N.1. 7. c. 2.
§ 3.

entered into a mutual League and Defence for the Sake of the Publick Good, should be debarr'd from separating themselves afterwards, when their private Advantage may seem any ways to clash with the Publick Good,

IV.
*Faults
berein
how re-
medied.*

L. N. N.
l. 7. c. 2.
§ 5.

BUT there are two Faults, which are chiefly incident to Human Nature, and which are the Occasion that many who are at their own Liberty, and independent one upon the other, cannot long hold together for the promoting of any Publick Design. The One is the *Contrariety* of Inclinations and Judgments in determining what is most conducive to such an End; to which in many there is join'd a *Dulness* of Apprehending which, of several Means propos'd, is more advantageous than the rest; and a certain *Obstinacy* in defending whatsoever Opinion we have embraced. The other is a certain *Carelesness* and *Abhorrence* of doing that freely, which seems to be convenient and requisite, whensoever there is no absolute Necessity, that compels them, whether they will or no, to the Performance of their Duty. The First of these Defects may be prevented by a lasting Uniting of all their Wills and Affections together. And the Latter may be remedied by the constituting of such a Power as may be able to inflict a present and sensible Penalty upon such as shall decline their Contributing to the Publick Safety.

V.
*Union of
Wills.*

THE Wills and Affections of a great Number of Men cannot be united by any better means, than when every one is willing to submit his Will to the Will of one particular *Man*, or one Assembly of Men; so that afterwards whatsoever he or they shall will or determine concerning

concerning any Matters or Things necessary for the Publick Safety, shall be esteemed as the Will of *All* and every particular Person.

Now such a Kind of Power, as may be formidable to All, can by no better means be constituted among a great Number of Men, than when All and every one shall oblige themselves, to make Use of their Strength after that Manner, as he shall command, to whom All Persons must submit and resign the Ordering and Direction of their united Forces: And when there is an Union made of their Wills and Forces, then this Multitude of Men may be said to be animated and incorporated into a firm and lasting Society.

VI.
And of
Forces.

MOREOVER, that any Society may grow together after a regular Manner, there are required Two *Covenants*, and One Decree, or *Constitution*. For, first, Of all those many, who are supposed to be in a Natural Liberty, when they are joined together for the forming and constituting any Civil Society, every Person enters into Covenant with each other, That they are willing to come into one and the same lasting Alliance and Fellowship, and to carry on the Methods of their Safety and Security by a common Consultation and Management among themselves: In a Word, That they are willing to be made Fellow Members of the same Society. To which Covenant, it is requisite, that All and singular Persons do consent and agree, and he that does not give his Consent, remains excluded from such Society.

VII.
Other Re-
quisites.
Two Co-
venants.
The First.
L. N. N.
l. 7. c. 2.
§ 6.

AFTER this *Covenant*, it is necessary, that there should be a *Constitution* agreed on by a publick Decree, setting forth, what *Form* of

Government

tion.

Government is to be pitched upon. For 'till this be determined, nothing with any Certainty can be transacted, which may conduce to the publick Safety.

IX. AFTER this Decree concerning the *Form of The other Government*, there is Occasion for another *Covenant*, when he or they are nominated and constituted upon whom the Government of this Rising Society is conferr'd ; by which Covenant the Persons that are to govern, do oblige themselves to take Care of the Common Safety, and the other Members do in like manner oblige themselves to yield Obedience to them ; whereby also all Persons do submit their Will to the Will and Pleasure of him or them, and they do at the same Time convey and make over to him or them the Power of making Use of, and applying their united Strength, as shall seem most convenient for the Publick Security. And when this Covenant is duly and rightly executed, thence, at last, arises a *complete and regular Government*.

X. A CIVIL Society and Government, thus constituted, is look'd upon as if it were but *One Person*, and is known and distinguished from every particular Man by one *Common Name* ; and it has peculiar Rights and Privileges, which neither each One alone, nor Many, nor All together can claim to themselves, without him, who is the Supreme, or to whom the Administration of the Government is committed. Whence a Civil Society is defined to be, *One Person* morally incorporated, whose Will containing the Covenants of many united together, is looked upon and esteemed as the Will of All ; so that he is in a Capacity of making Use

Use of the Strength and Power of every particular Person for the Common Peace and Security.

Now the Will and Intention of any Constituted Government or Society exerts it self, as the Principle of Publick Actions, either by one particular Person, or by one Council or Assembly, according as the Power of Managing Affairs is conferr'd on him, or on such an Assembly. Where the Government of the State is in the Power of One Man, the said Society is supposed to will, whatsoever shall be the Will and Pleasure of that Man, allowing that he is in his perfect Senses; and it being about those Affairs which only relate to Government.

BUT when the Government of a State is conferr'd upon a *Council*, consisting of several Men, every one of them retaining his own Natural Free-Will, that regularly is esteemed to be the Will and Pleasure of the State, whereto the *Major Part* of the Persons, of whom the Council is compos'd, does give their Assent; unless it be expressly declared, how great a Part of the Council consenting is required to represent the Will of the Whole. But where two differing Opinions are equally balanced on both sides, there is nothing at all to be concluded upon, but the Affair still remains in its former State. When there are several differing Opinions, that shall prevail which has more Voices than any of the other differing Opinions, provided so many concur therein, as otherwise might have represented the Will and Pleasure of the Whole, according to the Publick Constitutions.

A STATE

XI.

How subjected to One.

L. N. N.

l. 7. c. 2.

§ 14.

XII.

How to many.

L. N. N.

l. 7. c. 2.

§ 15.

XIII.

Various
Forms of
Govern-
ment.

L. N. N.

l. 7. c. 2.

§ 20.

A STATE or Government being thus constituted, the Party on whom the Supreme Power is conferr'd, either as it is a single Person, or a Council consisting of select Persons, or of All in General, is called a MONARCHY, an ARISTOCRACY, or a FREE STATE; the rest are looked upon as *Subjects* or *Citizens*, the Word being taken in the most comprehensive Sense: Although, in Strictness of Speech, some call only those *Citizens*, who first met and agreed together in the forming of the said Society, or else such who succeeded in their Place, to wit, *House-holders* or *Masters of Families*.

MOREOVER, Citizens are either *Originally* so; that is, such as are born in the Place, and upon that Account claim their Privileges: Or else *Adscititious*; that is, such as come from Foreign Parts.

OF the first Sort, are either those who at first were present and concerned in the forming the said Society, or their Descendants, whom we call *Indigenæ*, or Natives.

OF the other Sort are those who come from Foreign Parts in order to settle themselves there. As for those who come thither only to make a short Stay, although they are for that Time subject to the Laws of the Place; nevertheless, they are not looked upon as Citizens, but are called *Strangers* or Sojourners.

XIV.

Govern-
ment from
G O D.

L. N. N.

l. 7. c. 3.

NOT that what we have delivered concerning the Original of Civil Societies, does any ways hinder, but that CIVIL GOVERNMENT may be truly said to be from GOD. For it being his Will, that the Practices of Men should be ordered according to the *Law of Nature*; and yet upon the Multiplication of Mankind,

kind, Human Life would have become so horrid and confus'd, that hardly any Room would have been left for the same to exert its Authority; and seeing the Exercise thereof would be much improved by the Institution of Civil Societies; therefore (since He who commands the End, must be suppos'd to command likewise the Means necessary to the said End) GOD also, by the Mediation of the Dictates of Reason, is to be understood antecedently to have willed, That Mankind, when they were multiplied, should erect and constitute Civil Societies, which are, as it were, animated with a Supreme Authority. The Degrees whereof He expressly approves in Divine Writ, ratifying their Divine Institution by a peculiar Law, and declaring, That Himself takes them into his especial Care and Protection.

C H A P. VII.

Of the several Parts of Government.

WHAT are the Constituent *Parts* of Supreme Power, and by what *Methods* it exerts its Force in Civil Societies, may easily be gather'd from the Nature and End of the said Societies.

IN a Civil Society all Persons are suppos'd to have submitted their Will to the Will and Pleasure of the Governours, in such Affairs as concern the Safety of the Publick, being willing to do whatsoever they require. That this

Q

may

I:
L. N. N.
lv 7. c. 4.

II.
Will of the
Supreme
to be made
known.

L. N. N. may be effected, it is necessary, that the Go-
 1. 7. c. 4. vernors do *signify* to those who are to be go-
 § 2. verned, what their Will and Pleasure is con-
 cerning such Matters. And this they do, not
 only by their *Commands*, directed to particu-
 lar Persons about particular Affairs ; but also by
 certain general *Rules*, whence all Persons may,
 at all Times, have a clear and distinct Know-
 ledge of what they are to do or omit. By which
 likewise it is commonly defined and determined
 what ought to be looked upon to be each Man's
 Right and Property, and what does properly
 belong to another ; * what is to be esteemed
 Lawful, and what Unlawful in any Publick So-
 ciety ; what Commendable, or what Base ; what
 every Man may do by his own Natural Liber-
 ty, or how every one may dispose and order
 his own particular Rights towards the Advance-
 ment of the common Peace and Tranquillity :
 In fine, what, and after what manner, every one
 by Right may lay Claim to from another.
 For it conduces very much to the Peace and
 Prosperity of any Civil Society, that all these
 Things should be clearly and plainly laid down
 and determined.

III. MOREOVER, this is the Chief *End* of Ci-
 vil Societies, That Men, by a mutual Agree-
 ment and Assistance of one another, might be
 L. N. N. secured against the Injuries and Affronts, which
 1. 7. c. 4. may, and very often do, befall us by the Vio-
 § 3. lence of other Men. Now that this End may

* That is to say, In such Matters as are neither com-
 manded nor forbidden by any Divine Law, whether it be
 Natural or Revealed. See *Law of Nature and Nations*.
 Book VIII, Chap. I. § 2, &c.

the better be obtained by those Men, with whom we are link'd together in the same Society ; it is not sufficient, that they should mutually agree among themselves not to injure one another : Nor is it enough, that the bare Will and Pleasure of the Supreme Magistrate should be made known to them ; but 'tis likewise requisite, that there should be a certain Fear and Dread of *Punishment*, and a Power and Ability of inflicting the same. Which *Punishment* or *Penalty*, that it may be sufficient for this End, is to be so ordered, that there may plainly appear a greater Damage in violating the Laws, than in observing them ; and that so the *Sharpness* and *Severity* of the Penalty, may outweigh the *Pleasure* and *Advantage* gotten, or expected by doing the Injury : Because it is impossible but that of two Evils Men should chuse the least. For although there are many Men who are not restrained from doing Injuries by any Prospect of Punishment hanging over their Heads ; yet that is to be looked upon as a Case that rarely happens, and such as, considering the present Condition and Frailty of Mankind, cannot be wholly avoided.

BECAUSE also it very often happens, that many Controversies do arise about the *right Application* of the Laws to some particular Matters of Fact, and that many Things are to be nicely and carefully considered in order to determine whether such a Fact may be said to be against Law ; therefore, in order to the Establishment of Peace and Quietness amongst the Subjects, it is the Part of the supreme Governour to take Cognizance of, and determine the *Controversies* arising between Subject and Subject,

IV.
Contro-
versies.
L. N. N.
l. 7. c. 4.
§ 4.

and carefully to examine the Actions of particular Persons, which are found to be contrary to Law, and to pronounce and execute such Sentence as shall be agreeable to the same Law.

V. BUT that those, who by mutual Agreement have constituted a Civil Society, may be safe against the Insults of Strangers, the supreme Magistrate has Power to *assemble*, to *unite* into a Body, and to *arm*, or, instead of that, to list as many Mercenaries as may seem necessary, considering the uncertain Number and Strength of the Enemy, for the maintaining the publick Security; and it is likewise intirely left to the Discretion of the same Magistrate, to make Peace whenever he shall think convenient.

Power of
Peace and
War.
L. N. N.
l. 7. c. 4.
§ 5.

AND since, both in Times of Peace and War, *Alliances* and *Leagues* with other Princes and States are of very great Use and Importance, that so the different Advantages of divers States and Governments may the better be communicated to each other, and the Enemy, by their joint Forces, may be repulsed with the greater Vigour, or be more easily brought to Terms. It is also absolutely in the Power of the supreme Magistrate to enter into such *Leagues* and *Treaties* as he shall think convenient to each Occasion; and to oblige all his Subjects to the Observation of them, and at once to derive and convey down to the whole Civil Society, all the Benefits and Advantages thence arising.

VI. SEEING also the Affairs of any considerable State, as well in Time of War as Peace, cannot well be managed by one Person, without the Assistance of subordinate *Ministers* and *Magistrates*,

Publick
Officers.
L. N. N.
l. 7. c. 4.
§ 6.

gistrates, it is requisite that able Men should be appointed by the supreme Magistrate, to decide and determine in his Room the Controversies arising between Subject and Subject ; to inquire into the Councils of the Neighbouring Princes and States ; to govern the Soldiery ; to collect and distribute the publick Revenue : and, lastly, in every Place to take special Care of the Common Good. And from each of these Persons the supreme Magistrate may, and ought to exact the Performance of their Duty, and require an Account of their Behaviour in their respective Stations.

AND because the Concerns of any Civil Society can, neither in Time of War nor Peace, be managed without *Expences*, the supreme Authority has Power to compel the Subjects to provide the same. Which is done several Ways ; either when the Community appropriates a certain Portion of the Revenues of the Country they possess, for this Purpose ; or when each Subject contributes something out of his own Estate, and, if Occasion requires, gives also his personal Help and Assistance ; or when Customs are set upon Commodities imported and exported, (of which the first chiefly affects the Subjects, and the other Foreigners ;) or, lastly, when some moderate Tax is laid on those Commodities which are spent.

VII:
Taxes.
L. N. N.
l. 7. c. 4.
§ 7.

To conclude : Since the Actions of each Person are governed by his own particular Opinion, and that most People are apt to pass such a Judgment upon Things as they have been accustomed unto, and as they commonly see other People judge ; so that very few are capable of discerning what is just and honest ; upon this

VIII.
Publick
Doctrines.
L. N. N.
l. 7. c. 4.
§ 8.

Account therefore it is expedient for any Civil Society, that such Kind of Doctrines should be publickly taught, as are agreeable to the right End and Design of such Societies, and that the Minds of the Inhabitants should be seasoned betimes with these Principles. * It does therefore belong to the supreme Magistrate to constitute and appoint fitting Persons to inform and instruct them publickly in such Doctrines.

IX.

*All these
Parts con-
centered.*

NOW these several Parts of Government are naturally so connected, that to have a regular Form suitable to any civil Society, all these Parts thereof ought radically to center in One. For if any Part be wanting, the Government is defective, and incapable of procuring its End. But if these several Parts be divided, so that some of them be radically here, and others there, hence of Necessity will follow an irregular and incoherent State of Things.

* *Apolog.* § 6. *Evis Scandica.* P. 7, &c. See also the References at Lib. I. c. 4. § 9.

C H A P. VIII.

Of the several Forms of Government.

THE Supreme Power consider'd either as it resides in a Single *Man*, or in a Select *Council* or *Assembly* of Men, or of *All* in General, produces diverse Forms of Government.

I.
Diverse
Forms.
L. N. N.
l. 7. c. 5.

Now the Forms of Government are either *Regular* or *Irregular*. Of the first Sort are those where the supreme Power is so united in one particular Subject, that the same being firm and intire, it carries on, by one *supreme Will*, the whole Business of Government. Where this is not found, the Form of Government must of Necessity be *Irregular*.

II.
Regular
and Irregular.

THERE are Three *Regular* Forms of Government: The First is, When the supreme Authority is in *One Man*; and that is call'd a *MONARCHY*. The Second, When the same is lodged in a *select Number* of Men; and that is an *ARISTOCRACY*. The Third, When it is in a *Council* or *Assembly* of *Free-holders* and *Principal Citizens*; and that is a *DEMOCRACY*. In the First, he who bears the supreme Rule, is stil'd, A *MONARCH*; in the Second, the *NOBLES*; and in the Third, The *PEOPLE*.

III.
Three Regular
Forms.
L. N. N.
l. 7. c. 5.
§ 2.

IN all these Forms, the Power is indeed the same. But in one Respect *MONARCHY* has a considerable Advantage above the rest; because in order to deliberate and determine, that is, actually to exercise the Government, there is

IV.
Forms
compar'd.
L. N. N.
l. 7. c. 5.
§ 9.

no Necessity of appointing and fixing certain Times and Places ; for he may deliberate and determine in any Place, and at any Time ; so that a *Monarch* is always in a Readiness to perform the necessary Actions of Government. But that the *Nobles* and the *People*, who are not as one natural Person, may be able so to do, it is necessary that they meet at certain Times and Places, there to debate and resolve upon all publick Business. For the Will and Pleasure of a Council, or of the People, which results from the Majority of Votes concentrating, can no otherwise be discover'd.

V. *A distemper'd State*
L. N. N.
l 7. c. 5.
§ 10.

BUT, as it happens in other Matters, so in Governments also it falls out, That the same may be sometimes well, and at other times scurvily and foolishly managed. Whence it comes to pass, that some States are reputed *Sound*, and others *Distemper'd*. Yet we are not, on Account of these Imperfections, to multiply the several Species or Forms of Government, imagining that these several Defects make different Sorts of Governments ; for these Vices or Defects, though different in themselves, do not, however, either change the Nature of the Authority it self, or the proper Subject in which it resides. Now these Defects or Vices in Government, do sometimes arise from the Persons who administer the Government ; and sometimes they arise from the Badness of the *Constitution* it self. Whence the First are styl'd, Imperfections of the *Men*, and the Latter, Imperfections of the *State*.

VI. THE Imperfections of the *Men* in a *Monarchy* are, when he who possesses the Throne, is not well skilled in the Arts of Ruling, and takes

takes none, or but a very slight Care for the publick Good, prostituting the same to be torn in pieces and sacrificed to the Ambition or Avarice of evil Ministers; when the same Person becomes terrible by his Cruelty and Rage; when also he delights, without any real Necessity, to expose the Publick to Danger; when he squanders away, by his Luxury and profuse Extravagance, those Supplies which were given for the Support of the Publick; when he heaps up Treasure unreasonably extorted from his Subjects; when he is Insolent, Haughty, or Unjust; or guilty of any other scandalous Vice.

THE Imperfections of the Men in an ARISTOCRACY are, When by Bribery and base Tricks, Ill Men and Fools get into the Council, and Persons much more deserving than they, are excluded: When the Nobles are divided into several Factions: When they endeavour to make the common People their Slaves, and to convert the publick Stock to their private Advantage.

THE Imperfections of the Men in a DEMOCRACY are, when silly and troublesome Persons stickle for their Opinions with great Heat and Obstinacy; when those Excellencies, which are rather beneficial than hurtful to the Commonwealth, are depress'd and kept under; when, thro' Inconstancy, Laws are rashly establish'd, and as rashly annull'd, and what but just now was very pleasing, is immediately, without any Reason, rejected; and when base Fellows are promoted in the Government.

THE Imperfection of the Men, which may promiscuously happen in any Form of Government, are, When those who are intrusted with the

L. N. N.
l. 7. c. 5.
§ 10.

VII.
Aristocracy.

VIII.
Men in a Democracy.

IX.
Men in any Government.

the publick Care, perform their Duty either amifs, or flightly ; and when the Subjects, who ought to make Obedience their Glory, grow reftiff and ungovernable.

X.
*Faults in
a Confti-
tution,*

BUT the Imperfections of any *Conftitution*, are, When the Laws thereof are not accommodated to the Temper and Genius of the People or Country ; or, When the Subjects make ufe of them for fomenting intefine Difurbances, or for giving unjuft Provocations to their Neighbours ; or, When the faid Laws render the Subjects incapable of difcharging thofe Duties that are neceffary for the Prefervation of the Publick ; for Instance, When thro' their Defect the People muft of Necessity be diffolv'd in Sloth, or rendred unfit for the Injoyment of Peace and Plenty ; or when the fundamental Conftitutions are order'd after fuch a Manner, that the Affairs of the Publick cannot be difpatched but too flowly, and with Difficulty.

XI.
*How cal-
led.*
L. N. N.
l. 7. c. 5.
§ 11.

To thefe *distemper'd Conftitutions*, Men have given certain Names ; as a corrupt Monarchy, is call'd *Tyranny* ; a corrupt Aristocracy, is ftyl'd An *Oligarchy*, or a Rump-Government ; and a corrupt *Popular State*, is call'd An *Anarchy*, or a Rabble-Government. Altho' it often happens, that many by thefe Nick-names do not fo much exprefs the Distemper of fuch a Government, as their own natural Averfion for the prefent Governours and Conftitution.

FOR, oftentimes, he who is diffatisfied with his *King*, or a *monarchical Government*, is wont to call, even a Good and Lawful Prince, a Tyrant and Ufurper, efpecially if he be ftrict in putting the Laws in Execution. So he who is vex'd

vex'd because he is left out of the *Senate*, not thinking himself Inferiour to any of the other Counsellors, out of Contempt and Envy, he calls them, A Pack of assuming Fellows, who tho' in no Respect they excell any of the Rest, yet domineer and lord it over their Equals, nay, over better Men than themselves.

LASTLY, Those Men who are of a haughty Temper, and who hate a *Popular Equality*, seeing that all People in a *Democracy*, have an equal Right to give their Suffrages in Publick Affairs, tho' in every Place the common People makes the greatest Number, they condemn that as an *Ochlocracy*, or Government by the Rabble, where there is no Preference given to Persons of Merit, as they, forsooth, esteem themselves to be.

AN *Irregular Constitution* is, Where that perfect Union is wanting, in which the very Essence of a Government consists: And that not through any Fault or Male-administration of the Government, but because *this Form* has been receiv'd as good and legitimate by publick Law or Custom. But since there may be infinite Varieties of Errors in this Case, it is impossible to lay down distinct and certain Species of Irregular Governments. But the Nature thereof may be easily understood by one or two Examples; for Instance, If in a State the Nobles and the People are each vested with a supreme and unaccountable Power; * Or if in any Nation the

XII,
An Irregular
State.
L. N. N.
l. 7. c. 5.
§ 12.

* See L. N. N. l. 7. c. 5. § 14, &c. *Dissert. Accadem. de Rep. irregulari.* p. 301. & in *Append. ibid.* p. 529. *Eris Scandica.* p. 176, 187.

Nobles are grown so great, that they are no otherwise under the King, than as unequal Confederates.

XIII. *Union of several Communities.*
 L. N. N. We call those *Unions*, when several Constituted Societies by some special Tie are so conjoin'd, that their Force and Strength may be look'd upon in Effect as the united Force and Strength of one civil Society. Now these Unions
 l. 7. c. 5. § 17. may arise two several Ways; the one by a *Common Sovereign*, the Other by *League* or *Confederacy*.

XIV. *Union by a common Sovereign.*
 SUCH a *Union* happens, by means of a common Sovereign, when diverse separate Kingdoms, either by Agreement, or by Marriage, or hereditary Succession, or Victory, come to be subject to the same King; yet so that they do not close into one Realm, but each are still govern'd by the same common Sovereign, according to their own fundamental Laws.

XV. *Union by Confederacy.*
 L. N. N. ANOTHER Sort of *Union* may happen, when several neighbouring States or Governments are so connected by a perpetual League and Confederacy, that they cannot exercise some Parts of
 l. 7. c. 5. § 18. the supreme Power, which chiefly concern their Defence and Security against Strangers, but by a general Consent of them All: Each Society, nevertheless, as to other Matters, reserving to it self its own peculiar Liberty and independency.

C H A P. IX.

The Qualifications of Civil Govern-
ment.

IT is always one Prerogative of the Govern-
ment by which any Community is directed,
in every Form of Commonwealth whatsoever,
to be invested with the supreme Authority : *
Whereby it has the Regulating of all Things
according to its own Judgment and Discretion,
and acts without Dependence upon any other
Person † as Superiour, that can pretend to an-
nul or countermand its Orders.

FOR the same Reason, a Government so
constituted remains *unaccountable to all the World*;
there being no Authority *above* it to punish it,
or to examine whether its Proceedings are right
or no.

AND a *third Qualification* of like Nature with
the former, is, That inasmuch as all civil
Laws, of human Authority, derive both their

* *Grotius de Jure Belli & Pacis*, lib. 1. cap. 3.
§ 6, &c.

† This Restriction must be carefully observ'd; for
tho' in a *limited Monarchy*, the Sovereign can't enact
a Law without the Advice and Consent of his People re-
presented in Parliament, yet notwithstanding, this
Authority of the People is not equal, much less superi-
our, to that of the *Prince*: The Author's Account of
the Nature of supreme Authority is imperfect; it ought
to have comprehended distinctly what is equally agree-
able to a *limited* and to an *Absolute Sovereignty*.

L. N. N. Beginning and their Continuance from the Fa-
 1. 7. c. 6. vour of the Government ; it is impossible they
 § 3. should directly *oblige the very Power that makes*
them ; because the same Power would in Conse-
 quence be superiour to it self. Yet it is a happy
 Prospect, and a singular Advantage to the Laws,
 when a Prince conforms himself, of his own
 Pleasure, as Occasion serves, to practise the same
 Things that he commands his Subjects.

IV. THERE is also a peculiar *Veneration* to be
 paid to the supreme Government under which
Obedience we live ; not only in obeying it in its just Com-
due to it. mands, wherein it is a Crime to disobey, but
 L. N. N. in *induring its Severities* with the like Patience
 1. 7. c. 8. as the Rigour of some Parents is submitted to by
 dutiful Children. Wherefore, when a Prince
 proceeds to offer the most heinous Injuries ima-
 ginable to his People, let them rather undergo
 it, or every one seek his Safety by Flight,
 than draw their Swords upon the Father of their
 Country.

V. WE find, in *Monarchies* and *Aristocracies* es-
Ar. abso- pecially, that the Government is sometime *Ab-*
lute Mo- *bsolute* and sometime *Limited*. An *Absolute* Mo-
narchy. narch is one, who having no prescrib'd Form
 L. N. N. of Laws and Statutes perpetually to go by, in
 1. 7. c. 6. the Method of his Administration, proceeds
 § 7. intirely according to his own Will and Pleasure,
 as the Condition of Affairs and the publick
 Good in *his Judgment* seem to require.

VI. BUT because a single Person may be subject
A limited to be *mistaken* in his Judgment, as well as to
Monarchy be seduced into evil Courses in the Injoyment of
 L. N. N. so vast a Liberty ; it is thought convenient by
 1. 7. c. 6. some States, * to circumscribe the Exercise of
 § 9.

* *Grotius de Jure Belli & Pacis*, l. 1. c. 3. § 14. &c.
 this

this Power within the *Limits of certain Laws*, which are propos'd to the Prince at his Succession to be the future Rule of his Government. And particularly when any extraordinary Concern arises, involving in it the Interest of the whole Kingdom, for which there can be no Provision extant in the Constitution foregoing; They then oblige him to engage in nothing without the previous Advice and Consent of the People, or their *Representatives in Parliament*; the better to prevent the Danger of his swerving from the Interest of the Kingdom.

WE see likewise a Difference in the *Right and Manner of holding* some Kingdoms, from what it is in others. For those Princes especially who have acquired Dominions by Conquest, and made a People their own by Force of Arms, can *divide, alienate, and transfer* their Regalities at Pleasure in the manner of a Patrimonial Estate. Others that are advanced by the Voice of the People, tho' they live in full Possession of the Government during their Reigns, yet have no Pretensions to such a Power. But as they attain'd to the Succession, so they leave it to be determin'd, either by the ancient Custom, or the fundamental Laws of the Kingdom: * For which Reason they are compar'd by some to Usufructuaries, or Life-Renters.

VII.
Right and Manner of holding.
L. N. N.
l. 7. c. 6.
§ 14.

* *Grotius de Jure Belli & Pacis*, l. 1. c. 3. § 11. & l. 2. c. 7. § 12.

C H A P. X.

How Government, especially Monarchical, is acquired.

I. **A**LTHOUGH the *Consent of the Subject* is a Thing to be required in Constituting of every lawful Government, yet it is always obtain'd the same way. For as it is sometimes seen, that a Prince ascends the Throne with the *voluntary Acclamations of the People*; so sometimes he makes himself a King by his *Army*, and brings a People to consent by *military Force*.

II. WHICH latter Method of acquiring a Government is called *Conquest*; it happening, as often as victorious Prince, having Fortune on his Side and a just Cause, reduces a People by his Arms to such Extremities, as to compel them to receive him for their Sovereign. And the Reason of this Title is derived, not only from the Conqueror's Clemency in saving the Lives of all those whom, in Strictness of War, he was at Liberty to destroy, and instead thereof laying only a lesser Inconvenience upon them; but likewise from hence, That, when a Prince will choose to go to War with one that he has injured, rather than he will condescend to satisfy him in a just and equal Manner; * He is to be presum'd to cast himself upon the Fortune of War, with this Intention, that he does beforehand

Grotius de Jure Belli & Pacis, lib. 3. cap. 8.

tacitly

tacitly consent to accept of any Conditions whatsoever shall befall him in the Event.

As for the *voluntary Consent of the People*, a Government is acquired by it, when in an *Election* the People, either in order to their Settlement, or at any Time after, do nominate such a One, to bear that Office, as they believe is capable of it. Who, upon Presentation of their Pleasure to him, accepting it, and also receiving their Promises of Allegiance, thereby actually enters upon the Possession of the Government.

BUT betwixt this Election of a new Prince and the Death of the former, there uses in Monarchies that are already fix'd and settled, to intervene an *Interregnum*; which signifies an imperfect Kind of State, where the People keep together merely by Virtue of their *Original Compact*: Only that this is much strengthened by the common Name and Love of their Country, and the Settlement of most of their Fortunes there; whereby all good Men are obliged to preserve the Peace with one another, and study to restore their fallen Government again as soon as they can. Yet to prevent the Mischiefs which are apt to arise in an *Interregnum*, it is very convenient the Law should provide *Administrators*, to manage the publick Affairs during the Vacancy of the Crown.

Now though, as is said, in some Monarchies, as every King dies, they proceed again to a *New Election*: yet in others, the Crown is conferr'd upon Conditions to descend to certain Persons *successively*, (without any intervening Election) for all Time to come. The Right to which Succession may either be determined by

III.
Election.
L. N. N.
l. 7. c. 7.
§. 6.

IV.
An Inter-
regnum.
L. N. N.
l. 7. c. 7.
§ 7.

V.
Succession.
L. N. N.
l. 7. c. 7.
§ 11.

the *Order of the Prince*, or the *Order of the People*.

VI. *Desirable when.* L. N. N. 1. 7. c. 6. § 16. WHEN Princes hold their Crowns in the Manner of a *Patrimony*, they have the Liberty of *disposing of the Succession as themselves please*. And their declared Order therein, especially if their Kingdoms are of their own Founding or Acquiring, shall carry the same Force with the last Testament of any private Man. They may divide, if they please, their Kingdom amongst all their Children, not so much as excepting the Daughters. * They may, if they think fit, make an Adoptive, or their Natural Son, their Heir, or one that is not in the least a-kin to them.

VII. *Succession upon an Intestate.* AND when such an Absolute Monarch as this dies, without leaving Order for the Succession, it is to be presumed he did not thereby intend the Kingdom should expire with himself; but *first*, That it should devolve to his Children (before all others) because of the natural Affection of Parents to them: Then, *That* the same Monarchical Government should continue, which he recommended by his own Example. *That* the Kingdom be kept undivided, as one Realm; because any Division thereof must give Occasion to great Troubles, both among the Subjects and the Royal Family. *That* the Elder reign before the Younger, and the Male before the Female in the same Line: * And, lastly, *That* in Default of Issue, the Crown shall devolve upon the next in Blood.

* *Grotius de Jure Belli & Pacis*, Lib. 2. Cap. 7. § 12, &c.

† *Grotius de Jure Belli & Pacis*, l. 2. c. 7. § 12, &c.

BUT in those Monarchies, whose Constitution, from the very Beginning, was founded upon the voluntary Choice of the People, there the Order of Succession must have an Original Dependance upon the Will of the same People. For if, together with the Crown, they did confer upon the Prince the Right of appointing his Successor; whosoever shall be nominated to the Succession by him, will have all the Right to enjoy it. If they did not confer it upon the Prince, it is to be understood as reserved to themselves: Who, if they pleased, might make the Crown Hereditary to their Prince's Family; either prescribing the Order of Succession to be like other ordinary Inheritances, so far as can consist with the Publick Good; or set the same under any peculiar necessary Limitations.

WHEN a People have barely conferr'd upon their King an Hereditary Right, without any thing farther express'd; tho' 'tis true, it may seem to be intended, that the Crown shall pass to the Heirs in the same common Order of Descent as private Inheritances do; yet the Publick Good requires, That the Sense of such a Publick Act shall be taken under some Restrictions, notwithstanding their not being particularly express'd. As,

1. IT is supposed, That the Kingdom shall continue inseparable, as one Realm.

2. THAT the Succession shall go to the Descendants of the first Prince of the Line. Excluding,

3. ILLEGITIMATE and Adopted Children, with all that are not born according to the Laws of the Realm.

VIII.
Succession
in the
People.
L. N. N.
l. 7. c. 7.
§ 11.

IX.
Of Hereditary
Kingdoms.
L. N. N.
l. 7. c. 7.
§ 12.

4. THAT the Heirs Male be preferr'd before the Female in the same Line, tho' their Inferiors in Age. And,

5. THAT each Prince esteem his Succession, not as the Gift of his Predecessor, but as the Bounty of the People.

X. Now, because after a long Descent of Princes, there may easily arise Controversies almost inextricable, about the Person of the Royal Family, who approaches nearest in Kindred to the Prince deceased; therefore, for Prevention of such, in many Kingdoms they have introduced a *Lineal Succession*, of this Nature; That as every one descends from the Father of the Stem-Royal, they compose, as it were, a perpendicular Line; from whence they succeed to the Crown, according to the Priority of that Line to others: And tho', perhaps, the nearest of Kin to the Prince last deceased, may stand in a *New Line*, different from that of *His*; Yet there is no passing out of the Old Line thither, 'till Death has exhausted the same.

XI. THE Series of Succession most regardable, are those Two, deduced from the several *Families of the Father and the Mother*; the Relation whereof is distinguish'd in the Civil Law by the Names of *Cognition* and *Agnation*. The First, called also the *Castilian Law*, does not exclude the Women, but only postpones them to Males in the same Line; for it recurs to them in the Case of the other's *Default*. But by the Second, which is sometimes styl'd the *French* or *Salick Law*, both the Women and all their Issue, even Males, are excluded for ever.

WHEN, in a Patrimonial Kingdom, there arises a Dispute concerning the Succession, the most adviseable Way to determine it, is, To put it to the Arbitration of some of the Royal Family; And where the Succession originally depended upon the Consent of the People, there their Declaration upon the Matter, will take away the Doubt.

XII.
Differen-
ces about
Succession
how to be
determin-
ed.

C H A P. XI.

The Duty of Supreme Governours.

IF we consider what is the End and Nature of Communities, and what the Parts of Government, it will be easie from thence to pass a Judgment upon the Rules and Precepts, in the Observance of which, consists the Office of a Prince.

I.
L. N. N.
l. 7. c. 9.

BEFORE all Things, it is requisite, That he apply himself, with the utmost Diligence, to the Study of *whatever may conduce to give him a perfect Comprehension of the Affairs belonging to a Person in his Station*: because no Man can manage a Place to his Honour, which he does not *rightly* understand. He is therefore to be sequestred from those remote and foreign Studies, which make nothing to *this Purpose*: He must abridge himself in the Use of Pleasures and vain Pastimes, that would divert his Attention from *this Mark* and End.

II.
Their pro-
per Studies
and Con-
versation.
L. N. N.
l. 7. c. 9.
§ 2.

AND for his more *familiar Friends*, instead of Parasites and Triflers, or such as are accomplished in nothing but Vanities, (whose Company ought utterly to be rejected;) let him make Choice of Men of Probity and Sense, experienced in Business, and skilful in the Ways of the World; being assured, that 'till he does thoroughly understand, as well the Condition of his own State, as the Disposition of the People under him, he will never be able to apply the general Maxims of *State Prudence*, to the Cases that will occur in Government, in such a Manner as they ought. More especially, let him study to be excellent in Virtues, that are of the greatest Use and Lustre in the Exercise of his vast Charge; and so compose the Manners, and all the Actions of his Life, that they may be answerable to the Height of his Glory.

III. THE most General Rule to be observed by Governours, is this; *The Good of the Publick is the Supreme Law of all.* Because, in conferring the Government upon them, what is there else intended, but to secure the common End for which Societies were constituted in the Beginning? From whence they ought to conclude, That whatsoever is not expedient for the *Publick* to be done, ought not to be accounted expedient for *themselves*.

IV. AND it being necessary, in order to preserve a People at Peace with one another, that the Wills and Affections of them should be disposed and regulated, according as it is most proper for the publick Good; there ought to be some *suitable Laws* for the Purpose prescribed by Princes, and also a *publick Discipline* established

blished with so much Strictness, that so, Custom, as well as Fear of Punishment, may be able to keep Men close to the Practice of their several Duties. * To which End it is convenient to take Care, that the Christian Religion, after the most pure and most uncorrupt Way, be profess'd by the Subjects of every Realm or Community; and that no Tenets be publickly taught in the Schools, that are contrariant to the Designs of Government.

IT will conduce to the Advancement of the same End, that in the Affairs which are wont to be most frequently negotiated between Subject and Subject, the Laws which are prescribed be *clear and plain*; and *no more in Number* than will promote the Good of the Republick and its Members. For, considering that Men use to deliberate upon the Things they *ought*, or ought *not* to do, more by the Strength of their *Natural Reason*, than their Understanding in the *Laws*; whenever the Laws do so *abound* in Number, as not easily to be retained in Memory; or are so *particular* in their Matter, as to prohibit Things which are not prohibited by the Light of Reason; it must certainly come to pass, That innocent Persons, who have not had the least ill Intention to transgress the Laws, will be many times unwittingly hamper'd by them, as by Snares, to their unreasonable Prejudice, against the very End of Societies and Government.

V.
The Laws
plain and
few.

* See *Dissertationes Academicæ de Concord. Polit. cum Religione Christiana*, Lib. II. Pag. 449. And also *De Habitu Religionis Christianæ ad Vitam Civilem*: Especially Chapters 7, 47, 49.

VI. *And duly executed.* YET it is in vain for Princes to make Laws, and at the same time suffer the Violation of them to pass with Impunity. They must therefore *cause them to be put in Execution*, both for every *honest Person* to enjoy his Rights without Vexation, Evasions, or Delays; and also for every *Malefactor* to receive the Punishment due to the Quality of his Crime, according to the Intention and Malice in the committing it. They are not to extend their Pardons to any without sufficient Reason. For it is an unjust Practice, which tends greatly to irritate the Minds of People against the Government, not to use Equality (all Circumstances considered) towards Persons that are Equal in their Deservings,

VII. *Penalties.* AND as nothing ought to be Enacted under a *Penalty*, without the Consideration of some *Profit* to the Common-wealth, so in the *fixing of Penalties proportionably to that End*, it is fitting to observe a Moderation; with Care, that the Damage thence arising to the Subject on the one Hand, exceed not the Advantage that redounds to the Common-wealth on the other. In fine, to render Penalties effectual in obtaining the End intended by them, it is clear they should still be magnified to such a Degree, as, by their Severity, to out-weigh the contrary Gain and Pleasure, that is possible to proceed from chusing the Crime.

VIII. *Injuries.* MOREOVER, inasmuch as the Design of People, in incorporating together in a Common-wealth, is their Security from Harms and Violence; it is the Duty of the supreme Magistrate to *prohibit any Injury of one Subject to another* so much the more severely, because, by their constant

constant Cohabitation in the same Place, they have the fairer Opportunities to do them or to resent them: Remembring, that no Distinctions of Quality or Honour derive the least Pre-
tence to the Greater to insult over the Less at their Pleasure. Neither has any Subject whatsoever the Liberty to seek his Satisfaction for the Injuries, he presumes are done him, in the Way of a private Revenge. For the Design of Government is destroyed by such a Proceeding as this.

AND although there is no one Prince, how ingenious soever in Business, that is able in his own Person to manage all the Affairs of a Nation of any considerable Extent, but he must have *Ministers to participate with him in his Cares and Counsels*; Yet as these Ministers borrow their Authority, in every Thing they do, from Him; so the Praise or Dispraise of their Actions returns finally upon Him also. For which Reason, and because according to the Quality of Ministers, Business is done either well or ill, there lies an Obligation upon a Prince to advance *honest and fit* Persons to Offices of Trust in the Government, and upon Occasion to examine into the Proceedings of the same; and as he finds them deserving, to reward or punish them accordingly, for an Example to others to understand, that there is no less *Fidelity and Diligence* to be used in managing the *publick* Business, than one would practise in any *private* Affair that relates to himself. So when wicked People are encouraged to put their Inclinations in Practice, upon the Hopes of escaping very easily unpunish'd under *Judges that are subject to Corruption*; it is a Prince's Duty to animadvert severely upon such Judges,

as

IX.

*Ministers
of State
and
Judges.*L. N. N.
l. 7. c. 9.

§ 9.

as Favourers of Vice, against the *Safety* of the Subject, and *Quiet* of the Nation. And though the Dispatching of the ordinary Affairs may be committed to the Ministers Care; yet a Prince is never to refuse to lend his Ear with Patience, when his Subjects present him with their Complaints and Addresses.

X. *Of Taxes and Duties.* FOR Taxes and the like Duties, to which Subjects are upon no other Account obliged, than as they are *necessary* to support the publick Charge in Peace and War; it deserves to be the Care of Princes not to extort more, than either the *Necessities* or *signal Advantages* of the Nation require; and so to alleviate and soften them in the Ways and Means of laying them upon the Subject, that every one may find their Weight as little offensive as it can possibly be; being charged upon Particulars in a *fair* and *equitable Proportion*, without favouring of one Person, to deceive or oppress another. And let not the Money that is so rais'd be consumed by Princes in Luxury and Vanities, or thrown away in Gifts and needless Ostentation; but laid out upon the Occasions of the Nation; always foreseeing, that their *Expences* be made to answer to their *Revenue*; and in case of any Failure in the latter, so to order Things, that by prudent Frugality and retrenching unnecessary Expences, the Publick may not suffer Damage for want of a sufficient Treasure.

XI. *Interest of the Subject to be advanced by Princes.* IT is true, Princes have no Obligation upon them to find Maintenance for their Subjects, otherwise than Charity directs them to a particular Care of those, for whom it is impossible to subsist of themselves by Reason of some Calamity undeserved. Yet because the Money, that

that is necessary for the Conservation of the Publick, must be raised out of the Subjects Estates, in whose Wealth and Happiness the Strength of a Nation does consist; it therefore concerns Princes to use their best Endeavours, that the Fortunes of their Subjects improve and flourish; as particularly, by giving Orders, how the Products of the Earth and Water may be received in the most plentiful Measure; and that Men employ their Industry in improving such Matters as are of their own Growth, and never hire foreign Hands for those Works which they can conveniently perform themselves. That all Mechanick Arts and Merchandise, and in Maritime Places, Navigation be encouraged, as of great Consequence to the Commonwealth. That Idleness be banished from amongst them, and Frugality be restored by *Sumptuary Laws*, contrived on Purpose to avoid superfluous Expences; especially those, which occasion the transporting of Riches out of the Kingdom. Whereof, if the Prince is pleased to set an Example in his own Person, it is likely to prove of greater Force than all the *Laws* beside.

FARTHER, Since the *internal* Health and Strength of a Nation proceeds in a particular Manner from the *Unity that is among the People*; and according as this happens to be more and more perfect, the Power of the Government diffuses it self through the whole Body with so much the greater Efficacy: It is for this Reason incumbent upon Princes, to hinder, as well the Growth of *publick Factions*, as of *private Associations* of particular Persons by Agreements amongst themselves. As also to see, that neither all, nor any of the Subjects, place a greater

XII.

Factions
and Par-
ties.L. N. N.
l. 7. c. 9.

§ 12.

greater Dependance, or rely more for Defence and Succour on any other Person, within or without the Realm, under any Pretence whatsoever, whether Sacred or Civil, than on their lawful Sovereign, in whom alone, before others, all their Expectations ought to be reposed.

XIII. LASTLY, Since the Peace of Nations in reference to one another depends upon no very great Certainties; it ought to be the Endeavour of Princes to encourage *Valour and Military Studies* in their Subjects; having all things, as Fortifications, Arms, Men, and Money (which is the Sinews of Civil Affairs) ready prepared, in case of any Attack from abroad, to *repel* it: Though not voluntarily to *begin* one upon another Nation, even after sufficient Cause of War given, unless when invited by a very safe Opportunity, and that the Publick be in a good Condition conveniently to go thro' with the Undertaking. For the same Reason it is proper to observe and search into the Counsels and Proceedings of Neighbours with all Exactness, and to enter with them into *Leagues and Alliances* as prudently, as so great a Concern requires.

Of War and Peace with foreign Nations.
L. N. N.
l. 7. c. 9.
§ 13.

C H A P. XII.

Of the Special Laws of a Community, relating to the Civil Government.

IT Now remains, That we take a view of I. the respective *Parts* of Supreme Govern- *What they are.* ment, together with such *Circumstances* thereun- L. N. N. to belonging, as we find are worthy to be ob- l. 8. c. 1. serv'd. In the first Place, there are the *Civil* § 1. *Laws*, meaning the Acts and Constitutions of the highest *Civil* Authority for the Time being, ordained to direct the Subject in the Course of his Life, as to what Things he ought to do, and what to omit.

THESE are called *Civil*, upon two Accounts II. especially: That is, Either in Regard to their *Authority*, or their *Original*. In the first Sense, *Why so called.* all manner of Laws whatsoever, by the Force whereof Causes may be tried and decided in a Court of Civil Judicature, let their Original be what it will, may pass under that Denomination. In the other, we call only those Laws *Civil*, which derive their Original from the Will of the Supreme Civil Government, the Subjects whereof are all such Matters, concerning which neither the Laws of God or Nature have determined; yet a due Regulation and Settlement of them is found to be very conducive and advantageous to particular Commonwealths.

III. As nothing therefore ought to be made the Subject of a Civil Law, but what relates to the Good of the Commonwealth that does ordain it; so it seeming in the highest Degree expedient towards the Regularity and Ease of living in a Community, That in particular *the Law of Nature should be diligently observed by all People*; it lies upon Supreme Governours to authenticate the said Law with the Force and Efficacy of a Civil Law. For since indeed the Wickedness of a great Part of Mankind is arrived to a Degree, which neither the apparent Excellency of the Law of Nature, nor the Fear of God Himself, is sufficient to restrain; the most effectual Method remaining, to preserve the Happiness of living in a Community, is, by the Authority of the Government to inforce the *Natural* by the *Civil Laws*, and supply the Disability of the one with the Power of the other.

IV. Now the *Force and Power, which is in Civil Laws*, consists in this, That to the Mandatory Part of the Statute, concerning Things to be done or omitted, there is annexed a *Penal Sanction*, assigning the Punishment that is to be inflicted upon a Man by a Court of Justice for omitting what he ought to do, or doing what he ought to omit. Of which Kind of Sanctions, the Laws of Nature being of themselves destitute, the breaking of them does not fall under the Punishment of any Court in this World; but yet it is reserved for the Judgment of the Tribunal of GOD.

V. MORE particularly, it is inconsistent with the Nature of living in a Community, for any one by his *own* Force to exact and extort what himself accounts to be his Due. So that here the

the *Civil* Laws come in, to the Assistance of the *Natural*. For they allow the Creditor the Benefit of an *Action*, whereby the Debt that is owing to him by Virtue of a Law of Nature, with the Help of the Magistrate, may be demanded and recover'd in a Court of Justice, according to the Course of the Laws of the Nation: Whereas without such Inforcement of the said Laws, you can force nothing from a Debtor against his Will; but must intirely depend upon his Conscience and Honour. The *Civil* Laws admit of *Actions* chiefly in the Case of those Obligations that are contracted betwixt Parties by an exprefs Bond or Covenant. For as to other Affairs, where the Obligation arises from some *indefinite* Duty of the Law of Nature, the *Civil* Laws make them not subject to an *Action* at all; on purpose to give occasion to good Men to exercise their Virtue, to their more extraordinary Praise, when it is evident, they do that which is just and honest without Compulsion. Beside that, frequently, the Point in Question may not be of Consequence enough to trouble a Court about it.

AND whereas the Law of Nature commands many Things at large, in an indefinite Manner, and leaves the Application of them to every one in his own Breast; the *Civil* Laws being careful of the Honour and Tranquillity of the Community, prescribe a *certain Time, Manner, Place, Persons, and other Circumstances*, for the due Prosecution of those Actions, with the Proposal of a Reward upon Occasion, to encourage People to enter upon them. And when any Thing is obscure in the Law of Nature, the *Civil* Laws *explain* it. Which Explication

VI.

The Prosecution of them.

the

the Subjects are obliged to receive, and follow, although their own private Opinions do otherwise lead them to a contrary Sense.

VII.
Form.

So that there being thus a Number of Actions, left by the Law of Nature to be consider'd according to the Will and Judgment of each Person, which nevertheless in a Common-wealth ought to be regularly stated for the greater Decency and Quiet of the same; it uses to be the Care of the Civil Laws to reduce all those Actions, with their respective Concerns, to a *proper Form*; as we see it is in Wills, Contracts, and divers other Cases: from whence it comes, that they *limit* us (as they do) in the Exercise of several Rights, to the Use whereof the Law of Nature left us much at *Liberty*.

VIII.
The Obedience due to the Civil Laws.

FOR so far as the Civil Laws do not openly contradict the Law of GOD, the Subjects stand *obliged to obey them*, not merely out of Fear of Punishment, but by an internal Obligation confirm'd by the Precepts of the Law of Nature it self. This being one of them, amongst others, That *Subjects ought to obey their lawful Sovereigns*.

IX.
And to the particular Commands of the Sovereign,
L. N. N.
l. 8. c. 1.
9 6.

NAY, it is their Duty to obey even the *Personal Commands* of their Sovereigns, no less than they do the Common Laws of the Kingdom. Only here they must observe, whether the Thing commanded is to be done by them *as in their own Names*, in the Quality of an Action belonging *properly to Subjects to do*; or whether it be barely to undertake the *Execution* of an Affair for the Sovereign, in Consequence of that Authority which he has to command it. *

In

* This Distinction will by no means hold good; for if

In the latter Case, the Necessity that is imposed upon the Subject excuses him from Sin, tho' to command the Fact it self is a Sin in the Sovereign. But in the Other, for a Subject, as in his *own* Name, to do a Thing which is repugnant to the Laws of God and Nature, can never be Lawful. And this is the Reason, why, if a Subject takes up Arms in an unjust War, at the Command of his Sovereign, he sins not: Yet if he condemns the Innocent, or accuses and witnesses against them falsely upon the like Command, he sins. For as he serves in War, he serves in the Name of the Publick; but acting as a Judge, Witness, or Accuser, he does it in his Own.

C H A P. XIII.

Of the Power of Life and Death.

THE Civil Government, that is supreme I. in every State, has a Right over the *Twofold* Lives of its Subjects, either *indirectly*, when it exposes their Lives in Defence of the Publick; or *directly*, in the Punishment of Crimes.

FOR when the Force of Foreigners in an Invasion (which often happens) is to be repell'd II. by Force; or, That we cannot without the *Indirectly*

the Thing commanded by the Sovereign; be manifestly Criminal, Unjust, and Unrighteous, let it be commanded in what Way and Method it will, and enforced with the greatest Threats possible, it ought not to be comply'd with. See *L. N. N. Lib. 1. Cap. 1. § 24.*

Use of Violence obtain our Rights of them ; it is lawful for the Government, by its supreme Authority, to compel the Subjects to enter into its Service ; not thereby purposely intending their Death, only their Lives are exposed to some Danger of it. On which Occasions, that they may be able to behave themselves with Skill and Bravery, it is fit they should be exercised and prepar'd for the Purpose. Now the Fear of Danger ought not to prevail with any Subject, to render himself incapable of undergoing the Duties of a Soldier ; much less ought it to tempt a Man that is actually in Arms, to desert the Station appointed him ; who ought to fight it out to the last Drop of his Blood, unless he knows it to be the Will of his Commander, that he should rather preserve his Life than his Post ; or if he be certain that the maintaining of such Post is not of so great Importance, as the Preservation of the Lives engaged therein.

III.
Directly.
L. N. N.
l. 8. c. 3.
§ 1.

THE Government claims a Power to take away the Lives of Subjects *directly*, upon the Occasion of any heinous Crimes committed by them ; * whereon it passes Judgment of Death by way of *Punishment* : As likewise the Goods and Chattels of Criminals are subject to the Censure of the Law. So that here some general Things concerning the Nature of Punishments, come to be discours'd.

IV.
Of Punishments.
L. N. N.
l. 8. c. 3.
§ 4

PUNISHMENT is an Evil that is *suffered*, in Retaliation for another that is *done*. Or, A certain grievous Pain or Pressure, imposed upon a Person by Authority, in the Manner of a Force, with Regard to an Offence that has

* *Grotius de Jure Belli & Pacis*, l. 2. c. 20, & 21.
been

been committed by him. For although the *doing* of some Things may oftentimes be commanded in the Place of a Punishment, yet it is upon this Consideration, that the Things to be done are troublesome and laborious to the Doer, who will therefore find his Sufferings in the Performance of such Action. A Punishment also signifies its being inflicted against the Wills of People: For it would not otherwise obtain its End; which is, to deter them from Crimes by the Sense of its Severity: An Effect it never would produce, if it were only such, as an Offender is willing and pleas'd to undergo. As for other Sufferings, which happen to be undergone in Wars and Engagements; or which one bears innocently, being wrongfully and injuriously done him; the Former not being inflicted by Authority, and the Other not referring to an antecedent Crime, they do neither of them import the proper Sense and Meaning of a *Punishment*.

By our *Natural Liberty*, we enjoy the Privilege to have no other Superiour but GOD over us, * and only to be obnoxious to Punishments

V.
Inflicted
by the Go-
vernment.

* The Author here reasons on a false *Hypothesis*. He pretends, as is plain from what is here laid down That no one can inflict any Punishment on another, unless he be his Superiour. Now in the State of Nature all are equal; and then all Natural Laws would be useless and insignificant, if a Power, in such Case, were no where lodged to punish those who violate them, either with Respect to any private Person, or to Mankind in general; the Preservation of which is the End of these Laws, to the Observation of which all Men stand under a common Obligation. In this independent State, every one has a Right to put these Laws in Execution, and to punish the Person who violates them. See L. N. N. Lib. 8. Chap. 3. § 4.

L. N. N. Divine. But since the Introduction of Govern-
 1. 8. c. 3. ment, it is allow'd to be a Branch of the Office
 § 7. of those in whose Hands the Government is intru-
 sted, for the Good of all Communities; that upon the Representation of the unlawful Practices of Subjects before them, they should have Power effectually to *coerce*, [punish and restrain] the same, that People may live together in Safety.

VI. NEITHER does there seem to be any Thing of
 The Bene- Inequality in this; that *he who* Evil does should
 fit of Evil suffer. Yet in the Course of Human Punish-
 them. ments, we are not solely to regard the Qua-
 lity of the Crime, but likewise to have an Eye
 upon *the Benefit of the Punishment*: By no
 means executing it on purpose to feed the Fancy
 of the Party injur'd, or to give him Pleasure
 in the Pains and Sufferings of his Adversary:
 Because such Kind of Pleasure is absolutely inhu-
 mane, as well as contrary to the Disposition of
 a good Fellow-Subject.

VII. THE *Genuine End of Punishments in a State*,
 The kind is, The Prevention of Wrongs and Injuries;
 of them. which then have their Effect, when he who does
 L. N. N. the Injury is *amended*, or for the future *incapa-*
 1. 8. c. 3. *culated* to do more, or others taking *Example*
 § 8. from his Sufferings are deterr'd from like Prac-
 tices; or, to express it a nother way, That
 which a Government designs in the Matter of
 Punishments, is the *Good*, either of the Offen-
 der, or the Party offended, or generally of
 All its Subjects.

VIII. FIRST, We consider the *Good of the Offen-*
 Upon the der: In whose Mind the Smart of the Pu-
 Offender. nishment serves to work an Alteration towards
 L. N. N. Amendment, and corrects the Desire of doing
 1. 8. c. 3. the
 § 9.

the same again. Divers Communities leave such Kind of Punishments as are qualified with this End, to be exercis'd by Masters over the Members of their own Families. But it never was thought good they should proceed so far as to *Death*, because, he that is dead is past *Amendment*.

IN the next Place, a Punishment intends the IX.
Good of the Party offended: securing him, that *Upon the*
 he suffer not the like Mischief for the future, *Party of-*
 either from the same or other Persons. He be- *senaed.*
 comes secure from being again injured in like L. N. N.
 Manner by the same Person; first, By the l. 8. c. 3.
 Death of the Criminal; or, secondly, If he § 11.
 be allow'd Life, by depriving him of Pow-
 er to hurt; as, by keeping him in Custody,
 taking his Arms, or other Instruments of Mis-
 chief, from him, securing him in some distant-
 Place, and the like; or, thirdly, By ob-
 liging him to learn, at his own Peril, not to
 incur farther Guilt, or offend any more. But
 then to secure the Party offended from suffering
 the like Injury from other Hands, it is neces-
 sary that the Offender be punished in a most
 Open and Publick Manner, whereby the Crimi-
 nal may become an Example to all others; and
 that his Punishment be accompanied with such
 Circumstances of *Form* and *Pomp*, as are apt to
 strike a Dread into as many as behold it.

IN a Word, the *Good of all People* is intend- X.
 ed by the Execution of Punishment in this *Upon All.*
 Manner. For by this means, Care is taken, L. N. N.
 that he who has done a Mischief to one, shall l. 8. c. 3.
 do no such Mischief again to another: The § 12.
 Terrour of whose Example may also be an An-
 tidote for the rest against the Temptations to

his Crime : And this Good accrues after the same Manner as the former.

XI. *Internal Acts of the Mind, not subject to them.*
L. N. N.
l. 8. c. 3.
§ 14.

BUT if, together with the End of Punishments, we consider the Condition of Human Nature, we shall see, That *all Sins are not of that Quality, that they must necessarily fall under the Sentence of a Court of Justice.* The *Acts of the Mind within it self*, which are merely internal ; such as, Thinking upon a Sin with Delight, coveting, desiring, resolving to do an ill Thing, but without effect ; though they should be afterwards made known by a Man's own Confession, yet are all exempted from the Stroke of human Punishments. For so long as those *internal* Motions have not broken forth into Action, nor occasion'd the Prejudice of any one, whom does it concern or profit to cause the Author to suffer for the same ?

XII. *Nor minute Lapses.*

IT would also be over severe in Laws, to punish the more minute Lapses which may daily happen in the Actions of Men ; when, in the Condition of our Natures, the greatest Attention cannot prevent them.

XIII. *And other Actions.*
L. N. N.
l. 8. c. 3.
§ 14.

THERE are many Instances of Actions more, of which the Publick Laws dissemble the taking of any Notice, *for the sake of the Publick Peace.* As sometimes, because a good Act shines with greater Glory, if it seems not to have been undertaken upon Fear of human Punishment ; or, perhaps, it is not altogether worth the troubling of Judges and Courts about it ; or, it is a Matter extraordinarily difficult to be decided ; or it may be some old inveterate Evil, which cannot be removed, without causing a Convulsion in the State.

IN fine, it is absolutely necessary, That all ^{XIV.} *those Disorders of the Mind should be exempted* Nor the *Vices of the Mind.* *from Punishment, that are the Effects of the common Corruption of Mankind*; such as Ambition, Avarice, Rudeness, Ingratitude, Hypocrisy, Envy, Pride, Anger, private Grudges, and the like. All these of Necessity, must be exempted from the Cognizance of *Human* Judicatures, so long as they break not out into publick Enormities; seeing they abound to that Degree, that if you should severely pursue them with Punishments, there would be no People left to be the Subjects of Government.

FARTHER, When there have been Crimes committed, which are punishable by the Civil Judicature, it is not *always* necessary to execute the Sentence of Justice upon them. For in some Cases a *Pardon* may possibly be extended to Criminals, with a great deal of *Reason*, (as it never ought to be granted without it;) and amongst other Reasons, *these* especially may be some: *That* the Ends, which are intended by Punishments, seem not so necessary to be attended to in the Case in Question: *Where* a Pardon may produce more *Good* than the Punishment, and the said Ends be more conveniently obtain'd another way: *That* the Prisoner can allege those excellent Merits of his own or of his Family towards the Common-wealth, which deserve a singular Reward: *That* he is famous for some remarkable rare Art or other; or, it is hoped, will wash away the Stain of his Crime by performing some Noble Exploit: *That* Ignorance had a great Share in the Case, tho' not altogether such as to render the Criminal blameless: Or, *That* a particular Reason

XV.
Of Par-
don.
L. N. N.
l. 8. c. 3.
§ 15.

of the Law ceases in a Fact of the same Nature with his. For these Reasons, and oftentimes for the *Number* of the Offenders, being very great, Pardons must be granted, rather than the Community shall be exhausted by Punishments.

XVI. To take an Estimate of the *Greatness of any Crime*, there is to be consider'd, first, The Object against which it is committed; how Noble and Precious *that* is: Then, The *Effects*; what Damage, more or less it has done to the Common-wealth: And next, The *Pravity* of the Author's Intention, which is to be collected by several Signs and Circumstances: As, Whether he might not easily have resisted the Occasions that did tempt him to it? and besides the common Reason, Whether there was not a peculiar one for his Forbearance? What *Circumstances* aggravate the Fact? or, Is he not of a Soul dispos'd to resist the Allurements of a Temptation? Inquiring yet farther, Whether he was not the *Principal* in the Commission? or, Was he seduced by the Example of others? Did he commit it once, or oftner, or after Admonition spent in vain upon him?

XVII. BUT for the precise *Kind and Measure of Punishment*, that is fit to be pronounced upon each Crime, it belongs to the Authority of the Government to determine it, with an intire Regard to the Good of the Common-wealth. Whence the *same* Punishment may, and oftentimes is, impos'd upon two *unequal* Crimes; understanding the Equality that is commanded to be regarded by Judges, to mean the particular Case of those Criminals, who being guilty of the same Kind of Fact, the one shall

shall not be acquitted, and the other condemned without very sufficient Reason. And although Men ought to shew to one another all the Mercy and Tenderneſs that may be; yet the Good of the Nation, and the Security of its Subjects, require, upon Occaſion, when either a Fact appears moſt pernicious to the Publick, or there is need of a ſharp Medicine to obviate the growing Vices of the Age, that the Government ſhould *aggravate its Punishments*: which deſerve at all times to be carried high enough, to be ſufficient to controll the Propenſity of Men towards the Sins againſt which thoſe Punishments are levell'd. And let the Government obſerve, That no greater Punishments be inflicted, than the Law aſſigns, unleſs the Fact be aggravated by very heinous Circumſtances.

MOREOVER, Since the ſame Punishment, not affecting all Perſons alike, meets with various Returns to the Deſign thereof, of reſtraining in them the Itch of Evil-doing, according to the Diſpoſition of every one that incounters it; therefore both in the Deſignation of Punishments in general, and in the Application of them to Particulars, it is proper *to conſider the Perſon of the Offender*, in Conjunction with as many Qualities as concur to augment or diminish the Senſe of Punishment; as, Age, Sex, Condition, Riches, Strength, and the like.

XVIII.
The Perſon of the Offender.
L. N. N.
1. 8. c. 3.
§ 25.

NOT but that it frequently happens, that the Crime of one ſhall occaſion the Inconvenience of many others, even to the Intercepting of a future Bleſſing from them that they juſtly expected to receive. So when an Eſtate is conſiſcated

XIX.
Effects of one Man's Crime upon another

L. N. N. for a Crime done by the Parents, the innocent
 1. 8. c. 3. Children are plunged into Beggary. And when
 § 33. a Prisoner upon Bail makes his Escape, the
 Bail is forced to answer the Condition of the
 Bond, not as a *Delinquent*, but because it was
 his voluntary Act to oblige himself to stand to
 such an Event.

XX. FROM whence it follows, That as no Man
Crimes done by
Communities.
 L. N. N. does not consent to it, shall not be condemn'd
 1. 8. c. 3. for it; nor suffer the Loss of any Thing he
 § 28. does not hold in the Name and Service of the
 Community, farther than it is usual on these
 Occasions for the Innocent to feel the Smart of
 the *Common Misfortune*. When all those are
 dead, who did consent or assist towards the
 said Crime; then the Guilt thereof expires,
 and the Community returns to its pristine Inno-
 cency.

C H A P. XIV.

Of REPUTATION.

I. **R**EPUTATION in General, is that
Defined.
 L. N. N. some account or other, by which they are
 1. 8. c. 4. compar'd and equaliz'd, preferr'd or postpon'd
 § 1. to others.

II. **I**T is divided into *Simple*, and *Accumulative*;
Divided. and may be consider'd as to both, either in a
 People

People living at their Natural Liberty, or united together under a Government.

SIMPLE Reputation amongst a People in their Natural Liberty, consists chiefly in this, That by their Behaviour, they have the Honour to be esteem'd, and treated with, as Good Men, ready to comport themselves in Society with others, according to the Prescription of the Law of Nature.

III.
Simple Reputation in a State of Nature.
L. N. N.
l. 8. c. 4.
§ 2.

THE Praise whereof remains Entire, so long as no evil and enormous Fact is knowingly and wilfully done by them, with a wicked Purpose, to violate the Laws of Nature towards their Neighbour. Hence every one naturally is to pass for a Good Man, 'till the contrary is prov'd upon him.

IV.
How preserved.
L. N. N.
l. 8. c. 4.
§ 3.

THE same is *diminish'd* by Transgression against the Law of Nature maliciously, in any heinous Matters; which serves also as a Caution for the future, to treat with him that does it, with greater Circumspection; though this Stain may be wash'd of, either by a voluntary Reparation of Damages, or the Testimonies of a serious Repentance.

V.
Diminished, and repaired.
L. N. N.
l. 8. c. 4.
§ 4.

BUT by a Course of Life directly tending to do Mischief, and the seeking of Advantages to themselves, by open and promiscuous Injuries towards others, the Reputation describ'd is *totally destroyed*. And till Men of this sort repent, and change their Ways, they may lawfully be used as Common Enemies, by every one, that is in any manner liable to come within the Reach of their Outrages: Since it is not impossible, even for those Men, to *retrieve their Credit*; if after they have repair'd all their Damages and obtain'd their Pardons, they

VI.
Lost, and recovered.
L. N. N.
l. 8. c. 4.
§ 5.

they renounce their vicious, and embrace for the Time to come, an honest Course of living.

VII.
Under Govern-
ment.
L. N. N.
l. 8. c. 4.
§ 6.

SIMPLE Reputation, with regard to such as live under Civil Government; is that Sort of Esteem, by which a Man is looked on at the lowest, as a common but a sound Member of the State: Or when a Man hath not been declar'd a corrupt Member, according to the Laws and Customs of the State, but is supposed to be a good Subject, and is look'd upon accordingly, and valu'd for such.

VIII.
Lost by an
ill Condi-
tion of
Life,
L. N. N.
l. 8. c. 4.
§ 7.

HERE therefore the same *perishes*, either by Reason of the Course of a Man's Life, or in Consequence of some Crime. The first is the Case of *Slaves*; whose Condition, tho' naturally having no Turpitude in it, in many Communities places them, if possible, below Nothing. As likewise that of *Panders, Whores*, and such like, whose Lives are accompanied with Vice, at least the Scandal of it. For tho', whilst the Community thinks fit publickly to tolerate them, they participate of the Benefit of the Common Protection; yet they ought however to be excluded the Society of Civil Persons. And we may conclude no less of others, who are employ'd in Works of Nastiness and Contempt, tho' *naturally* not including any Vitioufness in them.

IX.
And his
Crimes.

BY *Crimes* Men utterly lose their Reputation, when the Laws set a Brand of Infamy upon them for the same; either by Death, and so their Memory is set under Disgrace for ever; or by Banishment out of the Community, or by Confinement, being consider'd as scandalous and corrupt Members,

OTHERWISE

OTHERWISE it is very clear, that the Natural Honour of no Man can be taken from him solely by the Will of the Government. For how can it be understood, that the Government should have a Power collated on it, which conduces in no Degree to the Benefit of the Common-wealth? So neither does it seem, as if a real Infamy can be contracted by executing the Commands of the Government, barely in the Quality of a Minister, or Officer.

ACCUMULATIVE Reputation we call that, by which Persons, reciprocally equal as to their Natural Dignity, come to be prefer'd to one another according to those Accomplishments, which use to move the Minds of People to pay them Honour: For Honour is properly, the Signification of our Judgment concerning the Excellency of another Person.

THIS Sort of Reputation may be consider'd, either as amongst those who continue in the Liberty of a State of Nature, or amongst the Members of the same Common-wealth. We will examine, what the Foundations of it are, and how they produce in People, both a Capacity to expect the being Honoured by others; and an actual Right, strictly so called, to demand it of them as their Due.

THE Foundations of an Accumulative Reputation, are in General reckoned to be all Manner of Endowments, either really containing, or such as are supposed to contain, some great Excellency and Perfection, which has plainly a Tendency in its Effects to answer the Ends of the Laws of Nature or Societies. Such are Acuteness and Readiness of Wit, a Capacity to understand several Arts and Sciences, a sound Judgment in Business,

X.
Otherwise
Indelible.
L. N. N.
l. 8. c. 4.
§ 9.

XI.
Accumulative Re-
putation.
L. N. N.
l. 8. c. 4.
§ 11.

XII:
Twofold.

XIII.
The
Grounds
of it.
L. N. N.
l. 8. c. 4.
§ 12.

Business, a steady Spirit, immoveable by outward Occurrences, and equally superiour to Flatteries and Terrours: Eloquence, Beauty, Riches; but, more especially the Performing of good and brave Actions.

XIV. ALL these Things together, produce a *Capacity* to receive Honour, *not a Right*. So that if *The Distinction of any Person should decline the Payment of his a Capacity Veneration to them,* he may deserve to be taken Notice of for his Incivility, but not for an Injury. For a *perfect Right* to be honoured by others, that bear the Ensigns thereof, proceeds either from an Authority over them; or from some mutual Agreement; or from a Law that is made and approved by one Common Lord and Master.

The Distinction of any Person should decline the Payment of his a Capacity Veneration to them,
and a Right to
 it.
 L. N. N.
 l. 8. c. 4.
 § 14.

XV. AMONGST *Princes and independent States,* they usually alledge, for *Honour and Precedence,* the Antiquity of their Kingdoms and Families, the Extent and Richness of their Territories, their Power Abroad and at Home, and the Splendour of their Styles. Yet neither will all these Pretences beget a *perfect Right* in any Prince or State to have the Precedence of others, unless the same has been first obtained by Concession or Treaty.

Amongst Princes and States.
 L. N. N.
 l. 8. c. 4.
 § 20.

XVI. AMONGST *Subjects,* the *Degree of Honour is determined by the Prince,* who wisely therein regards the Excellency of each Person, and his Ability to advance the publick Good. And whatever Honour a Subject receives in this Nature, as he may justly *claim* it against his Fellow-Subject, so he ought no less to satisfy himself in the quiet Enjoyment of it.

Amongst Subjects.
 L. N. N.
 l. 8. c. 4.
 § 24.

C H A P. XV.

Of the Power of Governours over the Goods of their Subjects.

AS it wholly lies at the Pleasure of supreme Governours, to appoint with what Restriction they will allow their Subjects to have Power over the Goods which *themselves* derive upon them; so also over the Goods of the Subjects *own acquiring* by their proper Industry or otherwise, the said Governours claim a *threefold Kind of Right*, resulting from the Nature, and as being necessary to the End, of Communities.

THEIR First, consists in this; That it belongs to them to *prescribe Laws* to the Subjects, about the Measure and Quality of their Possessions; and which way to transfer the same from Hand to Hand, with other Particulars of the like Nature; and how to apply them in the Use to the best Advantage of the whole Body.

By the Second, they claim to appropriate to themselves, out of the Goods of the Subjects, a *Portion* by the Name of *Tribute* and *Customs*. And it is but reasonable, that since the Lives and Fortunes of all the Members are defended by the Community, the necessary Charges thereof should be defrayed by a general Contribution. For he must be very impudent indeed, who will enjoy the Protection and Priviledges of a Place, and yet contribute nothing in Goods or Service towards its Preservation. Only herein there will be great Occasion for Governours to accommodate themselves with Prudence to the querulous

Temper

I.
Threefold.
L. N. N.
l. 8. c. 5.
§ 1.

II.
By Laws.
L. N. N.
l. 8. c. 5.
§ 3.

III.
By Taxes
and Customs.
L. N. N.
l. 8. c. 5.
§ 4.

Temper of common People ; and let them endeavour to levy the Money the most insensibly that they can : Observing first an Equality towards all, and then to lay the Taxes rather upon the smaller Commodities of various Kinds, than upon the Chief in a more uniform Way.

IV. THE Third, is a * *Right of Extraordinary Dominion*, consisting in this ; That upon an *urgent Necessity of State*, the Goods of any Subject, of which the present Occasion has need, may be taken and applied to *publick Uses*, tho' far exceeding the Proportion, that the Party is bound to contribute towards the Expences of the Common-wealth, For which Reason, as much (if it be possible) ought to be refunded to him again, either out of the publick Stock, or by the Contribution of the Rest of the Subjects.

V. BESIDE these three Pretensions over the *private*, in divers Communities there are some particularly call'd, the *publick Estate* ; which carry also the Name of the *Kingdom's, or the Prince's Patrimony*, according as they are distributed into the *Treasury* or the *Privy Purse*. The Latter serves for the Maintenance of the Prince and his Family ; who has a Property in it during Life, and may dispose of the Profits thence arising at his Pleasure : But the Use of the Other is appropriated for the publick Occasions of the Kingdom ; the Prince officiating therein as Administrator only, and standing obliged to apply all to the Purposes to which they are designed. And neither of the two *Patrimonies* can be *alienated* by the Prince without the People's Consent.

§ Grotius de Jure B. & P. l. 1. c. 1. § 6. L. 2. c. 14. § 7. L. 3. c. 19. § 7. Junff. l. 3. c. 1. § 15.

MUCH less can a *whole Kingdom* (that is not held *patrimonially*) or any *Part* of it, be *alienated* without their *Consent* to it : And in the latter Case particularly the *Consent* of *that Part* that is to be *alienated*. As on the other Hand no Subject against the Will of his Community, can possibly *disengage himself from the Bonds of his Duty and Allegiance* to it ; unless the Force of foreign Enemies reduces him to such a Condition, that he has no other Way to be safe.

VI.
Neither
Royal
Power nor
Allegi-
ance, ali-
enable.
L. N. N.
l. 8. c. 5.
§ 10.

C H A P. XVI.

of WAR and PEACE.

ALTHO' nothing is more agreeable to the *Laws of Nature*, than the mutual Peace of Men with one another, preserved by the voluntary Application of each Person to his Duty ; living together in a State of Peace, being a peculiar Distinction of Men from Brutes ; yet it is sometimes both *Lawful and Necessary* to go to War, when by means of another's Injustice, we cannot, without the Use of Force, preserve what is our own, nor enjoy those Rights which are properly ours. But here common Prudence and Humanity do admonish us * to forbear our Arms there, where the Prosecution of the Injuries we resent, is likely to return more Hurt upon us and ours, than it can do Good.

I.
Necessity
of War
sometimes.
L. N. N.
l. 8. c. 6.
§ 2.

THE *just Causes* upon which a War may be undertaken, come all to these : The Preservation

II.
Just Cau-
ses of War.

* Grotius de Jure Belli & Pacis, l. 1. c. 2.

L. N. N. of our selves, and what we have, against an unjust Invasion; and this Sort of War is called *
 § 4. *Defensive*. The Maintenance and Recovery of our Rights from those that refuse to pay them: The Reparation of Injuries done to us, and Caution against them for the future. And this Sort of War is called *Offensive*.

III. No T that upon a Prince's taking himself to be injur'd, he is presently to have Recourse to Arms, especially if any Thing about the Right or Fact in Controversie remains yet under Dispute. † But first let him try to compose the Matter in an *amicable Way*, by Treaties, by Appeal to Arbitrators, or by submitting the Matter in Question to the Decision of a Lot; † and these Methods are the rather to be chosen by that Party who *claims* from another, because *Possession*, with any Shew of Right, is wont to meet with the most favourable Constructions.

IV. THE *unjust Causes of War*, are either those which *openly to all the World are such*; as, Ambition and Covetousness, and what may be reduced thereto: Or ** those that admit of a faint L. N. N. and imperfect *Colour* to be pretended in their
 § 5. *Excuse*. Of this Kind there is Variety: As, The Fear of a Neighbour's growing Wealth and Power; Conveniency of a Possession, to which yet no Right can be made out; Desire of a better Habitation; The Denial of common Favours; The Folly of the Possessor; The Desire of extinguishing another's Title,

* *Grotius de Jure Belli & Pacis*, l. 2. c. 1, &c. to l. 2. c. 23.

† *Grotius de Jure Belli & Pacis*, lib. 2. cap. 23, 24.

‡ *Grotius de Jure Belli & Pacis*, lib. 2. c. 23. § 12.

** *Grotius*, l. 2. c. 24. § 4.

lawfully acquired, because it may be prejudicial to us ; * and many more.

AND tho' the most proper Way of Acting in War, is by that of Force and Terrour, yet it is altogether as lawful to attack an Enemy by *Stratagems and Wiles*, provided that the Faith and Trust which you give him is inviolably observed. † It is lawful to deceive him by Stories and feigned Narrations, not by Promises and Covenants.

V.
Of Deceit
in War.
L. N. N
l. 8. c. 6
§ 6.

BUT concerning the *Violence* which may be used against him, and what belongs to him ; we must distinguish betwixt what it is possible for him to *suffer without Injustice*, and what we may easily *inflict without the Breach of Humanity*. Whoever declares himself my Enemy, as he makes Profession by that very Act of enterprizing upon me the greatest Mischiefs in the World ; so at the same Time he fully indulges me the Leave to imploy the utmost of my Power, without Mercy, against himself. † Yet Humanity commands me, as far as the Fury of War will permit, that I do my Enemy no more Harm, than the Defence or Vindication of my Right requires, with Care to my Security for the Time to come.

VI.
Violence:
L. N. N
l. 8. c. 6
§ 7.

WE commonly divide War into *Solemn* and *less Solemn*. To a *Solemn* War it is required, That it be made on both Sides by the Authority of the Sovereign Governours ; and preceeded by a publick Declaration. The *other* either is not publickly denounced, or, perhaps, is begun

VII.
Solemn
and less
solemn
War.
L. N. N.
l. 8. c. 6.
§ 9.

* Grotius, l. 2. c. 1. § 17. Cap. 22. § 5.

† Grotius de Jure Belli & Pacis, l. 3. c. 1. § 6, &c.

‡ Grotius, l. 3. c. 4. § 2. Cap. 11, 12, &c.

amongst private Persons. * To which latter Head belong also *Civil Wars*.

VIII. As the *Power of making War*, in all Nations lies in the same Hands, that are intrusted with the Government; † so it is a Matter above the Authority of a *subordinate Magistrate* to engage in, without a Delegation from thence, tho' he could suppose with Reason, that were they consulted upon the Matter, they would be pleased with it.

Power of making War.
L. N. N.
l. 8. c. 6.
§ 10.

INDEED all Military Governours of fortified Places and Provinces, having Forces under them to command upon the Defence thereof, may understand it to be injoyn'd them by the very Design of their Employments, to repel an Invader, from the Parts committed to their Trust, by all the Ways they can. But they are not rashly to carry the War into an Enemy's Country.

IX. IN a State of Natural Liberty, a Person is assaulted by Force only for the Injuries that are done by himself. But in a Community, a War often happens upon the *Governour* or the *whole Body*, when *neither of them* has committed any Thing. To make this appear just, it is necessary, the Act of a Third Party must by some way or other pass upon them. Now Governours do partake of the Offences, not only of their proper Subjects, but of others that occasionally flee to them; if either the Offences are done by their *Permission*, or that they *receive and protect* the Offender. The Sufferance of an Offence becomes then blameable, when at the

Wars occasioned by protecting of Refugees.
L. N. N.
l. 8. c. 6.
§ 12.

* *Grotius de Jure Belli & Pacis*, l. 1. c. 3. § 4.

† *Grotius*, &c. l. 1. c. 3. § 1.

same Time that one knows of the doing it, he has a Power to hinder it. Things openly and frequently done by the Subjects, are supposed to be known to their Governours; in whom it is always presumed there is a Power also to prohibit, unless a manifest Proof appears of its Defect. Yet to make it an Occasion of War, to give Admittance and Protection to a Criminal, who flies to us for the Sake only of escaping his Punishment, is what must proceed rather by Virtue of a particular Agreement betwixt Allies and Neighbours, than from any *common Obligation*; unless the Fugitive, being in our Dominions, contrives Hostilities against the Common-wealth he deserts.

ANOTHER received Custom betwixt Nations, is, That the Goods and Estate of every Subject may be answerable to make good the Debts of that State of which they are originally Members; as also for all that Wrong which that State may offer to Foreigners, or that Justice it may refuse to shew them, insomuch, that the Foreign Nation, whose Subjects have been thus injur'd by this State, may retaliate the Wrong upon the Effects or Persons of such Subjects of this State, as may be found among them. And these Sorts of Executions are usually called *Reprisals*, * and commonly prove the Forerunners of War. Those States who are the Aggressors, and give just Cause for such Reprisals, ought to refund and make Reparation to their Subjects upon whom they have thus brought Loss and Damage, by making them liable to have such Reprisals made upon them.

X.
Reprisals.
 L. N. N.
 l. 8. c. 6.
 § 13.

* *Grotius de Jure Belli & Pacis*, l. 3. c. 2. § 4.

XI.
Of Wars
in the De-
fence of
others.
L. N. N.
l. 8. c. 6.
§ 14.

A WAR may be made by a Person, not only for himself, but for another. In order to do this with Honesty, it is requisite, that He for whom the War is undertaken, shall have a just Cause; and his Friend, a probable Reason, why he will become an Enemy to *that other* for his sake. Amongst those, in whose Behalf it is not only lawful, but our Duty to make War, there is, in the first Place, *our Natural Subjects*, as well severally, as the universal Body of them; provided, that the War will not evidently involve the State in greater Mischiefs still. Next, there are the *Allies*, with whom we have engaged to associate our Arms by Treaty: Yet, therein not only giving the Precedence to our own Subjects, if they should chance to stand in need of Assistance at the same Juncture; but presupposing also, that the Allies have a just Cause, and begin the War with Prudence. * After our Allies, our *Friends* deserve to be assisted by us, even without our Obligation to do it by a special Promise. And where there is no other Reason, the common Relation alone of Men to Men, may be sufficient, when the Party imploring our Aid is unjustly oppressed, to engage our Endeavours, as far as with Convenience we are able, to promote his Defence.

XII. THE *Liberty that is in War*, of killing, plundering, and laying all Things waste, extends it self to so very large a Compass, that tho' a Man carries his Rage beyond the *utmost Bounds of Humanity*, yet in the Opinion of Nations, he is not to be accounted infamous, or one that ought to be avoided by Persons of

* Grotius de Jure Belli & Pacis, l. 2. c. 25.

Worth. * Excepting, that amongst the more Civilized World, they look upon some particular Methods, of doing Hurt to Enemies, to be *base*; as poisoning Fountains, or corrupting of Soldiers or Subjects to kill their Masters, &c.

MOVEABLE *Things* are understood to be Taken in War then, when they are carried out of the Reach of the Enemy who before possessed them. † And *Things immoveable*, when we have them within our Custody so, that we can beat the Enemy away from thence. Yet the Right of the former Possessor to retake the same, is never utterly extinguished, till he renounces all his Pretensions to them by a subsequent Agreement. For without this, it will be always lawful, by Force, to retrieve again what by Force is lost. The Soldiers fight by the Authority of the Publick; and whatever they obtain from the Enemy, they get it not for themselves, but properly for the Community they serve. Only it is customary in most Places, to leave to them by Connivance the Moveables, especially those of small Value, that they take, in the Place of a Reward, or perhaps instead of their Pay, and for an Encouragement to them to be free of their Blood. When *Things immoveable* that have been lost to, are retaken from the Enemy, they return into the Possession of the former Owners: || And Moveables ought to do the same; but that amongst

XIII.
Of things
taken in
War.
L. N. N.
l. 8. c. 6.
§ 20.

* Grotius de Jure Belli & Pacis, l. 3. c. 1, &c. c. 4.

§ 15, &c.

† Grotius, l. 3. c. 6.

|| Grotius de Jure Belli & Pacis, l. 3. c. 9. § 13.

most People they are delivered over and foregone as a Prey to the Army.

XIV. *Conquest.* EMPIRE also or Government comes to be acquired by War, not only over the *particular or single Persons conquered*, but *intire States*. * To render this lawful, and binding upon the Consciences of the Subjects, it is necessary, That on the one Side the Subjects swear Fidelity to the Conqueror; and on the other, that the Conqueror cast off the State and Disposition of an Enemy towards *them*.

XV. *Truce.* THE Proceedings of War are suspended by a *Truce*; which is an Agreement (the State and Occasion of the War remaining still the same as before.) to abstain on both Sides from all Acts of Hostility for some Time appointed. When that is past, if there be no Peace concluded in the *Interim*, they resume their Hostilities again, without the Formality of a new Declaration.

XVI. *Treaties of Truce.* Now *Truces* are either *such* as they consent to during the Continuance of the Expedition, whilst both Sides keep their Forces on foot; or *those*, on which they quite disband their Forces, and lay aside all Military Preparations. The first are seldom taken but for a small Time. The others they *may* and usually *do* take for a Continuance so long, as to carry the Face of a Peace; and sometimes also the very Name, with the Addition of some Term of Years, only to distinguish it from a *perfect Peace* indeed, which regularly is Eternal, and extinguishes the Causes of the War for ever. † Those that they call *tacit Truces*, oblige to nothing. For as on

* *Grotius de Jure Belli & Pacis*, l. 3. c. 7. & c. 15.

† *Grotius de Jure Belli & Pacis*, l. 3. c. 21. § 1. &c.
both

both Sides they lie quiet for their Pleasure, so, whenever they think fit, they may break out into Acts of Hostility.

BUT when a Peace is mutually ratified by each Sovereign Governour, upon Articles and Conditions agreed betwixt themselves, which they ingage to observe and put in Execution faithfully by a Time prescribed ; then a War is perfectly ended. * In Confirmation whereof, it is usual, not only for both Parties to take their Oaths and interchange Hostages ; but for some others' ostentimes, especially amongst the Assistants at the Treaty, to undertake the *Guaranty* of the same, with Promises of Aid to him who ever is first injured by the other, in Contravention to the Articles of the Peace that is made.

XVII.
*Treaties
of Peace.*
L. N. N.
l. 8. c. 8.

* *Grotius*, l. 3. c. 20. § 2, &c.

CH A P. XVII.

of ALLIANCES.

ALLIANCES interchangeably passed betwixt Sovereign Governours, are of good Use both in Times of War and Peace. * They may be *divided*, in Respect of their Subject, either into such as *reinforce the Duty* already incumbent on us from the *Law of Nature* ; or such

I.
*Alliances
twofold.*
L. N. N.
l. 8. c. 9.
§ 1.

* *Grotius de Jure Belli & Pacis*, l. 2. c. 15.

as *superadd something* to the Precepts of the Law ; at least, they determine their Obligation to such or such particular Actions, which before seem'd indefinite.

II. BY the *first* Sort are meant *Treaties of Peace*, wherein nothing more is agreed upon than the simple Exercise of Humanity towards one another, or a Forbearance of Mischief and Violence. Or, perhaps, they may establish a general Sort of Friendship betwixt them, not mentioning Particulars ; or fix the Rules of Hospitality and Commerce, according to the Directions of the *Law of Nature*.

III. THE others of the latter Sort, are called *Equal Leagues*, and are either *Equal* or *Unequal*. *Equal Leagues* are so far compos'd of the same Conditions on both Sides, that they not only promise what is *Equal* absolutely, or at least in Proportion to the Abilities of the Person ; but they stipulate in such a Manner too, that neither Party is to the other obnoxious, or in a worse Condition.

IV. *UNEQUAL Leagues* are those, wherein Conditions are agreed upon that are unequal, and render one Side worse than the other. * This Inequality may be either on the Part of the *Superiour*, or else of the *Inferiour Confederate*. For if the *Superiour Confederate* engages to send the other Succours, unconditionally, not accepting of any Terms from him, or engages to send a greater Proportion of them than He, the Inequality lies upon the *Superiour*. But if the League requires of the *inferiour Confederate* the Performance of more Things towards the *Superiour*,

* *Grotius de Jure Belli & Pacis*, l. 1. c. 3. § 21.

than the Superiour performs towards him, the Inequality there no less evidently lies on the Side of the *Inferiour*.

AMONGST the Conditions required of an inferior Ally, some contain a *Diminution of his Sovereign Power*, restraining him from the Exercise thereof in certain Cases without the Superior's Consent. Others *impose no such Prejudice upon his Sovereignty*, but oblige him to the Performance of those we call *transitory Duties*, which once done, are ended altogether. As, to discharge the Pay of the other's Army; to restore the Expences of the War; to give a certain Sum of Money; to demolish his Fortifications, deliver Hostages, surrender his Ships, Arms, &c. And yet neither do some *perpetual Duties diminish the Sovereignty* of a Prince. As, to have the same Friends and Enemies with another, tho' the other be not reciprocally engaged to have the same with him: To be obliged to erect no Fortifications here, nor to sail there, &c. To be bound to pay some certain friendly Reverence to the other's Majesty, and to conform with Modesty to his Pleasure.

V.
Conditions
put upon
Inferiours.
L. N. N.
l. 8. c. 9.
§ 5.

BOTH these Sorts of Leagues, as well *Equal* as the *Unequal*, are wont to be contracted upon various Reasons, whereof such especially produce Effects of the strongest and most binding Complexion, as tend to the Conjunction of many Nations in a League that is to last for ever. But the *Common Subject* of the Leagues most in Use, is, either the Preservation of Commerce, or the Furnishing of Succours in a War, Offensive or Defensive.

VI.
The Subject of
Leagues.

THERE is another famous Division of Leagues into *Real*, and *Personal*. The *Latter* express

VII.
Real and
personal
Leagues.

L. N. N. exprefs such a near Regard to the Person of the
 1. 8. c. 9. Prince they are contracted with, that whenever
 § 6. he dies, they expire alfo. *Real Leagues* are
 thofe, which not being entred into in Confidera-
 tion fo much of any particular Prince or Gover-
 nour, as of the Kingdom or Common-wealth,
 continue in full Force, even after the Death of
 the firft Contracters of them.

VIII. THE next in Nature to *Leagues*, are the
Sponfions. Agreements of a *Publick Miniſter*, made upon
 L. N. N. the Subject of the Affairs of the Prince his Maſ-
 1. 8. c. 9. ter, without Orders for the fame; which are
 § 12. uſually called *Overtures*. The Conditions where-
 of impoſe no Obligation upon the Prince, till
 he ſhall pleaſe afterwards to ratifie them by his
 own Authority. And therefore, if, after the
Miniſter has agreed upon the Compact abſo-
 lutely, he cannot obtain his Prince's Confirma-
 tion of it; it lies upon himſelf to conſider, what
 Satisfaction he ought to render to thoſe, who,
 depending upon his Credit, have been deceived
 by him with insignificant Ingagements.

C H A P. XVIII.

The D U T Y of Subjects.

I. THE Duty of Subjects is either *General*,
Twofold. ariſing from the Common Obligation
 L. N. N. which they owe to the Government as *Subjects* :
 1. 7. c. 8. Or *Special*, upon the Account of ſome particu-
 § 10. lar *Office* and *Employment*, that the Government
 impoſes upon them.

THEIR

THEIR *General* Duty respects the Demeanour of themselves severally, towards their Governours, the Common-wealth, and one another in particular.

To their *Governours* they owe Honour, Fidelity, and Obedience. Beside that, they ought to entertain good and honourable *Thoughts* of them and their Actions, and *speak* accordingly; to acquiesce with Patience and Content under the present State of Things, not suffering their Desires to wander after Innovations; not adhering to any Persons, or admiring and honouring them, *more* than they do the Magistrates that are set over them.

IN Reference to the Common-wealth, their Duty is, to prefer the Happiness and Safety of it to the dearest Things they have in the World: To offer their Lives, Estates and Fortunes with Cheerfulness towards its Preservation, and to study to promote its Glory and Welfare by all the Powers of their Industry and Wit.

TOWARDS *one another*, their Behaviour ought to be friendly and peaceable, as serviceable, and as affable as they can make it; not to give Occasion of Trouble by Moroseness and Obstinacy, nor envying the Happiness of any, or interrupting their lawful and honest Enjoyments.

AND as for their *peculiar Duties*, as *Officers*, whether they influence the whole Body of the Nation, or are employed only about a certain Part of it, there is this one general Precept to be observed for all; *That* no Person affect or take upon him any Employment, of which he knows himself, by the Sense of his Difabilities (whether

Want

II.

General.

III.

Towards
their Go-
vernours.

IV.

The Com-
mon-
wealth;

V.

One ano-
ther.

VI.

Their spe-
cial Du-
ties.

Want of Strength, Skill, Courage, &c.) to be unworthy and incapable.

VII. PARTICULARLY, let those who *assist at the*
The Duty of Privy-Counselors. *Publick Counsels*, turn their Eyes round upon all Parts of the Common-wealth; and whatever Things they discover to be of Use, thereupon ingenuously and faithfully, without Partiality or corrupt Intentions, lay open their Observations. Let them not take their own Wealth and Grandure, but always the publick Good, for the End of their Counsels; nor flatter their Princes in their Humours to please them only. Let them abstain from Factions and unlawful Meetings or Associations; dissemble not any thing that they ought to speak, nor betray what they ought to conceal. Let them approve themselves impenetrable to the Corruptions of Foreigners; and not postpone the publick Business to their private Concerns and Pleasures.

VIII. LET the *Clergy*, who are appointed publickly to administer in the *Sacred Offices of Religion*, perform their Work with Gravity and Attention; teaching the Worship of God, in Doctrines that are most true, and shewing themselves eminent Examples of what they preach to others; that the Dignity of their Function, and the Weight of their Doctrine, may suffer no Diminution by the Scandal of their ill led Lives.

IX. LET such who are publickly employed to *instruēt the Minds of the People in the Knowledge of Arts and Sciences*, teach nothing that is false and pernicious; delivering their Truths so, that the Auditors may assent to them, not out of a Custom of hearing, but for the solid Reasons that attend them: And avoiding all Questions which incline to imbroil Civil Society; let them assure themselves,

themselves, that whatever human Science or Knowledge returns no Good to us, either as Men or Subjects, the same deserves their Censure as *impertinent* Vanity.

LET those Magistrates, whose Office it is to *distribute Justice*, be easie of Access to all, and ready to protect the Common People against the Oppressions of the more mighty; administering Justice both to Rich and Poor, Inferiour and Superiour, with a perfect Equality. Let them not multiply Disputes unnecessarily; abstain from Corruption; be diligent in trying of Causes, and careful to lay aside all Affections that may obstruct *Sincerity* in Judgment; not fearing the Person of any Man while they are doing their Duty.

X.

Lawyers.

LET the *Officers of War* diligently Exercise their Men on all Occasions, and harden them for the enduring the Fatigues of a Military Life, and inviolably preserve good Discipline among them. Let them not rashly expose them to the Danger of the Enemy, nor defraud them of any of their Pay or Provisions; but procure it for them with all the Readiness they are able, and keep them in the Love of their Country, without ever seducing them to serve against it.

XI.

Officers of the Army.

ON the other Hand, let the *Soldiers* be content with their Pay, without plundering, or harassing the Inhabitants. Let them perform their Duty courageously and generously, in the Defence of their Country; neither running upon Danger with Rashness, nor avoiding it with Fear: Let 'em exercise their Courage upon the Enemy, not their Comrades: And maintain their several Posts like Men, preferring an Honourable

XII.

Soldiers.

nourable Death before a Dishonourable Flight and Life.

XIII. *Ambassadors and Envoys.* LET the *Ministers of the Common-wealth in foreign Parts*, be cautious and circumspect; quick to discern Solidities from Vanity, and Truths from Fables; in the highest Degree, Tenacious of Secrets, and obstinately averse to all Corruptions, out of their Care of the Good of the Common-wealth.

XIV. *Officers of the publick Revenues.* LET the *Officers for Collecting and Disposing of the Publick Revenue* have a Care of using needless Severities, and of increasing the Subjects Burthen for their own Gain, or through their troublesome and petulant Humours. Let them misapply nothing of the publick Stock; and satisfy the Persons who have Money to be paid out of it, without Delays unnecessary.

XV. *The Continuance of the Duties aforesaid.* ALL these *Particular Duties of Subjects*, continue during the Time of Employment: And when that ceases, the other expire also: But their *General Duties are in Force*, so long as ever Men continue to be Subjects; that is, 'till by either the *express* or *tacit* Consent of the Nation, they depart thence, to fix the Seat of their Fortunes elsewhere; that they are banished and deprived of the Rights of Subjects for their Crimes; or, being overcome in Battle, they are forced to yield to the Disposal of the Conqueror.

The E N D.



I N D E X.

The Roman Numerals I and II, signifie the First and Second Book. The first Figure after them directs to the Chapter, and the second Figure to the Section in that Chapter.

A.



ACCEPTANCE, of the Person to whom the Promise is made, necessary to make the Promise binding I. 9. 16.

Accessional Improvements, what they are, and to whom they belong I. 12. 7.

Accidents; Damages that come by Accidents not to be made good I. 6. 9.

Acquisition, the different Sorts of it I. 12. 5.

Action; what is meant by Human **ACTIONS** I. 1. 2. What are the Principles of them I. 1. 3. What it is that makes Men chargeable with their **ACTIONS** I. 1. 10. **ACTIONS** involuntary or forced I. 1. 16. Mix'd **ACTIONS** what I. 1. 16. **ACTIONS** of other Men, how they may be chargeable on us I. 1. 18, 27. The different Qualities of Moral **ACTIONS** I. 2. 11, 12, &c. What **ACTIONS** above the Reach of Commerce I. 14. 3.

U

Actions

I N D E X.

- Actions at Law*; for what Things a Man may or may not bring his Action II. 12. 5.
- Advantage*; in how many Ways Men may procure Advantages to others I. 8. 1, &c.
- Adultery*, dissolves the Marriage II. 2. 6.
- Aggressor*; we may not always use the last Extremity against an unjust Aggressor I. 5. 14. When the first Aggressor has a Right to defend himself I. 5. 24.
- Alliances*, and other publick Treaties consider'd and explain'd II. 17.
- Ambassadors*, their Duty II. 18. 13.
- Antichrests*; what Sort of Covenant so named I. 15. 15.
- Arbitrators*, what they are, and wherein their Duty consists II. 1. 11.
- Aristocracy*; what Sort of Government so called II. 6. 11. The Defects of such a Constitution II. 8. 7.
- Arts*; in what respect, and after what manner Arts are to be studied and cultivated I. 5. 9.
- Assignments of Debts*, when they may properly be made I. 16. 8.
- Astrology Judicial*, a Science contrary to the true Principles of Religion and Morality I. 5. 3.
- Atheists*, are wholly inexcusable I. 4. 2. Whether they ought to be brought to Punishment I. 4. 2.

B

- BARTER*, what is meant by it I. 15. 8.
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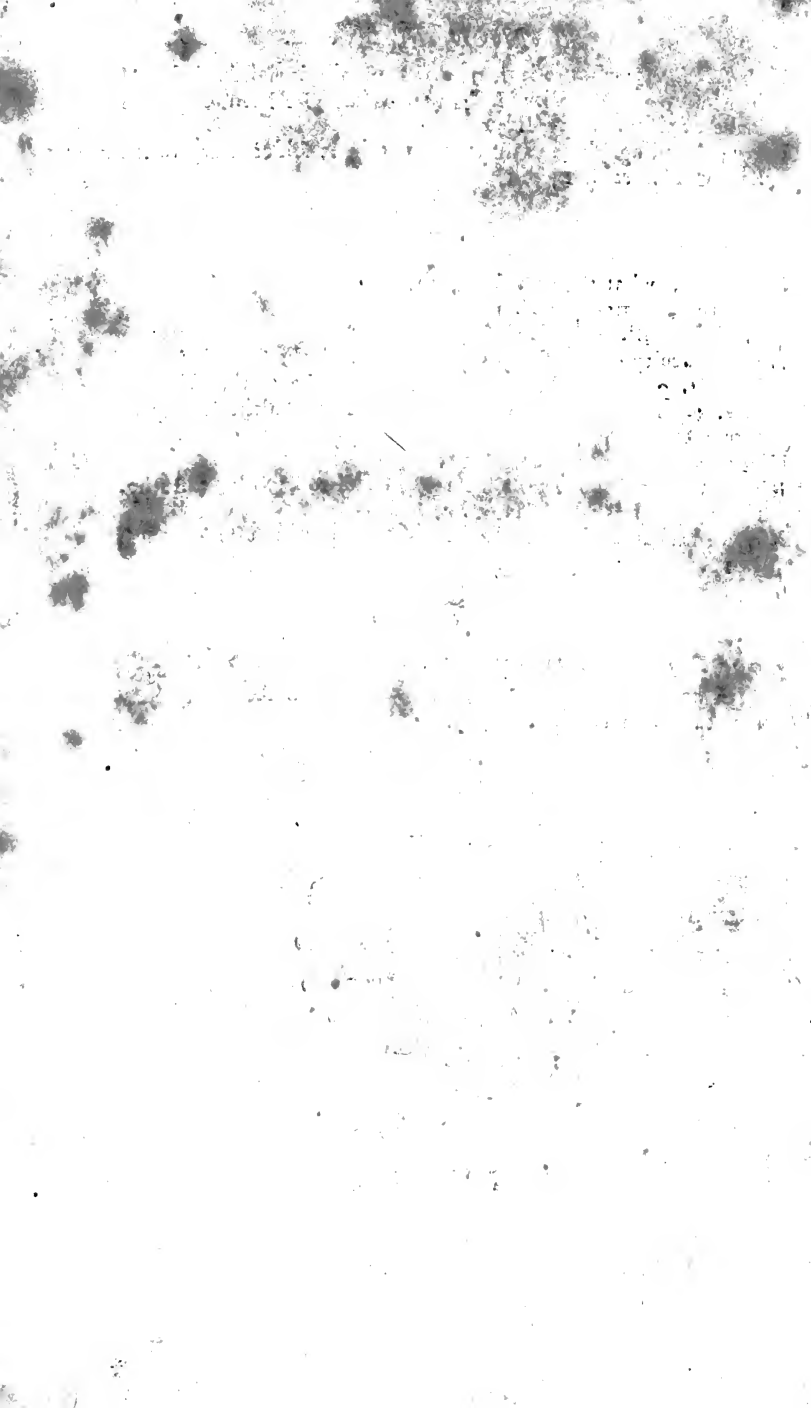
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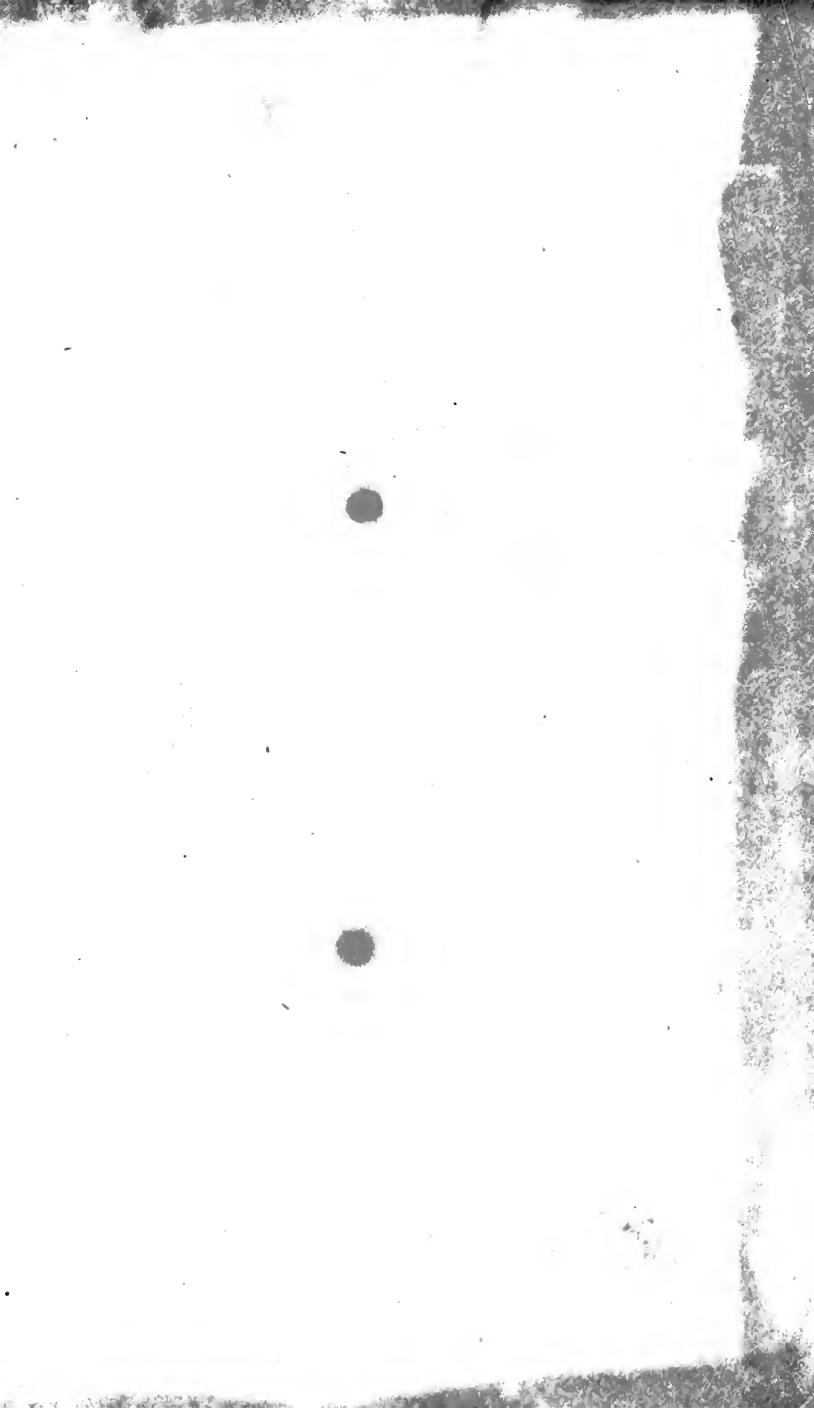
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